Library elect, pursuant to the above section of the statute, to have their libraries come within the provisions of said Act.

OFFICIAL OPINION NO. 47
June 2, 1949

Mr. Robert Hougham,
Executive Secretary,
Indiana State Teachers' Retirement Fund,
Room 336, State House,
Indianapolis 9, Indiana.

Dear Mr. Hougham:

Your letter of May 11, 1949 has been received and reads as follows:

"An amendment to the Teacher's Retirement Fund law in 1947, in Section 3, Chapter 353, Acts of 1947, directed the payment of certain increases in annuities to persons then retired; and appropriated $300,000 annually for the payment of such increases.

"The retirement fund has requisitioned against this $300,000 for this fiscal year ending June 30, 1949, the following amounts: * * * ($330,667.02, as itemized)

* * *

"Since this creates an accrued liability deficit of $30,667.02, in addition to the $300,000.00 specifically appropriated by the act, the question has arisen as to how and from what fund this additional money may be obtained to fulfill the provisions of the law with respect to these retired teachers. We, therefore request your official opinion as to the course we shall take in this matter."

Sub-section (g) of Section 1 of Chapter 353 of the Acts of 1947 provides as follows:

"In the year Nineteen Hundred Forty-seven there shall be levied not less than six cents (6c) on each
One Hundred Dollars ($100.00) valuation of taxable property as other State taxes are levied, an Indiana State Teachers' retirement fund levy sufficient, when added to funds hereby authorized to be transferred from the State General Fund by the State Board of Finance, to provide the necessary funds to cover the actuarial liability incurred by the State for the payment of four-sevenths (4/7) of an annuity of One Thousand Two Hundred Dollars ($1,200.00) as provided in this Act as determined by the actuarial investigation above provided for. On the basis of the actuarial investigations herein provided for, and for the other expenditures herein provided for, the trustees of the Indiana State Teachers' Retirement Fund hereafter shall submit its budget and estimated necessary tax levies to the Governor, or to such other officer or committee as shall be by law authorized to recommend to the General Assembly the necessary tax levies and the General Assembly shall make or cause to be made the necessary tax levies for the succeeding biennium which shall be sufficient to provide the necessary funds to cover the estimated liability of the State under this Act for the current year and the succeeding year."

Section 3 of Chapter 353 of the Acts of 1947 further provides as follows:

"Any teacher receiving annuity at the time of the passage of this act under the provisions of Chapter 182 of the Acts of 1915 or any acts amendatory of or supplementary thereto enacted prior to January first, Nineteen Hundred Forty-seven shall be eligible to receive the state's proportionate share of any annuities provided by the terms of Chapter 328 of the Acts of 1945, which act shall be deemed to continue in full force and effect for all persons not accepting the provisions of this act up to a maximum of six hundred eighty-five dollars ($685.00) per year by making application therefor in writing to the Board at any time hereafter, said annuity to begin upon the tenth of the month following receipt and acknowledgment of such application. Such retired teacher shall be entitled to
all the privileges of this act, including, but not restricted to, the privilege of paying arrearages on such teacher's active service credit. There is hereby appropriated from the general fund of the State the amount of three hundred thousand dollars ($300,000.00) annually to pay the increased annuities provided in this section."

It is apparent from the study of the above quoted sections of the law that the General Assembly made two distinct appropriations to provide the funds to pay the State's proportionate share of teachers' annuities. One appropriation was made by providing a tax levy and an additional and supplementary appropriation of $300,000.00 was made directly from the General Fund of the State. Sub-section (g) of Section 1 of the Acts of 1947 specifically provides that the tax levy and the supplemental appropriation from the General Fund of the State shall produce the necessary funds to cover the liability of the State for its proportionate share of teachers' annuities.

It is my opinion that it was the legislative intent not only to grant an increase to teachers who were receiving annuities at the time of the passage of Chapter 353 of the Acts of 1947 but to appropriate from the General Fund of the State an amount annually to cover such increase. In Section 3 of the Act, the State positively assumed an increased obligation to teachers already receiving annuities and the appropriating clause in said Section is again quoted for emphasis, as follows:

"There is hereby appropriated from the General fund of the State the amount of three hundred thousand dollars ($300,000.00) annually to pay the increased annuities provided in this section."

The Legislature having created the financial obligation and having directed the source from which such funds were to be derived, by implication granted the authority to the fiscal officers of the State to transfer from the General Fund sufficient money to meet the obligation. It is likewise evident that the $300,000.00 appropriation was an arbitrary estimate of the funds to be appropriated and the State Board of Finance is granted authority under sub-section (g) of Section
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1 of the said Act to transfer from the General Fund sufficient money to liquidate the statutory obligation to the teachers in this class.

TLW/ar/man

OFFICIAL OPINION NO. 48
Superseding Official Opinion No. 18
June 3, 1949

Mr. Roscoe C. O’Byrne,
Chairman, Public Service Commission of Indiana.
State House, Room 401,
Indianapolis 4, Indiana.

My Dear Mr. O’Byrne:

This is in reply to your recent communication dated May 19, 1949, which is as follows:

"Under date of April 1, 1949, we wrote you asking your opinion with respect to the authority of Indianapolis Water Company to require that copper pipe be used in the installation or replacement of service lines between the company’s distribution mains and the customer’s meters. With our letter, we sent you a copy of Rules 19 to 28, both included, of the Indianapolis Water Company, which Rules are on file with this Commission and which were approved by the order of this Commission entered in Cause No. 12499 on January 15, 1938. By letter dated April 7, 1949, you advised us that it was your opinion, based upon the materials so submitted to you, that the Indianapolis Water Company does not have the right to require ‘all of its customers to install new copper service pipes as suggested in your letter."

"Since receiving your letter, our attention has been called to Rule 31 of the Indianapolis Water Company, similarly approved by this Commission in its order of January 15, 1938. It occurs to us that this rule may have a bearing upon the question submitted in our letter of April 1, 1949. It reads as follows:

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