TEACHERS' RETIREMENT FUND BOARD: Authority to maintain "Contingent Reserve"; disposition of funds upon discontinuance; source of funds for emergency expenses in absence of appropriation.

July 12, 1939.

Indiana State Teachers' Retirement Fund Board,
334 State House,
Indianapolis, Indiana.

Gentlemen:

I am in receipt of your letter of June 26, 1939, which states that the Indiana State Teachers' Retirement Fund Board, by order of the board of April 4, 1930, established a so-called contingent reserve, to become operative as of October 1, 1929, the purpose of such contingent reserve being, according to the motion adopted by the board, to "set aside our surplus earnings above 4.25 per cent from October 1, 1929, as an insurance fund against any investment losses or any expense incurred in collecting delinquent bonds or interest coupons belonging to the pension fund."

You further state that this contingent reserve has been drawn upon for certain expenses which the board over this ten-year period felt were properly chargeable to the collecting and servicing of its defaulted coupons and securities, as is more fully shown from the records of the board; that none of the funds of this reserve have every been budgeted or appropriated for expenditure in any of the biennial appropriation acts of the legislature.

Question having arisen as to the legal authority for the original creation of this contingent reserve and its present continuance, you request my opinion as follows:

"May we have your opinion as to whether the board had authority under the law for originally establishing this contingent reserve and whether it properly may be continued at this time. In the event it cannot, under what authorization in the law, if any, may the board pay necessary and urgent expenses arising in the next two years, involved in collecting and servicing defaulted securities, in view of no provision having been made in the budget for these expenses for the fiscal years beginning July 1, 1939, and July 1, 1940."

In approaching this question, I refer to an opinion by Attorney General Ogden to the Teachers’ Retirement Fund Board dated November 17, 1930, which carefully considered the question as to whether the board was required the same as all other departments to file requests for appropriation before the Budget Committee.

It is unnecessary here to go into that opinion to any extent except to say that after discussing various sections of the Teachers’ Retirement Fund Law, the state tax levy law, and the budget law, the gist and the conclusion of the opinion was as follows:

“I may say that I do not think your department comes under the budget law except in the limited way as indicated above, but I advise in the interest of uniformity that you make the budgetary request as in the past in order that your appropriation may be included in the general appropriation Act.”

The several laws, or parts thereof, which were controlling with references to the question raised in that opinion have undergone some change but not such as in any respect would modify the conclusion then reached therein.

Both before and since the foregoing opinion was rendered, the Teachers’ Retirement Fund Board submitted its regular requests for budget appropriation with the Budget Committee, it having been generally assumed by the board, as well as by previous and subsequent opinions from the Attorney General’s office, that the board should follow the course of requesting appropriations the same as other departments regardless of whether it was held strictly to the requirements of the budget law.

For the purpose of answering the inquiry contained in your letter it is not necessary again to decide the question as to whether your board is obliged under the law to file the regular biennial requests with the Budget Committee for legislative appropriation. I find no reason for overruling the opinion of my predecessor, Attorney General Ogden. On the contrary, I concur in his opinion that your department hardly comes within the operation of the budget law except in the limited way pointed out in that opinion, and I fully agree also with the position that you should nevertheless file your budgetary requests, not only in the interest of uniformity but for other sufficient reasons.
In preparing your budget, it is my opinion that your estimates for budgetary purposes submitted to the Budget Committee should include expenses of whatsoever character in connection with the operation of your department; that is, in addition to all other estimated expenses, your budget should include anticipated and estimated expenses which are now paid out of and from the contingent reserve referred to in your letter. This course should be followed for the reason that although the Teachers’ Retirement Fund law bestows unusually broad powers upon your board relating to your control of the retirement fund, there seems to have been no authorization in the law for the creation and continuance of any separate fund or account such as the contingent reserve, from which up to this time certain expenses of the board have been paid and which reserve as hereafter stated should be discontinued.

The Teachers’ Retirement Fund Law, according to section 28-4510, Burns Indiana Statutes Annotated 1933, provides for the creation or “the segregation” of the retirement fund into three separate accounts, and nowhere in the law is there any provision for the establishment of any other account, either directly or by implication, so far as I am able to determine. These three accounts as specified in such section 28-4510 are the “annuity savings account,” the “pension reserve account,” and a “permanent account.” Each has its purpose and functions as outlined in such section.

Following, in the same section, is the further provision: “The said board shall pay all expenses attendant upon the administration of this act and provide for the bond of the executive secretary from the pension reserve fund, in the manner prescribed by this Act.”

It is therefore my conclusion, in answer to the first part of your question as contained in your letter, that there was no basis in the law for the creation, as of October 1, 1929, of the so-termed contingent reserve, and that its present continuance is unauthorized. Such reserve should be discontinued, and all funds set apart therein for whatever purpose should be absorbed, as the facts may warrant, by either or both the annuity savings account or the pension reserve account.

This brings us to a consideration of that part of your question which asks, that in the event the contingent reserve should be discontinued, “under what authorization in the law, if any,
may the board pay necessary and urgent expenses arising in the next two years, involved in collecting and servicing defaulted securities, in view of no provision having been made in the budget for these expenses for the fiscal years beginning July 1, 1939, and July 1, 1940."

In this connection, as relating to the duties and powers of the board, I call attention to the wording of the first sentence of section 28-4508 of the Indiana Teachers’ Retirement Fund law, Burns Indiana Statutes Annotated 1933, which reads: "The board of trustees of the Indiana State Teachers’ Retirement Fund shall determine what part of said fund may be safely invested and how much shall be retained for the immediate needs, demands and exigencies of said fund."

And I quote from section 28-4506 of the same law as follows:

"The board of trustees of the Indiana State Teachers’ Retirement Fund shall have power to adopt and enforce all necessary by-laws and regulations for the government and administration of the department and the control and investment of the funds committed to its care, not inconsistent with the provisions of this Act. Said board may sue and be sued under the name and style of ‘the board of trustees of the Indiana State Teachers’ Retirement Fund,’; shall have authority to summon and examine witnesses in the adjustment of claims, shall have authority, in adjusting disability claims, to require physical examinations by doctors approved or appointed by the said board as provided by this Act, but shall not require more than two (2) such examinations in any one (1) year, shall have power to meet any emergencies which may arise in the administration of its trust, and shall have discretionary power in determining all matters pertaining to its trust not specifically provided for in this Act." (Our italics.)

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 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 legislative 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.

This further should be noted, that your board or department is included as one of those departments that operates under the Department of Audit and Control, according to the State Executive Administrative Act, chapter 4, Acts of 1933, and the Executive Order issued thereunder of April 15, 1933, and that the Auditor of State, as chief administrative officer thereof, has final authority in all matters governing the Indiana State Teachers' Retirement Fund, subject to the limitations which might be imposed by the other two members of the board of the Department of Audit and Control, as I pointed out in my opinion to your board of January 21, 1937.