The same reason applies to farm management corporations. The manager is not required to have a license to supervise and manage the farms of others. Trusting this answers all of your inquiries.

OFFICIAL OPINION NO. 106


Mr. Robert B. Houghman
Executive Secretary,
Indiana State Teachers’ Retirement Fund
336 State House
Indianapolis 4, Indiana

Dear Mr. Houghman:

Your letter has been received and reads as follows:

“We wish to ask the following questions regarding Section 3 of Chapter 130 of the Acts of 1949. This section provided that retired members now receiving annuity may receive an increase in the portion of their annuity which is paid by the State. The act provides an appropriation for paying same.

1. Is the $497,000 appropriated in Section 3 of Chapter 130 of the Acts of 1949 intended to supercede the $300,000 appropriated yearly in Section 3 Chapter 353 of the Acts of 1947? Is the $497,000 intended to cover the cost of the increases granted to retired members in 1947 and 1949 or just 1949 alone?

2. If and when during any fiscal year the cost of adjustments paid to retired members under this act exceeds the $497,000, is the excess to be paid out of the funds of the Teachers’ Retirement Fund or is the Retirement Fund to look to the State General Fund for additional contributions?

3. Is the appropriation of $497,000 intended to pay specific increases provided by law or is it intended as a grant from the State General Fund to assist in meeting the state’s liability for all pensions without reference to any specific benefits?
4. If the $497,000 is a general grant to the Retirement Fund, may the Auditor of State transfer the money to the Retirement Fund in one lump sum or in installments without requiring a specific showing of how much the increases cost under the 1947 and 1949 laws?"

Section 3 of Chapter 130 of the Acts of 1949 in part reads as follows:

"On and after July 10, 1949, any teacher receiving annuity under the provisions of Chapter 182 of the Acts of 1915 or any acts amendatory of or supplementary thereto enacted prior to January 1, 1949, shall be eligible subject to the provisions of Section 2, subsection (j) hereof to receive an annuity approximately equal to the state's proportionate share of any annuity provided by this act up to thirty years of service. Such persons shall make application therefor in writing to the Board at any time hereafter, said annuity to be in upon the tenth of the month following receipt and acknowledgment of such application. There is hereby appropriated from the general fund of the state the amount of four hundred ninety-seven thousand dollars annually to assist in the payment of annuities provided in this act, and the liability of the state under this act may be reduced by the board by an amount equal to the interest earned by the board on demand deposits in the fund of state moneys hereby authorized to be made by the State Board of Finance or its successor agency of state government. The board of trustees within a reasonable time shall cause to be issued to each active member of the Teachers' Retirement Fund a certificate which shall be known as a service certificate this certificate shall show the name, last known address, and account number of each member, and in addition shall certify to each such member the total number of years of credit which such member has as of a date to be fixed by said board of trustees and in addition said service certificate shall show under which law said member is participating in the fund and the annual assessment due from such member. * * *"
The above section of the statute was previously amended by Section 3, Chapter 333 Acts of 1947. The 1947 amendment was the subject of an official opinion of this office, same being 1949 Ind. O.A.G. official opinion No. 47. In the 1947 amendment the sum of $300,000.00 was specifically appropriated annually “to pay the increased annuity provided in this section.”

It is to be noted the 1949 amendment to this section appropriated annually the sum of $497,000.00 “to assist in the payment of annuities provided in this act.” The 1947 amendment was therefore restricted and so earmarked for distribution only to annuities provided for in that section, while the 1949 amendment makes its specific appropriation payable for any annuities provided for in the Act. Under the 1949 amendment, it could be used for the payment of any annuities and therefore, no reason would exist for specifically earmarking the same for annuities payable under Section 3, of the 1949 law.

In the 1947 official opinion, supra, it was held that from a general consideration of the other provisions of the Teachers’ Retirement Act, and specifically in consideration of subsection (g), of Section 10, of said Act, that the $300,000.00 appropriated in the 1947 law was an arbitrary estimate of the funds to be appropriated for that specific purpose and that the State Board of Finance had authority under subsection (g) of Section 1, of the 1947 Act to transfer from the general fund sufficient money to liquidate statutory obligations to the Teachers who were granted annuities under Section 3, of the 1947 law. This additional grant was to enable members of the old teachers’ retirement fund to equally participate in an annuity equal to the State’s 4/7 contribution to annuities received by later members of the fund under later statutes. An identical purpose, as far as benefits are concerned, is evident in Section 3, of the 1949 law.

