

The rule that specific and particular descriptions in contracts and deeds will control over more general terms where both cannot stand together, and the rule that every part of an instrument will be given some meaning, if possible, necessitates the conclusion that the agreement constituted a reservation of land for orchard purposes.

An orchard is defined as "a plantation of fruit trees; an inclosure containing fruit trees; also, the trees collectively; used especially of apples, peaches, pears, cherries, plums, or the like, less often of nut bearing trees or sugar maples" and a fruit tree is defined as "a tree cultivated for its edible fruit."

In the light of these definitions, I do not believe that the cultivation of blackberries comes within the scope of the reservation contained in the agreement of March 17, 1932.

Therefore, the answer to your first question is in the negative. However, Mr. Heller has the right during the continuance of this agreement to replace with orchard trees, any trees within the acreage reserved which have been killed, and the state has the right to enjoin Mr. Heller from planting blackberries in any acreage reserved by the agreement for orchard purposes.

**TEACHERS' RETIREMENT FUND, INDIANA STATE:
Authority of State Auditor over department boards and
commissions within the department.**

January 21, 1937.

Hon. Robert D. Hougham,
Executive Secretary,
Teachers' Retirement Fund Board,
Indianapolis, Indiana.

Dear Sir:

Your letter of January 16, 1937, submits the question as to what authority the Auditor of State has in reference to the purchasing of securities from the State Teachers' Retirement Fund.

In answer to this question your attention is directed to the State Executive Administrative Act, the same being chapter 4 of the Acts of 1933.

Section 9 of this Act provides that the Governor is authorized and empowered to assign and/or transfer any administrative power, duty or function to one or more of the eight departments created by the Act and further provides that all such powers, duties and functions shall continue in such department.

The executive order of the Governor, effective April 15, 1933, under the Department of Audit and Control, contains the following provision:

“It is further ordered by the Governor of the State of Indiana that the powers, duties and functions of the following named departments, bureaus, commissions, agencies, offices and activities be and the same are hereby transferred and assigned to the Department of Audit and Control.”

Among the departments listed under this order is the Indiana State Teachers' Retirement Fund and following this title appears the further statement that,

“All State governmental duties, powers and functions relative thereto, as provided by the Acts of the General Assembly as follows * * *” and listing thereunder Section 28-4508, Burns 1933 Revision, Indiana Statutes.

This section is the section which formerly vested in the Board of Trustees of the State Teachers' Retirement Fund the authority to make investments in interest bearing securities.

It is my opinion, therefore, that, under the Executive Administrative Act, the Auditor of State as the chief administrative officer of the Department of Audit and Control, would have final authority on all matters governing the Indiana State Teachers' Retirement Fund, subject only to the limitations which might be imposed by the other two members of the Board of the Department of Audit and Control.