lection of defaulted mortgages which shall come into the State Fund pursuant thereto, nor does any other section of the Teachers' Retirement Fund Act make express provision therefor. However, the Act does place the Fund under the control and management of the Board; (Burns Indiana Statutes Annotated (1933), Section 28-4503) and gives it "discretionary power in determining all matters pertaining to its trust not specifically provided for in this act." Burns Indiana Statutes Annotated (1933), Section 28-4506. Surely this power would extend to the collection of defaulted mortgages or other securities and to the doing of such things as are reasonably necessary for the protection of the investment. It is my opinion, therefore, that the Board may exercise a sound discretion in paying nominal sums for titles under the conditions set out in this opinion to protect an existing investment.

HIGHWAY COMMISSION, STATE: Right of Indiana State Rural Membership Corporation to erect poles in State Road 32; right of Highway Commission to prevent impairment of usefulness of state highways.

January 29, 1936.

Hon. Evan B. Stotsenburg,
Commissioner, State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion concerning the right of the Indiana Statewide Rural Membership Corporation to build a pole line on State Road 32 in Boone County, Indiana. You state that said corporation has staked out its proposed line so that the poles will be within eighteen inches of the edge of the traveled pavement which will create a condition that will be most dangerous and will result in many accidents.

You submit the following questions:

"1. Has this corporation the right to erect its pole lines in a State Road without first obtaining the consent of this Commission?"
“2. If the corporation has such right, has this Commission the right to designate the side of the road on which the line shall be placed, and the distance the poles shall be from the traveled way?

“3. Could the Commission prevent the installation on the line marked out, because such location of the poles would endanger the life, limb, and property of persons lawfully traveling the highway?”

The corporation evidently relies upon the provisions of Section 11 of Chapter 175 of the Acts of 1935 and especially subdivision (f) thereof which reads as follows:

“A corporation created under the provisions of this act shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

*(f) To construct works across or along any street or public highway, or over any lands which are now or may be the property of this state or any political subdivision thereof without obtaining any franchise or other permit therefor. The corporation shall, however, restore any such street or highway to its former condition or state as near as may be and shall not use the same in a manner to impair unnecessarily its usefulness, or to injure the property of others.” (Our italics.)

The State Highway Commission Act on the same subject provides specifically as follows:

“No state highway shall be torn up or otherwise disturbed for any purpose by anybody without the written consent or permit of the chairman of the state highway commission, and then only in accordance with the regulations prescribed by said commission; Provided, That highways shall not be torn up for any purpose or in any event without consent of the chairman; and all such work shall be done under his supervision, and all the cost of replacing the highway in as good condition as previous to its being disturbed shall be paid by the person to whom or in whose behalf such permit was given.” (Our italics.)

The foregoing sections are inconsistent on the subject of the necessity for a previous permit and the 1935 Act must be held to have modified the 1933 Act in that particular. However, that does not mean that the corporation can locate its poles wherever it may choose to locate them. The corporation is required to

"restore any such street or highway to its former condition or state as near as may be and shall not use the same in a manner to impair unnecessarily its usefulness, or to injure the property of others." (Our italics.)

The question as to whether a particular use of the highway by the corporation will unnecessarily impair the highway's usefulness as such is a question of fact, to be determined in the first instance by the Highway Commission, as furnishing the basis of possible court action in case of a disagreement, but ultimately to be determined by the court if court action becomes necessary.

I think your first question should be answered in the affirmative, subject, of course, to the provision that such poles must be so placed as not to impair unnecessarily the usefulness of the highway. As already indicated that question is ultimately a question for the court in the determination of any appropriate action brought to enjoin interference with the use of the highway. Under the conditions stated by you, however, it would seem that there is no room for difference in opinion as to whether poles placed within eighteen inches of the traveled portion of the highway would unnecessarily endanger it. I think they would do so.

Your second question should be answered in the negative, subject to the same provision as indicated in the answer to your first question. I think, too, that in determining whether the proposed location of such poles interferes unnecessarily with the use of the highway, future contemplated uses may be taken into consideration.

In answering your third question I call your attention again to the proposition that a question of fact is involved; but it is difficult to see how there could be room for difference of opinion as to the ultimate fact under the circumstances set out by you in your letter. Your third question, in my opinion, should be answered in the affirmative.
You state also that "some of the poles are to be placed in the drainage ditch" and that "a pole so placed would prevent us from dragging the shoulders, impede drainage, and otherwise interfere with the maintenance of the road." You submit the following further question:

"Would such results unnecessarily impair the usefulness of the highway?"

This is a question of fact, pure and simple, and will have to be determined upon that basis.

PUBLIC INSTRUCTION, OFFICE OF SUPT. OF: Meaning of "eighteen weeks training" as used in teachers' minimum salary law of 1935. January 30, 1936.

Hon. Floyd I. McMurray,
Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

"1. Since Section 2 of Chapter 315 of the Acts of 1935 refer to 144 weeks of professional training as the maximum training for which a teacher's salary may be based, does this designated number of weeks determine a basis for an interpretation of semester and term hours in relation to the periods of eighteen (18) weeks referred to?

"2. Since the average student load for eighteen (18) weeks is fifteen (15) semester hours, or twenty-four (24) term hours, may a teacher receive an increase of $2.50 per month for eighteen (18) weeks' training when less than the average load is carried during the eighteen (18) weeks' training?

"3. May a teacher receive the increase of $2.50 per month as herein provided for professional work done for a period of eighteen (18) weeks for which the college in which the work was taken refuses to grant full credit because of inferior work or because of unprepared courses?