Section 3, of the 1949 law, as well as Section 3, of the 1947 law, made it mandatory for the payment of this additional annuity. The beneficiaries were definitely ascertainable as well as the amount each was to receive. This would clearly seem to amount to an appropriation. In the case of Henderson, Auditor v. The Board of Commissioners of the
State Soldiers’ and Sailors’ Monument (1891), 129 Ind. 92, at page 100 the court approves and follows a principle of law announced in the case of Campbell v. Board etc., 115 Ind. 591, and Rostine v. State ex rel., 20 Ind. 328, as follows:

“It may be said generally, that a direction to the proper officer, or officers, to pay money out of the treasury on a given claim, or class of claims, or for a given object, may, by implication, be held to be an appropriation of a sufficient amount of money to make the required payment.”

It is pertinent to note, Section 1 (g), of Chapter 130, of the Acts of 1949, makes provisions for a State Tax levy of 6-13/100 cents on each $100.00 of taxable property in the State, to be known as the Indiana State Teachers’ Retirement Fund Levy, which “when added to funds hereby authorized to be transferred from the State General Fund by the State Board of Finance will be sufficient to provide in each teacher’s account the funds necessary to cover the actuarial liability incurred by the State for the payment of an annuity of seven hundred dollars per year after thirty years of service * * *.”

Said sub-section of said statute last mentioned further provides:

“There is hereby appropriated annually to said retirement fund from the sources designated herein and funds of the State not otherwise appropriated an amount necessary to carry out the provisions of this act. * * *”

From the foregoing, and in accord with the official opinion previously mentioned, it is only reasonable to construe the statute as to mean that any additional amount necessary to pay the additional annuity authorized by Section 3, of the 1949 law, in excess of $497,000.00 should be paid from the General Fund of the State of Indiana on action by the State Board of Finance. The annuities there specified represent an amount equal to the State’s share of any other annuities payable under the Act. The specific appropriation of $497,000.00 is made to assist in payment of all annuities. How-
ever, by making the appropriation payable for all annuities the Legislature intended to obviate the necessity of carrying special accounts and earmarkings the same for annuities provided in Section 3 of the Act. It also made it possible for thus any surplus could be used for the other purposes in the Act.

It is only reasonable to determine that since a definite payment is required to be made, without providing the fund with which any possible deficiency is to be payable, that it would require such payment from the general fund of the state rather than from the Retirement Fund which is made up primarily at the present time from contributions of teachers who are members of said Fund under laws enacted after the teachers provided for in Section 3, of the Act, became members of said Fund.

It is to be further pointed out the $300,000.00 appropriation in the 1947 Act had to a great extent to be used to carry out said Act at the time of the 1949 appropriation. In such case, even though the 1949 Act became effective by an emergency clause on April 1, 1949, it would not indicate any intent that the 1949 appropriation under Section 3, of the Act was anything other than an additional appropriation and meant in the first instance to assist in taking care of additional annuities referred to in Section 3, of the 1949 Act.

From the foregoing, I am of the opinion that each of your questions should be answered as follows:

1. In answer to your first question, I am of the opinion the $497,000.00 appropriation is not intended to supersede the $300,000.00 appropriated by Section 3, Chapter 353, Acts 1947. It is primarily intended to assist in paying the annuities provided for in Section 3, of the 1949 Act. No more appropriation will be available after June 30, 1949.

2. In answer to your second question, I am of the opinion, any excess above $497,000.00 in any year to pay the annuities provided for by Section 3, of Chapter 130 of the Acts of 1949, should be paid from the General Fund of the State of Indiana.
3. In answer to your third question, I am of the opinion the $497,000.00 although evidently to assist in paying the additional annuity payments required by Section 3, Chapter 130, of the Acts of 1949, is not restricted in its use to such payments as the Legislature has changed the language of the Act and worded it so that it is to pay for the benefits provided for in the retirement act.

4. In answer to your question number 4, I am of the opinion the $497,000.00 is a general grant to the retirement fund, primarily intended to assist in the payments of the annuities provided for in Section 3, of said Act and that the same may be paid into the retirement fund in one lump sum without requiring a specific showing of the cost of the annuities established by Section 3, of Chapter 130 of the Acts of 1949.

TLW:man

OFFICIAL OPINION NO. 107
November 8, 1949.

Mr. R. S. Robertson,
Executive Secretary,
Flood Control and Water Resources Commission,
522 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sirs:

I have your letter of September 29 requesting an opinion from this office, which reads as follows:

"This letter is written as a request for an interpretation of Section 18 of the 'Flood Control Act', Enrolled Act No. 174, Senate, Chapter 318, 84th General Assembly, as regards the establishment of floodways.

"By way of explanation I should like to point out that numerous cases of floodway encroachment are being brought to our attention.

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