

qualified under other provisions of the Act for membership in the fund. If such employe is thus qualified for membership in the fund, it would continue notwithstanding the teacher's license may have expired in the meantime.

I trust this will clarify the matter. As applied to the case submitted by you, it would appear that such employe is a member of the fund.

**TEACHERS' RETIREMENT FUND, INDIANA STATE:
Authority of Board to sell real estate, title to which has
been acquired through foreclosure proceedings.**

September 28, 1937.

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

Dear Sir:

I have before me your letter in which you state that the Indiana State Teachers' Retirement Fund is the owner of a number of real estate properties in Indianapolis which were acquired by the fund by foreclosure of mortgages given to the Indianapolis Teachers' Pension Fund before that unit became a part of the state system. You state further that the board is desirous of selling these properties when, as and if the proper offers can be obtained. You request an opinion as to whether the board has the authority to make a sale of real estate thus obtained and thus owned by the fund.

In my letter of July 28, 1937, to the state examiner of the state board of accounts, I held with respect to investments made by the board that it is charged only with the investment of funds in interest bearing securities of the type named in the Act, and that having once made such purchases it is charged with the duty to deposit and keep in its custody the securities so purchased, collecting only the interest and income therefrom as the same shall become due and payable. I accordingly held that the board of trustees of the Indiana State Teachers' Retirement Fund is not authorized to sell securities purchased as an investment nor to trade or exchange such securities for other securities. In the same

opinion I pointed out, however, that when bonds mature they should be surrendered for payment.

In the case now submitted, I do not have before me the question of the exchange or sale of securities purchased by the board as an investment. The real estate acquired by the board and which the board desires to sell was obtained pursuant to the regular procedure for the collection of a note secured by mortgage which became a part of the assets of the fund pursuant to the terms of section 7 of the Act authorizing local units to accept and come under the provisions of the State Teachers' Retirement Fund Act. Among the things required by said section after the preliminary authorizations were secured was the transfer to the state fund of all moneys, credits and other property belonging to the local unit's Pension or Retirement Departments.

Burns Indiana Statutes Annotated (1933), Section 28-4505.

It was pursuant to such a transfer that the state fund became possessed of the note and mortgage, the foreclosure of which mortgage resulted in the acquirement of the real estate referred to. While the statute is not as clear perhaps as it might be upon this subject, it seems to me that in authorizing the state fund to receive such securities it was intended that it should be vested with the same powers ordinarily incident to such ownership whereby the indebtedness could be collected when due. The suit upon the note, the foreclosure of the mortgage, the sale pursuant to the foreclosure and the purchase of the property by the fund are simply steps in the ultimate collection of the liability and it seems to me that this procedure of collection is not actually completed until the land thus acquired is sold. It is evident from a reading of the statute that investments in this type of securities and investments in land are no longer eligible investments by the teachers' retirement fund board, and when the credits obtained from the Indianapolis Teachers' Pension Fund are ultimately collected, the money thus obtained should be invested in the type of securities set out in section 11 of the Act as subsequently amended, at which time the principles announced in my letter of July 28, 1937, would apply. See Burns Ind. Stat. Annotated, 1933, section 28-4508.

Owing to the fact, however, that the sale of the real estate obtained, as above described, is simply a final step in the collection of the original obligation by reducing it to cash, I do not think the board would be precluded or prohibited from the sale of such real estate. In accordance with a previous opinion, however, the details should be submitted for approval to the department in which the board now functions.

INHERITANCE TAX DIVISION: Right of tenant in common, upon inheriting interest of co-tenant, to deduct taxes which are a lien on the entire property in arriving at value for inheritance tax purposes of interest inherited.

September 29, 1937.

Hon. Isaac Kane Parks,
Inheritance Tax Administrator,
231 State House,
Indianapolis, Indiana.

Dear Mr. Parks:

I have before me your letter dated September 23, 1937, in the matter of the estate of Harriet G. Conklin of Wayne County, in which you state that the decedent departed this life July 25, 1936, the owner of an undivided one-half interest in and to certain real estate which she devised to her sister who was the owner of the other undivided one-half interest in said real estate. You state further that the surviving sister in presenting the schedule for inheritance tax determination included under the item of deduction several hundred dollars in taxes that had been imposed against the entire tract and the whole of the respective interests, claiming the right to do so under literary paragraph 3 of section 4 of the Inheritance Tax Act of 1931. You submit the following question:

“Is the survivor entitled as a deduction to the entire taxes against the property; or, entitled only to a deduction of one-half thereof?”

Section 4 of the Inheritance Tax Act of 1931 provides in part as follows:

“In determining the value of property transferred by will or interstate laws the following deductions and no others shall be allowed from the full fair cash value of the property to which the transfer relates:

* * * * *