AUDITOR OF STATE: Authority to release matured securities deposited by Investment Association and accept a replacement for same.

April 19, 1939.

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

Dear Sir:

I have before me your letter in which you state that the Fidelity Investment Association of Wheeling, West Virginia, has requested the privilege of substituting securities of a value of $25,000 to replace a like amount of securities that have matured, the matured securities having been deposited with the Auditor of State pursuant to chapter 215 of Acts of the General Assembly of Indiana of 1901. You request an opinion as to whether you have the authority to release the matured securities and to accept a replacement for same.

The Act under which the above securities were deposited is found on pages 487 to 489, inclusive, of the Acts of 1901. It is apparent from the study of said Act that these deposits are required for the purpose of securing the liabilities of such association to its contract holders in the State of Indiana. The fund is in the nature of a trust fund which the Auditor of State is required to keep available for the benefit of the creditors of the association in this State. The Act was repealed by chapter 179 of the Acts of 1935, which became effective on April 1, 1935.

While there is no express authority authorizing the Auditor of State to accept substitutions of securities, I think it may be reasonably implied that the Auditor of State would have the authority to surrender matured securities in case they are replaced by other securities of equal value. Owing to the fact, however, that the 1935 Act has been repealed and that there may be some uncertainty as to just how far the savings clause in the repealing Act goes, I recommend that these matured securities should not be released except upon the receipt of securities of equal value supplemented by an agreement whereby the investment association agrees to make the replacement and to assign the same to the Auditor of State, trustee, for the same purposes as otherwise provided in said statute. This agreement should be a separate and distinct instrument signed by the investment association.