

Your question is whether the agreement of the sponsor to finance its part of the entire cost as shown in the Project Proposal is such a contract as meets the provisions of the Appropriation Act that "any sums of the above appropriation contracted for during the life of the appropriation shall be held available by the Auditor of State until the claims of such contracts have been paid."

It seems to me that if the proposed work is undertaken, the agreement of the sponsor then becomes binding and sufficient to meet the above requirement. I think this is especially true in view of the expressed purpose of the appropriation heretofore quoted in this opinion. The sponsor, having agreed to finance its part of the cost of the project supported by an allotment made to it by the Budget Committee during the life of the appropriation, I think it is intended that that amount should remain available to it until its obligation has been discharged. This seems to be the intent of the act.

TEACHER'S RETIREMENT FUND BOARD: Authority of Board to provide for emergencies out of funds which were not specifically appropriated by the general biennial appropriation Act.

March 6, 1940.

Hon. K. V. Ammerman, President,
Board of Trustees, State Teachers' Retirement Fund,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which, among other things, you state that two resolutions were passed by your Board on October 6, 1939, which were believed to be in conformity with the authority conferred by the Retirement Fund Act as interpreted by the opinion given to the Board of Trustees by the Attorney General on July 12, 1939.

You further state, however, that:

"Through some misunderstanding as to the procedure to follow, the resolutions provided that the emergency appropriations should be transferred to the personal service account of the fund, and the salaries

of the two named employees were paid out of said personal service account up to and including the monthly salaries due and payable January 31, 1940.

* * * "

You further state that the actual transfer of the emergency funds to the personal service account has not as yet been made or set up on the books from which you make the following deduction:

"The personal service appropriation for the operation of the fund has thus by error been drawn down below the needs of the board for the purposes originally intended by the amount of the salaries thus paid in error from such personal service account."

You submit the following question:

"Will you please advise us whether such personal service account of the retirement fund may be reimbursed from the pension reserve account of the fund, so that the intent and purpose of the emergency resolutions adopted October 6th may be carried out, and so that the original appropriation for the personal service account, expended by error, may be made available for the purposes originally intended?"

I think, before proceeding further, some of the language used in your letter needs clarification. The term "personal service account" refers to the account set up on the books of the Auditor of State reflecting the amount appropriated by the General Assembly from the "Pension Reserve Account" of the Fund for the payment of personal service items as defined in the Biennial Appropriation Act. The terms "emergency appropriations" and "emergency funds" refer to the additional amounts sought by the Board to be made available by the resolutions above referred to for the payment of the salaries of two men employed by the Board and which the Board, following prior procedure, would pay out of its so-called "contingent reserve fund" which fund was held to be without authority of law by the opinion of July 12, 1939, already referred to.

In the request which resulted in the above opinion, the Board also asked to be advised as to what, if any, available

fund remained out of which urgent and necessary expenses involved in collecting and servicing defaulted securities could be paid in the event the setting up of the so-called "contingent reserve fund" was held to be invalid.

On this subject, after referring to certain sections of the Retirement Fund Act, especially Section 28-4506 of Burns' Indiana Statutes Annotated (1933), I said:

"From these two and other sections of the law, it is apparent that the legislative intent was to give the board extensive powers over the control of the Teachers' Retirement Fund. Considering the size (the retirement fund involving about \$20,000,000 in moneys and investments) and the extent and intricacy of the business the board must manage and administer, and necessarily the emergencies that from time to time would likely arise, accounts, in my opinion for the legislature having provided in full protection as against possible emergencies by having included in the section just quoted the language which is italicized.

"It is my opinion, however, that any such emergencies should be anticipated and estimated insofar as possible and should be included in the biennial requests to the Budget Committee, as above stated. In the event such estimates and requests, as granted by the Budget Committee, and the legislative enactment, prove insufficient or fail to satisfy actual emergency requirements during the two-year period for which estimated, I am convinced from the reading of the entire act that the board would be authorized upon its own order to appropriate and use from the "pension reserve account" of the Teachers' Retirement Fund such amount of money as would be necessary to meet any such additional emergency requirements.

"From the facts stated in your letter as to the long continued use of the so-called contingent reserve, and the fact that this reserve must hereafter be dispensed with, an emergency at present arises calling for the use of money from the pension reserve account to defray certain expenses for the two-year period from July 1, 1939, to June 30, 1941, until such time as legis-

lative appropriations are available for the two subsequent and succeeding years.

“Accordingly, in answer to the last part of your question, it is my opinion that emergency needs for the next two years, from July 1, 1939, may be satisfied, as outlined in the next two preceding paragraphs, from the pension reserve account of the Teachers’ Retirement Fund until appropriations are forthcoming from the next biennial session of the General Assembly in 1941.”

For further particulars you are referred to Opinions of Attorney General (1939), pages 202-206.

The Board, in its resolutions of October 6, 1939, found an emergency to exist for the continuation of the services of the two men above referred to as to the one for an indefinite period and as to the other until the close of the fiscal year ending June 30, 1940, and ordered certain transfers from the “Pension Reserve Account” of the Fund to the “personal service account” to pay their salaries. These transfers were never in fact made, notwithstanding which the salaries of the two men above referred to have been paid and charged against the “personal service account”, leaving it seriously depleted as respects the use originally contemplated.

If the Board has the power “to meet any emergencies which may arise in the administration of its trust”, (see Burns’ Indiana Statutes Annotated (1933), Section 28-4506), (see also Opinions of Attorney General (1939), pages 202-203), it would seem to me that if a real emergency exists which could not reasonably have been contemplated by the Board when the General Assembly’s appropriation was made, it may meet that emergency and pay the expense thereof out of any unappropriated balance in the “Pension Reserve Account”, out of which all administration expenses are to be paid. Burns’ Indiana Statutes Annotated (1933), Section 28-4510.

In view of the fact that the “Personal Service Account” has been depleted by reason of the payments out of it of the salaries of the employees named in the Board resolutions of October 6, 1939, the question with which you are now confronted is as to how it may be restored, if at all. I think the intent of the resolutions is clear, which is to allocate to

the emergency fund payable out of the "Pension Reserve Account" of the Retirement Fund a sufficient amount to pay such salaries. But the resolutions probably went too far in ordering a transfer to the "Personal Service Account", a procedure which, however, was never completed.

It seems to me that you have the case of the making of certain payments by error out of the wrong fund, but I see no legal reason to prevent a correction of the error, if there is a fund out of which such erroneous payments legally could have been made. The payment out of the wrong fund leaves it depleted and the right fund correspondingly enlarged. This should be corrected and, in my opinion, may be done legally.

TAX COMMISSIONERS, STATE BOARD OF: Banks exempt from tax on personal property accruing subsequent to acquisition of property by bank.

March 7, 1940.

Hon. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Mr. Zoercher:

I have your letter of February 29, 1940, in which you state:

"The Citizens Bank of Greenfield had a mortgage on the real estate and the printing plant of the Mitchell Printing Company. The bank foreclosed and the deed conveying the real estate and personal property was made on May 6, 1935. On November 2, 1936, the bank paid all the delinquent taxes on the real estate, but they did not pay the delinquent taxes on the personal property, which at that time, the time of the transfer, amounted to about \$1,281. They have refused to pay any tax on the printing presses and personal property of that printing plant which they took over on the mortgage. The accumulated tax thereon now amounts to approximately \$2,980. However, they have paid and kept paid the taxes on the real estate.