OFFICIAL OPINION NO. 45

May 9, 1946.

Hon. Ross Teckemeyer,
Executive Secretary,
Public Employees' Retirement Fund,
307 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sir:

I am in receipt of your letter of April 1st requesting my official opinion upon the following questions:

"1. Whenever the county department of public welfare, by action of the county board of public welfare and proper action of the County Council applies to become a participant in the Public Employes' Retirement Fund, does the original membership cost and the continuing expense become an obligation of the county welfare fund to be included in the county welfare budget? If not, what county fund is liable?

"2. If a county, by action of the county council, brings all employes of the county under the Public Employes' Retirement Fund, does the amount applicable to employes of the county department of public welfare under such county-wide participation become an obligation of the county revenue fund under the general county levy or is such prorata share an obligation of the county welfare fund?

"3. In that the budget of the county department of public welfare is originally adopted by the county board of public welfare and after review by the state department of public welfare submitted directly to the county council for action, which agency or agencies in the county government enter into the contractual relationship with the Public Employes' Retirement Fund in regard to membership and future payments to the fund in relation to the employes of the county department of public welfare?"
The pertinent provisions of the Public Employes' Retirement Act which appear as Chapter 340, page 1589, of the 1945 Acts are as follows:

"Section 4. * * * ‘Governing Body’ shall mean the county council, the city council, the trustees of a town, the township trustee and the township advisory board, board of school trustees, board of school commissioners or library board, as the case may be. * * *"

"Section 19. Any municipality may elect, by ordinance or resolution adopted by the governing body as defined herein to become a participant in the Fund established by this act. * * *"  

"Section 22. Any municipality as herein defined is hereby authorized and empowered to elect to become a participant in the Fund by an ordinance or resolution adopted by the governing body of such municipality which by law is authorized to determine, establish and fix a rate of taxation on the taxable property of such municipality. Such ordinance or resolution shall designate by departmental, occupational or other definable classifications, the employes who are to become members of the Fund. When any such municipality shall be admitted to membership in the Fund, such municipality shall be and it is hereby authorized and empowered by its proper legal officers to make appropriations, to make any and all payments and to do any and all things required by the provisions of this Act without any limitation other than as contained in this Act. * * *.” (Emphasis mine.)

On March 15th of this year, official opinion No. 22 was issued to you in which I arrived at the following conclusions:

“(1) The county council may by its own motion, without a request from any officer, county department, or county board, initiate an ordinance electing membership in the Public Employes' Retirement Fund.

“(2) All appropriations should be made by the county council upon estimate or request by the proper
legal officer in like manner as other appropriations are made by the county.

"(3) The power of the county council to enter into contracts with the Public Employes’ Retirement Fund is questionable and therefore, all such contracts should be executed by the county council, the county commissioners, and the officer and/or board which employs the county employes who are covered by the membership election."

Section 99 of Chapter 3, page 12 of the Acts of 1936 (Section 52-1302 Burns’ 1945 Supplement) provides for the adoption of a budget annually by the county board of public welfare and its approval by the State Department. In this section it is provided:

"* * * Part 2 of such budget shall contain an estimate of the amount of money which will be needed for the administrative expenses of the county department, in carrying out the provisions of this act and of the several acts which the county department is authorized and required to administer, other than the amounts of money requested in Part 1 of such budget. * * *" (Emphasis mine.)

The following section provides for appropriation of such funds by the county council. Section 98 provides for the levy of a tax by the county council for the benefit of the county welfare fund from which such appropriations are made.

The term “administrative expenses” as used in the quotation last above has been defined as follows:

"* * * the term ‘administrative expenses’ covers many items, such as salaries of office clerks and stenographers, expenses for office supplies, payroll taxes, telephone, telegraph, etc.” (Emphasis mine.)


I am, therefore, of the opinion that your questions should be answered as follows:
Whenever the employees of the county department of public welfare are brought under the Public Employes' Retirement Fund by action of the county council, all expenses including both the original membership cost and continuing expenses allocable to such employees should be appropriated and paid from the county welfare fund in like manner as other administrative expenses are paid from such fund.

As stated in the third clause of the opinion above quoted, there is doubt as to who should execute the contracts with the Public Employes' Retirement Fund and it is, therefore, recommended that in regard to public welfare employees the contract should be executed by the county council, county commissioners and the county department of public welfare.

OFFICIAL OPINION NO. 46

May 15, 1946.

Hon. Rue J. Alexander,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 4 which is as follows:

"Articles have been presented to the Secretary of State merging an Indiana corporation, the non-survivor, into an Illinois corporation, pursuant to section 69 (a) of Chapter 192 of the Acts of 1937 (Section 25-314a BRS 1933 Supplement).

"The aggregate number of shares which the corporation is authorized to issue upon consummation of the merger is 530,000, of which 33,600 shares will represent the shares of stock of the non-surviving corporation, whose authorized capital stock is 15,000 shares. The assets of the Indiana corporation constitute all that will be owned in Indiana by the surviving Illinois corporation, which has not previously conducted business in Indiana."