become a part of the orders of the Indiana Securities Commission.

"This rule shall become effective on and after ten days from the date of its adoption.

"Adopted this .... day of March, 1939.

INDIANA SECURITIES COMMISSION

By ...........................................

In my opinion the above rule, if adopted and promulgated, would be valid and enforceable with the following exception, namely:

The Securities Commission has no jurisdiction over annuity contracts which are issued by an insurance company qualified with the Insurance Department of the State. Acts of 1937, page 658. For that reason the term "annuity contracts" wherever it appears in the proposed rule should be changed so as to read "annuity contracts unless issued by an insurance company qualified with the Insurance Department of this State."

When the change is made, in my opinion, the proposed rule is within the power of the Securities Commission to adopt it.

INSURANCE DEPARTMENT: Standard provisions of insurance contracts required by statute, whether mandatory or directory as regards naming of beneficiary.

April 3, 1939.

Hon. George H. Newbauer, Commissioner,
Department of Insurance of Indiana,
State House,
Indianapolis, Indiana.

Honorable Sir:

I have before me your letter of the 29th ult., relating to the construction to be placed upon section 174, Indiana Insurance Law, 1935, covering standard provisions for the various types of insurance policies written by insurance companies licensed to do business in this state and in particular, standard provision No. 11, reading in part as follows:

"A standard provision relative to indemnity payments which may be in either of the two following
forms: Form (a) to be used in policies which designate a beneficiary and Form (b) to be used in policies which do not designate any beneficiary other than the insured.

"(A): 11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

"(B): 11. All the indemnities of this policy are payable to the insured."

The answer to your question raised by the facts stated in your letter involves the legal construction to be put on the entire section 174, above cited: Whether, in short, this section is to be construed to be mandatory or merely directory.

If the nature of this legislation together with the well defined principles of law relating to contractual obligations is considered, there is little doubt but that this section of the statutes is to be construed as mandatory.

In the first place there has been much litigation on insurance policies involving the question of right and wrong payment made by the insurance carrier in satisfaction of losses sustained under the policies in such cases. Our assembly must have had this in mind when, in the 1935 Act, supra, it was expressly provided that policies contain specific provisions as to payees or beneficiaries therein named, and it was to provide certainty in this particular where formerly there had been uncertainty that such legislation was enacted.

In the second place the real party in interest is the insured, his assignee or his designated beneficiary. In the two latter cases the beneficiary and the assignee stand in the place of the insured who is the only party occupying a position of privity of contract with the insurer. It is apparent that the assured may assign his policy to the designated assignee as the interest of the assignee may appear. This is the common practice where fire insurance and the like is assigned to a mortgagee. Assignments of this nature, however, do not involve any modification of the insurance policy and is in fact quite different from an amendment to or modification of the policy.

It is equally true that the payment of the obligation may consist of anything offered by the obligor and accepted by the obligee as such, except in those cases where the statute law of the forum has provided in certain instances a definite
specific medium and manner of payment which is the case here.

So that the statute being construed as mandatory, it follows
that its provisions must be adhered to. And it would be idle
to provide for a definite, designated payee of insurance in the
policy and then to circumvent the plain provisions by an in-
dependent agreement otherwise. Bearing in mind that these
statutory enactments are made for the purpose of establishing
the person or party to whom payment of insurance must be
made in certain instances, it is apparent that the insurer can
discharge his liability only through payment made to the per-
son prescribed by statute.

While your letter does not state a formal question, it is my
opinion that payments made, or agreements for payments of
insurance, to parties other than those prescribed by statute,
would be illegal.

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TEACHERS' RETIREMENT FUND BOARD: Eligibility of
teachers under contract after July 1, 1939, but before
actually engaging in teaching, power of board to require
payment of arrearages before retirement.

April 3, 1939.

Mr. Robert B. Hougham, Executive Secretary,
Indiana State Teachers' Retirement Fund Board,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein the following questions are sub-
mitted:

"1. Are teachers who are under contract after July
1, 1939, eligible for membership in the retirement fund
before they are actively and regularly employed at the
beginning of the next school year?

"2. Has the Retirement Fund Board the power to re-
quire teachers entering under the law to pay all or
any portion of their arrearages for prior service before
their retirement?"

The answer to your first question is to be found in section
14, (a) (1) of House Bill 44, passed by the 81st Session of