

1969 O. A. G.

OFFICIAL OPINION NO. 19

July 31, 1969

Dr. B. W. Johnson, Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis, Indiana 46204

Dear Dr. Johnson:

This opinion is in response to the question:

"Is the investment as represented by the commitment to participate in the financing of the Columbus, Indiana, Post Office a legal investment for the Indiana State Teachers' Retirement Fund?"

The commitment proposal forwarded to this office reflects that the Board will lend the sum of One Million Two Hundred and Forty Thousand Dollars (\$1,240,000) subject to limited adjustments, repayable by monthly installments over thirty (30) years with interest at seven and one-half per cent (7½%) per annum. Under the terms of the commitment proposal, the Board will not be required to commit any sum of money until the facility is ready for occupancy by the Post Office Department, at which time the loan will be consummated and secured by a first lien upon the leasehold estate of the developer and by an assignment of the developer's interest in the post office lease. Rental payments will be paid by the Post Office Department to a trustee for distribution in the repayment of the loan and other costs of the facilities until the amount of the loan is fully repaid.

Acts of 1915, Ch. 182, as last amended by Acts of 1965, Ch. 410, as found in Burns' (1968 Supp.), Section 28-4508, specify the investments which the Board may make with the principal of the fund. Generally, this Act specifies the numerous types of investments which may be participated in by the Fund and which are restricted to obligations of a governmental body when unconditionally guaranteed or insured against loss by such a body.

While it may appear that the investment of funds in the proposed Columbus, Indiana, postal facility are guaranteed as to repayment by the federal government, such investment

OPINION 19

cannot be considered as unconditionally guaranteed or insured so as to meet the stringent conditions and requirements of the cited Act. The federal government through the Post Office Department by way of a "Purchase-Leaseback" agreement will agree to make payments to a trustee subject to contractual conditions which must be met by the participating parties to the proposed agreement.

Acts of 1965, Ch. 410, Sec. 2 (15) provides in its applicable part as follows.

"The fund may make investments although not conforming to the foregoing categories, conditions, limitations and standards, but limited in aggregate amount of ten per cent (10%) of the fund's assets at the end of the preceding fiscal year * * *"

In effect, the quoted provision authorizes the Board to waive the categories, conditions, limitations and standards with respect to investments made under Acts of 1965, Ch. 410, Sec. 2 (1), (2), (3), (4), and (6) provided that the conditions and limitations may be relaxed by the Board only to the extent of an aggregate amount "of ten per cent (10%) of the fund's assets at the end of the preceding fiscal year."

The foregoing relaxed conditions clause was apparently passed by the Legislature in order to allow the Board to use its best judgment within the stated limits to take advantage of investment opportunities which are conditionally guaranteed against loss, but which in its judgment are a sound and safe investment.

In my opinion, the Board may legally participate in the proposed financing of the Columbus, Indiana, postal facility with its available funds subject to the provisions of Acts of 1965, Ch. 410, Sec. 2 (15) as set out herein. This opinion is restricted to the authority of the Board to make the stated investment and does not attempt to approve the legality or form of any particular executed instrument which has not been examined for that purpose.