TEACHERS' RETIREMENT FUND: Right of Board to agree to a new issue of Water Works Bonds, involving an increase, and to exchange bonds held by it in the first issue, for an equal amount of the new issue.

October 18, 1940.

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

Dear Sir:

I have before me your request for an official opinion as to the authority of the Board to exchange bonds held by it for bonds to be issued under the conditions and in the manner hereinafter set out. Two cases are described upon the facts of which the opinion requested is to be based.

The first of these cases is that of Speedway City where, on account of the unexpected and rather phenomenal increase of residential and industrial development of the city, it has become necessary to increase the capacity of the water works plant, it being claimed that otherwise a competitive supply may have to be secured from elsewhere. The other case arises in Connersville where the city finds it necessary to improve its water works plant and increase its capacity in order to maintain fourth class fire insurance rates for the community. In each of these cases the Teachers’ Retirement Fund Board is the owner of water works bonds issued by such cities, which bonds the Fund bought in open market after the terms of issuance had been determined upon by the respective municipalities. It is stated that the two cities apparently cannot proceed with the proposed increase in the bonded indebtedness of their water works plants unless the retirement fund, as a bondholder, agrees to accept securities of the new issue for those which it now holds. It is represented that the new issue for which the old bonds are to be exchanged will bear the same rate of interest as the old bonds, and will mature at the same time as the old bonds. The increase will probably bear a lower rate of interest and will all mature after the maturity of the old bonds. You request an opinion as to whether you have the right, under the statute, to agree to accept the new securities bearing the same interest and having
the same maturity dates as the present holdings, in exchange for the present holdings of the Fund.

In an opinion addressed to the State Examiner bearing date of July 28th, 1937, this Department had under consideration, among other things, the following question:

"Is the board of trustees of the Indiana state teachers’ retirement fund authorized to sell securities purchased as an investment, or is such board authorized to trade or exchange any such securities, so purchased as an investment, for other securities?"


In the consideration of this question the Department, in its opinion quoted extensively from Section 28-4508 of Burns’ Indiana Statutes Annotated, 1933, and thereafter continued as follows:

"The same section quoted continues to recite the manner of safe keeping of ‘such securities’ so purchased. This is described in minute detail and provides that duplicate lists of such securities shall be obtained upon examination at stated intervals, ‘the original of which shall be deposited with the state teachers’ retirement fund and the duplicate of which shall be kept in the state board of accounts.’

"It is interesting to note that nowhere in the Act does the word ‘sell’ or ‘sale’ appear with regard to the securities which constitute the investment of the teachers’ retirement fund. The entire duty imposed upon the board seems to deal with the purchasing of such securities, together with the collection of all interest due thereon and all the income therefrom as the same shall become due and payable. The fact that an examination of these securities is required at least once a year and a list of the securities on hand deposited after each examination with the state board of accounts indicates that the investment of the fund was intended to have such a degree of permanency as would make an identification of such investments possible at all times. I can find nowhere in the statute any authority for the selling or trading of securities once
purchased and identified as a part of the investment fund."


Accordingly the Department concluded that the Board is charged only with the investment of the funds in interest bearing securities of the type named in the Act, and having made such purchases is charged with the duty to deposit and keep in its custody the securities so purchased, collecting only the interest and income as the same become due and payable. Accordingly it was said that:

"When bonds mature they should be surrendered for payment, otherwise they become identified with the fund when purchased and should so remain."

The question was accordingly answered in the negative.


In a later opinion dated November 12th, 1937, and addressed to yourself, as Executive Secretary of the Teachers' Retirement Fund Board, the Department reaffirmed its holding in the above opinion but stated that:

"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 * * *"

Accordingly it was held that where holdings of the fund were in default and other creditors had agreed to a refunding program, that the Board would be authorized for the purpose of safeguarding its securities to accept new bonds in place of old bonds which were in default. This was justified on the theory that it was a part of the process of collecting the security held by the fund.


The question which you have now presented, however, is not like the question presented in the last mentioned opinion. It is true that there is some analogy with the Speedway City situation, because it is claimed that there is a possibility that unless something is done to enlarge the water works system
the value of the present holdings of the Retirement Fund may be impaired, but in the Connersville situation there appears to be no analogy with the opinion of the Attorney General of November 12th, 1937, at all, and in both cases none of the bonds are in default.

It has been urged that the opinion of the July 28th, 1937, supra, ought not to be held to govern in these cases upon the theory that that opinion was based fundamentally upon the proposition that the statute did not give the Board authority to deal in securities in the broad sense of buying and selling as its judgment might dictate, whereas in these cases the obligor, as well as the terms of the bond, remained the same.

I have not been furnished with the details of the plan by which the exchange is to be effected so as to enable me to pass definitely upon the validity of the above suggestion. It would seem to me, however, that if the new bonds carried the same interest, the same maturity, and have the protection of the same security and priority which the old bonds possessed, there would be no objection to the exchange. On the other hand, if any of the above factors are missing or any others which would impair the security or value of the new bonds as compared with that of the old, it seems to me that there would be clearly no authority in the Board to give its consent to the exchange.

PHARMACY, STATE BOARD OF: Pharmacist apprentices, clerks. Examinations, when must be taken.

October 23, 1940.

Mr. Albert C. Fritz, Secretary,
Indiana Board of Pharmacy,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you request an official opinion as follows:

"The Indiana Board of Pharmacy, herewith requests an ‘Opinion Clarification’ of Chapter 16, Acts of 1939. This law reads as follows: ‘Be it enacted by the General Assembly of the State of Indiana, That any pharmacist apprentice whose apprenticeship began