1965 O. A. G.

OFFICIAL OPINION NO. 1

January 4, 1965

Hon. William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Wilson:

You have requested that I examine 1962 O. A. G., page 102, No. 24, because of certain practical aspects which have developed since the time that it was issued. For informational purposes I am including your entire letter in this Opinion and said letter reads as follows:

“Since the issuance of 1962 O. A. G., No. 24, p. 102, which permitted school teachers to direct that a part of their annual salary be used by the school board to purchase annuities, we have received numerous questions concerning the limitation of this right which appears in the Opinion.

“This limitation imposed restricts the teachers to applying that part of their salary which exceeds the statutory minimum salary to purchase annuities. In presenting these questions, arguments have been advanced that the Opinion results in an unrealistic discrimination and such arguments appear to me to have certain merits. Particularly is this true in the case of young married teachers who are each paid only the statutory minimum but who would like to invest a portion of their combined salaries in such annuities.

“Because of this factual situation, I should appreciate your examining the Official Opinion and advising me as to your opinion on this specific area included in 1962 O. A. G., No. 24, p. 102.”

This Opinion was written in answer to a question regarding the right to provide tax favored annuities as a part of the contract with the teacher, if such were requested by the teacher. In the Opinion it was stated that the form of the contract could be amended to provide for payment of the
purchase of an annuity for a teacher, and payment could be so made at the request of the teacher. A proposed form of amendment to the contract was included in the Opinion. I have been informed that the new contract has been approved by the Internal Revenue Service as being acceptable and sufficiently within the terms of the amendment concerning deferred payment of salaries to entitle the participating teacher to take advantage of the tax benefits.

In the Opinion was included certain statements which were not required by the specific question presented and were not given sufficient consideration in relation to the proposed amended form of the contract and the provisions of the Internal Revenue Code and the intent thereof. These statements constituted a restriction as to the amount that a teacher might request to be used to purchase an annuity and limited it to the amount said teacher might receive above the statutory minimum teacher's salary. As a practical matter there is no relationship between the desire or the ability of an individual school teacher to take advantage of the tax benefits provided and the amount of money the teacher may receive in excess of the statutory minimum teacher salary.

The annual compensation of a teacher as set forth in the contract constitutes the entire compensation of the teacher for that year and may not be less than the statutory minimum. By requesting that the payment of a portion of that salary be used to purchase an annuity, no actual reduction in the salary as contained in the contract results, but within the intent of the Internal Revenue Code, a deferral of the actual receipt thereof is accomplished. Such a deferral of payment is entirely voluntary on the part of the teacher and may be terminated by the teacher as far as future payments are concerned, at any time. Under no circumstances will the teacher be deprived of the final receipt of the entire annual compensation provided for in the contract. No public funds are involved in the purchase of the annuity.

Viewed from this position, it is my opinion that 1962 O. A. G., page 102, No. 24, supra, should be modified to the extent that the limitation imposed on the amount any teacher may request to be used for the purchase of an annuity be removed. This Opinion and the one modified hereby are in
answer to questions pertaining solely to school teachers and the answer is likewise limited strictly in its application to school teachers.

OFFICIAL OPINION NO. 2

January 6, 1965

Mr. Earl M. Utterback
Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis, Indiana

Dear Mr. Utterback:

This is in reply to your recent letter requesting an Official Opinion, which reads, in part, as follows:

"This is to request an official opinion as to whether persons licensed as teachers by the State of Indiana and regularly employed to teach by the Indiana Youth Training Corps at Camp Atterbury, the Southeastern Indiana Area Vocational School and/or by the Parke County Children's Memorial Activity Center are eligible to membership in the Indiana State Teachers' Retirement Fund, whose service in such employment is creditable as provided by the Acts of 1915, ch. 182, sec. 14, as last amended by the Acts of 1955, ch. 275, sec. 2, as found in Burns' (1964 Supp.) Section 28-4511, subsections (a) and (m).

"It is our understanding that the Indiana Youth Training Corps is a project of the Indiana Youth Council supported by state (appropriation?) and federal funds; that the Southeastern Indiana Area Vocational School is a joint school established by cooperative arrangement of nine school districts in Ripley, Switzerland, Ohio and Jefferson Counties under a plan approved by the Indiana State Board of Education at a meeting March 12, 1964; and that the Parke County Children's Memorial Activity Center is a not-for-profit corporation receiving public funds from the State Department of Mental Health, Parke County and the