In construing both of the said sections, I am of the opinion that questions 1, 2 and 3 should be and are answered in the affirmative.

TEACHERS, STATE RETIREMENT FUND: Payment of arrearages.
Retirement Fund, Teachers: Payment of arrearages.
Payments, Teachers' Retirement Fund: Payment of arrearages.

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

June 14, 1940.

Dear Sir:

I have before me your letter in which you state that the Board has before it a number of applications of teachers who are now members of the fund as established under the Retirement Fund Act as it existed prior to the 1939 amendments who desire to elect to come under the provisions of the 1939 amendments and obtain the benefits of those amendments. In some cases the accounts of the applicants show deficits as the accounts existed under the provisions of the Act as previously existing. These deficits may be classified as follows:

"1. Deficits due to the payment of an insufficient contribution in one or more of the past years on account of errors.

"2. Deficits due to the failure to pay a contribution as required by law in some previous year.

"3. Deficits due to the establishment of the teacher of a new 'beginning age' for the fixing of rates of contribution by claiming additional years of service under and according to the provisions of the 1939 law. This deficit arises because the change of the 'beginning age' must increase the rate which should have been paid under the old law."

You request an official opinion in answer to the question as to whether the Board may require the payment of the
deficit as above set out, before permitting a transfer of the applicant to the new fund under the 1939 amendments.

I have classified the deficits described by you on the basis of the manner in which they arise for the purpose of analysis of the problem, although I think upon the basis of the statute, the different source would not affect the answer to your question as to whether the Board may decline to recognize the election because of the existence of a deficit. In other words, the statute seems to permit very clearly such an election on the sole basis that the person electing is a teacher as defined in the Act.

It will be noted that the members of the fund as set out in the Amendatory Act of 1939 include the following:

“(1) All teachers as herein defined, who are employed to teach in the public schools of the state and whose services in such schools began after June 30, 1921, or whose services shall begin hereafter.

“(2) Those teachers who entered service in such schools of the state prior to July 1, 1921, and who, before December 31, 1936, were members of the fund under the provisions of Chapter 182 of the Acts of 1915 or acts amendatory of said chapter.

“(3) Teachers who entered service in the schools of the state prior to July 1, 1921, and who failed to elect membership in the State Teachers' Retirement Fund prior to December 31, 1936, may elect to receive membership in such fund at any time before December 31, 1942, by the payment of all arrearages for prior services claimed. These arrearages may be paid in cash the first year or in a series of installments according to the rules and regulations of the board of trustees of the Indiana State Teachers' Retirement Fund, which shall not be more burdensome than the equal distribution of the installments over the term of years between the time of election to come into the fund and the year in which the teacher may retire on the full annuity.”

Acts of 1939, p. 73.
The above language would ordinarily be sufficient to transfer all teachers within the above classifications without any act upon their parts at all, but subdivision (n) of Section 1 of the 1939 Act apparently requires an election of those who were members of the fund prior to the 1939 amendments, a requirement doubtless having in mind the constitutional question which might otherwise arise. However, there is nothing in the Act which I have been able to discover which places any impediment in the way of a teacher’s electing to come under the 1939 amendments if such teacher was a member of the fund as it was set up under prior provisions of the law and continues to be such at the time of the election.

The question remains, however, as to what the Board may do with respect to the deficits above described. As to the first class, that is, deficits which have arisen by reason of error in the amount of the contribution, this deficit is clearly a charge against the teacher’s account and remains a charge until paid. The Board would doubtless have the right to collect this amount, and while the statute is silent upon the subject, it seems to me that it is clear that it would constitute a charge against any benefits which might accrue to the teacher by reason of his membership in the fund.

As to the second classification, I think the same is true.

As to the third classification, I think the Act expressly provides for this situation. I call your attention to Subdivision (h) of Section 1 of the Acts of 1939, page 76, which reads as follows:

“(h) Teachers coming under the provisions of this act except those teachers provided for in paragraph (3) of subdivision (a) of this section shall be required to pay as arrearages an amount equal to the amount which would have accumulated from their contributions with four per cent compound interest had they been members under this act for the number of years which they claim for prior service, provided that a teacher may waive his or her right to former service and pay only current rates from the time when the membership begins and receive no credit for prior service. These arrearages may be paid in cash the first year or in a series of installments according to the rules and regulations of the board of trustees of
the Indiana State Teachers' Retirement Fund or may be left as a lien against the annuity; *Provided, however,* That deferred payment or adjusted accounts must bear interest at four per cent per annum which shall be compounded if not paid. In case of retirement before all arrearages are paid, the annuity otherwise available will be reduced in the proportion which the amount unpaid bears to the then present value of such annuity."

This section undoubtedly takes care of the case of arrearages arising from the fact that additional years of service is claimed and, I think, it is fair to conclude that the Legislature intended to take care not only of unpaid contributions by reason of the claim of additional years of service, but also of *any* deficit growing out of the fact of the establishment of a new "beginning age" which, from an actuarial standpoint, would have required a different yearly payment under the previously existing Act. Under the above subdivision of Section 1, *supra,* it appears that the teacher in Class 3 has three options. He may either pay the arrearages in cash during the first year or, in a series of installments according to the rules and regulations of the Board of Trustees of the Indiana State Teachers' Retirement Fund, or, the charge may be left as a lien against his annuity.

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**PROBATION, DIRECTOR OF:** Funds may be expended on wards who are being maintained in their own homes.

Children, Neglected or Dependent: Funds of Probation Dept. may be expended on wards who are being maintained in their own homes.

Neglected Children: Funds of Probation Dept. may be expended on wards who are being maintained in their own homes.

Dependent Children: Funds of Probation Dept. may be expended on wards who are being maintained in their own homes.