TEACHERS' RETIREMENT FUND BOARD: Authority of board to enter into refunding agreement in case of defaulted bonds.

June 4, 1941.

Hon. Robert B. Hougham,
Executive Secretary,
Teachers' Retirement Fund Board,
334 State House,
Indianapolis, Indiana.

In re: Defaulted Bonds of Village of South Euclid, Ohio.

Dear Sir:

I have before me your letter in which you state that the Board of Trustees of the Indiana State Teachers' Retirement Fund has approved a proposal to exchange $22,000 par amount of defaulted bonds of the civil village (now a city) of South Euclid, Ohio, for an equal par amount of new 30-year refunding bonds of the same municipality, dated July 1, 1938, callable at par on any interest-paying date.

You state further that the bonds you hold have all matured for payment—$11,000 on October 1, 1939, and $11,000 on October 1, 1940, and that same are in default as to principal and accumulated unpaid interest amounting to $3,960.00.

You ask as to whether it is proper for you to execute the form of consent required, which accompanies your letter. It seems to me that the legal question here involved is covered by the opinion of my predecessor to you dated November 12, 1937, in which it is said that, quoting from the opinion:

"The board, of course, would have the further power to do such reasonable things as would be involved in the collection of the securities held by it." * * *

In this case the question of exchange of securities for bonds of an equal amount in a refunding series was under consideration, and it was there said that:

"Generally speaking, I think the procedure outlined would be valid and within the authority of the board." * * *

(See Opinions of Attorney General, 1937, p. 600).
On the basis of that opinion, I think the board has the authority to execute the consent to refund, as described in your letter, on the basis that it is simply a step in the collection of the past due principal and interest of the original issue.

PUBLIC INSTRUCTION: County Superintendent—whether election of.

COUNTY AUDITOR: Right to vote in elections of County Superintendent.

June 6, 1941.

Hon. Clement T. Malan,
State Supt. of Public Instruction,
State House,
Indianapolis, Indiana.

My dear Mr. Malan:

I have before me your letter calling attention to the provision of Section 28-702 of Burns’ Indiana Statutes Annotated 1933, providing in part as follows:

"* * * In all elections of a county superintendent, the county auditor shall be the clerk of such election; and in case of a tie vote, the auditor shall cast the deciding vote. In case any one (1) candidate shall receive a number of votes equal to one-half of all the trustees of the county, the county auditor shall then and at all subsequent ballots cast his vote with the trustees until some candidate shall receive a majority of all the votes in the county, including the county auditor." * * *

(Our italics.)

On the basis of the foregoing provisions of the statute you submit the following questions:

"Is the delegation of voting power to the county auditor contingent upon the existence of an actual tie vote among the township trustees present at the meeting?

"May the county auditor legally vote for county superintendent in case any one candidate shall receive a number of votes equal to one-half of all the