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OFFICIAL OPINION NO. 15

September 4, 1975

Mr. John W. Miller
Executive Secretary
Indiana State Teachers' Retirement
Fund
Room 506 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Miller:

This is in response to your request for an official opinion in answer to the following question:

“Does the current policy of the Indiana State Teachers' Retirement Fund Board of Trustees, of purchasing common stock in corporations, violate provisions of the Constitution of the State of Indiana?”

ANALYSIS

The Indiana Code of 1971, Section 21-6-1-8 sets forth procedures for the Board of Trustees of the Indiana State Teachers' Retirement Fund (the Fund) to follow in investing its money. Although this section originally was enacted in 1915, it was Section 2 of the Acts of 1965, Ch. 410, which inserted the present provisions which purport to authorize the Fund to invest, *inter alia*, in the common stock of corporations which have had demonstrated earnings over a period of years. Thus, even though the current investment policy of the Fund seems to follow Code Section 21-6-1-8, the question you raise necessarily is directed at the validity of that section.

Article 11, Section 12 of the Constitution of Indiana provides the following:

“The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; *nor*

shall the State hereafter become a stockholder in any corporation or association.” (My emphasis).

It is clear that the Fund is an agency of the State of Indiana. Public moneys are appropriated to the Fund; and the control and management of the Fund, including both public appropriations and private contributions, are vested in a Board whose members are said to exercise the sovereign powers of the State. See 1961 O.A.G. No. 18, p. 87.

Consequently, it also is clear that Code Section 21-6-1-8 violates the constitutional prohibition against state ownership in private corporations. The situation you present here is analogous to that presented in 1962 by the Public Employees' Retirement Fund (PERF) to then Attorney General Edwin K. Steers. PERF was following a 1959 statutory provision which authorized investment in “[s]hares of capital stock of an open-ended investment trust.” Attorney General Steers' opinion concludes as follows:

“In view of the foregoing, it is my opinion that the Legislature is without authority to authorize the purchase of stock by the state by reason of the constitutional prohibition in the Indiana Constitution, Art. 11, Sec. 12, *supra*. Since the Public Employees' Retirement Fund is a state agency and is thereby covered by such constitutional provision, it cannot purchase shares of capital stock of any corporation or association, including shares of capital stock of opened-end investment trusts or mutual funds.” 1962 O.A.G. No. 37, pp. 185, 192.

It is puzzling that the 1965 Indiana General Assembly, subsequent to the opinion of Attorney General Steers, should repeat the constitutional error with respect to the Teachers' Retirement Fund. These provisions in the Teachers' Fund law, however, are just as violative of constitutional Article 11, Section 12 as they were in the PERF law.

CONCLUSION

It is, therefore, my Official Opinion that the Constitution of Indiana prohibits an agency of state government from in-

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vesting in the common stock of any corporation. Consequently, those portions of the Indiana Code of 1971, Section 21-6-1-8, which appear to authorize such purchases are patently unconstitutional.