

OPINION 25

OFFICIAL OPINION NO. 25

September 4, 1969

Mr. W. W. Hill, Commissioner
Department of Administration
507 State Office Building
Indianapolis, Indiana

Dear Mr. Hill:

This is in reply to your request for an opinion on the following two questions:

1. Is it legal for the Public Employees' Retirement Fund and the State Teachers' Retirement Fund to purchase student loan notes?
2. Is it legal for the State Scholarship Commission to purchase from banks outstanding student loan notes and resell them to the State Retirement Fund?

The 1945 Indiana General Assembly which created the fund known and designated as the Public Employees' Retirement Fund of Indiana gave the general administration and responsibility for the proper operation of this fund to a board of trustees. Acts of 1945, Ch. 340, Sec. 13, as amended and as found in Burns' (1961 Repl.), Section 60-1613.

Among the powers and duties delegated to the Public Employees Retirement Fund board is one which provides for the investment of all cash not required for current payments in securities eligible for investment under this Indiana Act. Section 14 (f), *supra*, as found in Burns' (1961 Repl.), Section 60-1614 (f).

Among the specific classes of securities which may be purchased for investment with the funds held in trust by the trustees, Section 18a(b), as added to the original act in 1945, and as found in Burns' (1969 Supp.), Section 60-1618(b), authorizes the investment in:

“(b) Bonds, notes, debentures, mortgages, other evidences of indebtedness and other securities *guaranteed* or *insured* as to *principal* and *interest* by the United States or any administrator, agency, authority or instrumentality thereof”; (My emphasis)

A similar provision is found in the act which created the Indiana State Teachers' Retirement Fund which vested control and management of such fund in a board of trustees also. Acts of 1915, Ch. 182, Sec. 3, as amended and found in Burns' (1948 Repl.), Section 28-4503.

Among the specifically-enumerated investments which the trustees of this fund may purchase with funds remaining after allowing for immediate needs, demands, and exigencies of such fund include:

"2. Bonds, notes or other evidences of indebtedness *guaranteed or insured* as to *principal and interest* by the United States * * *" (My emphasis) Burns' Section 28-4508, *supra*.

Thus, it is clear that the trustees of both these funds may lawfully invest funds which are in their possession, after they have taken care of current needs, in notes which are guaranteed or insured as to *both principal and interest* by the Federal Government or an instrumentality or agency of the Federal Government. Whether the student loan notes to which you refer are insured by the United States as to both principal and interest requires an examination by the fund trustees of the pertinent Federal programs, bank programs, and loan programs.

In making such an examination, the fund trustees should be guided by the 1969 Official Opinion of the Attorney General No. 19 in which the applicable statutes are set out together with the necessary criteria relative thereto. If the trustees deem these statutory standards and criteria unduly restrictive, the remedy lies with the Legislature.

In this connection, it should be noted that 1969 Official Opinion of the Attorney General No. 19 discusses the importance of Acts of 1965, Ch. 410, Sec. 2 (1), (2), (3), (4), and (6) which provide that investment 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."

Subject to the exception noted above, it is my opinion that in the administration of these trust funds, it is not the office

OPINION 25

of the Attorney General, but the trustees of the pertinent retirement funds who have their bounden trustee duties; and in this case if both the interest and the principal on such notes or loans are guaranteed by the Federal Government, then these trustees can legally make such investments. Again, subject to the exception noted above, it is my further opinion that if both the interest and principal are not guaranteed by the Federal Government, then Indiana law does not permit the trustees of those funds to make such investments; and the respective Boards of Trustees have the responsibility of analyzing each prospective investment.