membership in the State Teachers' Retirement Fund prior to December 31, 1936, may elect to receive membership in such fund at any time hereafter by the payment of arrearages under the conditions set forth by this Act."


It seems to me that the above provisions are sufficient to authorize the class of teachers referred to in your question to elect to receive membership in the fund, as provided in the 1937 Act, by the payment of arrearages under the conditions set forth in that Act.

As stated in my opinion to you dated October 28, 1938, such teachers cannot be compelled to come under the provisions of the 1937 Act but they are, in my opinion, clearly eligible to make the election to come under the same.

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AUDITOR OF STATE: Refund of gasoline tax as to vehicles on federal projects.

January 6, 1939.

Hon. Frank G. Thompson,
Auditor of State of Indiana,
State House,
Indianapolis, Indiana.

Attention: Mr. Howard L. Rhea.

Dear Sir:

I have before me your request for an official opinion in answer to the question as to whether individuals operating trucks on WPA and PWA projects are entitled to refund of the tax on gasoline as provided in Section 5 of the Indiana Motor Vehicle Fuel Tax Law.

You state that there are a few projects where the equipment is operated wholly on private property, but in most cases the trucks are operated partially on the highway and partially on private property.

You state further that you have been governed in handling these cases by a ruling from our office dated December 20, 1938, which applied to the operation of trucks on CWA. This opinion appears on page 600 of the Opinions of the Attorney General for 1938.
I have re-examined the above opinion and adhere to that opinion as applied to the particular facts then under consideration. I think too that the same reasoning applies to the case which you have submitted, except as to projects where the equipment is operated wholly on private property. As to those cases, I think the refund should be allowed. As to cases where the trucks are operated partially on the highway and partially on private property, as a practical matter I do not see how a refund could be granted. It seems to me that there is no possible way in which the two services could be separated, and I am quite clear upon the point that no exemption or refund can be allowed on the ground that the sale is to a Federal agency.

INSURANCE DEPARTMENT: Surplus of qualifying life insurance company need not be paid-in in money but may consist of securities acceptable to the department.

January 16, 1939.

Hon. George A. Newbauer,
Insurance Commissioner,
State of Indiana,
State House, Room 240,
Indianapolis, Indiana.

Honorable Sir:

I have before me your letter of January 12, 1939, in which you request my official opinion upon the interpretation of Section 74, Clause E, of the Indiana Insurance Law of 1935, approved and enforced March 8, 1935.

Your question reads as follows: “In the organization of a new life insurance company, the original capital of $100,000 is paid-in in actual cash, can this department accept securities acceptable to this department for $50,000 surplus as required in Section 74, Clause E, Insurance Law of 1935?”

Section 74, Clause E, reads as follows: “Sec. 74, Cl. E. Each domestic capital stock company organized under this law, in addition to the capital in and by this section required, shall have a surplus paid-in equal to at least fifty per centum of the capital required of such company.”

Your question in its ultimate analysis is, may this surplus so required consist of assets acceptable to your department?