"The second question is in reference to certain trust funds held by the educational institution which are deposited as public funds, but the institutions have retained the depository interest earned thereon as part of this trust fund.

"The question is, should the institutions retain this depository interest as part of the fund, and if they do is the state sinking fund responsible for any loss through suspension of the depository?"

In my opinion, the right to participate in the benefits of the state sinking fund for public deposits depends upon whether the deposit to be secured is liable to a diversion of interest thereon to create and sustain the fund. Assuming that such funds are not liable to such interest diversion, in my opinion, no liability against the state sinking fund for public deposits would exist in the case of loss of such funds through bank failure.

The question as to the liability of such funds to interest diversion is involved in an action now pending in the Supreme Court awaiting decision. The decision of the Supreme Court will be conclusive on that point and pending such decision, I do not think it is desirable that this department express its opinion other than by way of argument in the above case.

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INSURANCE COMMISSIONER: Whether legal reserve life insurance company may invest its funds in bonds proposed to be issued in Huntington School City.

October 21, 1933.

Hon. Harry E. McClain,
Commissioner of Insurance,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of October 10, 1933, in which you ask whether a legal reserve life insurance company, organized and operating under the laws of Indiana, may lawfully invest its funds in bonds or other evidences of indebtedness proposed to be issued by the School City of Huntington, Indiana, under the provisions of chapter 240 of the Acts of 1933.
Chapter 11, Acts of 1929, provides in part as follows:

"All investments of any life insurance company organized under the provisions of this act, in order to be eligible for deposit under section ten (10) of this act, must be made as follows:

"* * * (2) (a) In the legally authorized bonds and other evidence of indebtedness issued by and being either the direct obligation of, or payable out of taxes required to be levied upon all the taxable property of, any political division or other taxing unit within this state or any other state of the United States or of the District of Columbia. * * *"

The "section ten" referred to above, as amended (chapter 52, Acts 1929), requires the deposit with the insurance commissioner by all such insurance companies of securities and investments in an amount equal to the net reserve value of all policies in force. I assume that the question you really intended, is whether or not the investment referred to in your question would be such an investment as could be deposited with the insurance commissioner under the requirements of chapter 11, quoted above.

It will be noted that in order to qualify for deposit under (2) (a), supra, the indebtedness must be "either the direct obligation of, or payable out of taxes required to be levied upon all the taxable property of" the borrowing taxing unit. This necessitates an examination of the statute, that is, the express authority for the negotiation of the loan in the case referred to in your letter, which is chapter 240, Acts of 1933.

The act in question authorizes the borrowing of money by a municipal corporation, such as the School City of Huntington against funds on deposit in banks which are in liquidation or which have, for any reason, refused to permit the withdrawal of any such funds. The amount borrowed is limited to the amount of such unavailable deposit, and the act authorizes the pledging of such deposit as security for repayment of the loan. It would appear that it was the intention of the legislature to limit liability for repayment of the loan to the unavailable funds or deposit, were it not for the following express language found in section 2 of the act:

"The full faith and credit of such borrower is hereby pledged to repay any and all money so borrowed, to-
gether with any and all interest which shall have ac-
crued thereon.” (My italics.)

In view of this statement, it is my opinion that such a debt
becomes a “direct obligation” of the taxing unit, within the
purview of that portion of chapter 11, Acts of 1929, which is
quoted above.

Your letter calls attention to the State Sinking Fund for
Public Deposits Act (Acts 1932, p. 141), wherein there is a
provision that such fund shall become subrogated to the mu-
icipality’s right to deposits in closed banks in proportion to
the amount in which the municipality is reimbursed out of
the fund on account of such deposits. While it is possible
that the respective provisions of the sinking fund act, and of
the recent act authorizing the municipality to pledge its de-
posits as security for a loan, might lead to complications when
the deposits are released in part or in full by the bank, still
this fact does not affect the question now under considera-
The debt incurred under the provisions of chapter 240 of the
Acts of 1933, would remain as a “direct obligation” of the
taxing unit.

CONSERVATION DEPARTMENT: Fish and game division
—whether it has power to open for musseling certain
parts of streams closed by resolution of conservation com-
misson.

Hon. Kenneth M. Kunkel, Director,
Fish and Game Division,
Department of Conservation,
Indianapolis, Indiana.

October 23, 1933.

Dear Sir:

I have before me your letter of October 18, 1933, asking
whether or not your department has the power to open for
musseling certain short sections of streams now closed by
resolution of the conservation commission.

Section 5, chapter 253, Acts of 1927, provides in part as
follows:

“The conservation commission is hereby authorized
and empowered to prescribe and designate by regula-
tion or order areas or parts of waters of this state as