POLICE, INDIANA STATE: Pension Plan—Whether the Trust Agreement of the Indiana State Police Pension Program can be amended to authorize continuance in service after reaching the age of 55.

March 18, 1942.

Hon. Don F. Stiver,
Superintendent, Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

"1. Is there anything in the present law or the trust agreement of the Indiana State Police Pension Program that would prevent an amendment to permit an extension of time to an officer who reaches the age of fifty-five to continue his service with the Department until such time as he will have completed twenty-years of service and thus entitle him to the full 20/20 of his pension?

"2. If legally permissible, what steps are necessary to make this change?

"3. What board determines as to whether or not a man after reaching the age of fifty-five may continue service with the Department?"

The Indiana State Police Pension Program was established pursuant to Chapter 54 of the Acts of 1937 enabling the Department of State Police to establish and operate a Pension Program for eligible employees through the instrumentality of a pension trust briefly described in Sections 1 and 2 of the Act. Sub-division (h) of Section 1 of the Act defines the term "Pension Trust" as follows:

"The term ‘pension trust’ means the agreement between the department and the trustee under the terms of which an actuarially sound retirement pension plan is established and operated for the exclusive benefit of the employee beneficiaries subject to the following limitations:" * * *
Thereafter follows thirteen numbered limitations, the first of which reads as follows:

“The normal retirement age may be earlier but not later than age seventy;”

Under the pension trust established the Department set the normal retirement age at fifty-five years. Since, under the Act the normal retirement age may extend to the age of seventy, it is apparent that there is nothing in the Act which would prevent an amendment to permit an extension of time beyond the age of fifty-five if so provided in the pension trust and if such age does not exceed the age of seventy years.

An examination of the trust agreement now in force reveals the fact that provision is expressly made for an amendment to be made to such agreement which, if the procedure set out in the trust agreement is complied with, would be sufficient to effect any amendment which would have been legal under the Act if incorporated in the original agreement. The answer to your first question, I think, should be in the negative.

In answering your second question, I call your attention to the second literary paragraph of Section 23 of the original trust agreement, which reads as follows:

“At any time after January 1, 1938, the Trust Agreement may be changed, altered or amended in any particular by the Department with the consent of the Engineers, and a majority of all the Employee Beneficiaries, except that if such change, alteration or amendment shall modify or change the relative rights under the respective pension classifications, the consent shall be required thereto of a majority of the Employee Beneficiaries of each pension classification so affected.”

“It will be noted that the procedure above set out contemplates amendments are to be made “by the Department with the consent of the engineers and the majority of all the employee beneficiaries, except that if such change, alteration or amendment shall modify or change the relative rights under the respective pension classifications, the consent shall be required thereto of a majority of the employee beneficiaries of each pension classification so affected.”
I think the terms "Department"—"Employee Beneficiaries" and "Engineers" as used in the Trust Agreement should be given the same meaning as the similar terms used in the Act authorizing the Trust Agreement. It is apparent, therefore, that the Department of State Police must first agree upon the desired amendment and the consent of the engineers and of the majority of the employee beneficiaries, as stated, should also be obtained. The amendment may be made by specifically amending each section of the existing Trust Agreement and of the Supplemental Agreement which will be affected by the change. However, an amendment of such an agreement as this does not require the use of the same method as applies to the amendment of statutes, and probably a simpler method would be to provide that—"anything to the contrary in the original Trust Agreement or the Supplemental Agreement, said Agreement and Supplemental Agreement are hereby amended and modified so as to provide" et cetera (here set out the proposed modification).

In answer to your third question, I desire to say that this answer should be included in the amendment; however, I doubt whether such an amendment would be valid which placed the authority to determine as to whether a man, after reaching the age of fifty-five, may continue service with the Department with any other body than the Department itself.

POLICE, INDIANA STATE: Authority of State police and other law enforcement officers in case of fatal accidents at railroad crossings.

March 26, 1942.

Mr. Don Stiver,
Superintendent, Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Mr. Stiver:

Your request of March 3 is at hand for an official opinion reading as follows, to-wit:

"I respectfully request an official opinion from you as to the rights and duties of members of the State