if possible, be separately considered and appropriation made therefor.

Thus, it is my opinion, that since there is no express authorization by the Legislature to the park board to expend the activity fees in the "Special Non-reverting Fund" without prior appropriation, such money cannot be disbursed without a prior appropriation ordinance having been adopted according to law by the city council, county council or town board of trustees.

OFFICIAL OPINION NO. 55

October 25, 1965

Mr. Earl M. Utterback
Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Utterback:

This is in answer to your recent letter in which you requested an Official Opinion on the following question.

"If a teacher retires prior to the Supplemental Benefits Act, Chapter 329 of the Acts of 1955, and returns to active service under that Act and earns sufficient quarters of Social Security coverage as a teacher, should the Social Security earned as a teacher be taken into consideration in determining the minimum benefit (State's guarantee) ?"

It is believed that a brief resume of the history of the Teachers' Retirement Act would aid in a better understanding of the problem presented by your question.

The Indiana Teachers' Retirement Fund was established by Acts of 1915, ch. 182, Burns IND. STAT. ANN., §§ 28-4501—28-4511, 28-4513—28-4514, which provided each teacher contribute an assessment of from $10.00 to $25.00 per year on a graduated scale depending on the number of years taught in the public schools. Each teacher was to receive an annuity
on retirement after thirty-five years of service of $600 per year on a graduated scale to $700 per year after forty years of service. The fund consisted of (1) gifts and grants, (2) teachers' contributions, and (3) school tuition tax funds.

The Act was amended by Acts of 1921, ch. 256, placing the plan on an actuarial basis to provide a basic pension of $700 per year to a retired teacher after forty years of service, or an amount after twenty-five years of service equal to the “then present value of the annuity which would otherwise have ultimately been available” computed on an actuarial basis purchasable at the teacher's age of retirement, based on actuarial tables to be adopted by the board of trustees of the fund. Amendments by Acts of 1937, ch. 189 and Acts of 1945, ch. 328, provided a basic annuity of $960 and $120, respectively, to teachers who retired after thirty-five years' service. A tax levy and transfer of necessary amounts from the State General Fund were provided to meet the state's actuarial liability of four-sevenths of the benefits provided for. Retirement again was permitted after twenty-five years' service at a reduced benefit according to actuarial tables adopted.

Acts of 1947, ch. 353, provided for an annuity of not less than $1200 after thirty-two years of service and permitted retirement at a reduced actuarial figure after twenty years' service.

Under Acts of 1949, ch. 130, benefits of not less than $1200 annually were provided ($700 by State and $500 from teacher's contributions) for a teacher with thirty years' service, and a teacher who had twenty years' service at age fifty could retire at a reduced actuarial figure. Acts of 1949, ch. 130, § 1 (g) reads in part, as follows:

“(g) In the year 1949 and in each year thereafter there shall be levied not less than six and fifteen hundredths cents on each one hundred dollars valuation of taxable property, as other state taxes are levied, an Indiana state teachers' retirement fund levy which, when added to funds hereby authorized to be transferred from the State General Fund by the State Board of Finance, will be sufficient to provide in each teacher's account the funds necessary to cover the actuarial
liability incurred by the state for the payment of an annuity of seven hundred dollars per year after thirty years of service as determined by the actuarial investigation above provided for.

Acts of 1951, ch. 142, increased the state's proportionate actuarial liability by making funds available to provide in each teacher's account the monies necessary to cover the actuarial liability insured by the state for the payment of an annuity of not less than $80.00 per month after thirty years of service and an amount of not less than $500 annually to be derived from actuarial value of the amount in the teacher's account. Again retirement after twenty years' service at age fifty is permitted at a reduced actuarial figure. The teacher's account share was increased by Acts of 1953, ch. 180, to not less than $550 annually after thirty years' service, and the state's share increased to not less than $88.00 per month. Acts of 1955, ch. 275 raised the state's liability to not less than $90.00 per month after thirty years' service.

In each of the above-cited Acts, a teacher was given the election to pay arrearages for all years' service credit claimed, or to waive any time served, or continue in contractual relationship to the fund under whichever Act she had entered the fund or made subsequent election.

In 1955, the Indiana Public Employees Social Security Integration and Supplemental Retirement Benefits Act was enacted as Acts of 1955, ch. 329, as amended, Burns IND. STAT. ANN., §§ 60-1911—60-1940. Its principal purpose was to provide Social Security coverage to members of the Public Employees Retirement Fund, Indiana State Teachers' Retirement Fund, and the State Board of Accounts Retirement Fund, and to provide certain additional supplemental benefits for employees to whom such coverages is extended so as to provide benefits substantially similar to those provided by existing public retirement systems. Section 60-1912, supra. Referenda were provided for under § 4 of the Act, Burns IND. STAT. ANN., § 60-1914, and all school corporations of the State subsequently elected, via such referenda, to come under its terms. Section 12 of the Act, Burns IND. STAT. ANN., § 60-1923, provides, in part, as follows:
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"... The benefits provided under this Act shall be in lieu of all benefits to which such employees would or might have become entitled as members of any existing retirement system, and the contributions required under this act shall be in lieu of all contributions heretofore required with respect to such retirement system. Each such retirement system shall nevertheless continue to be a separate retirement system and its affairs shall continue to be administered by the board which has previously administered the affairs of such system, subject to the same terms and conditions as heretofore except insofar as the same are inconsistent with the terms and conditions of this act... ."

Section 13(a) of the Act, Burns IND. STAT. ANN., § 60-1924, provides for an assessment by each member of three per cent of his compensation, not in excess of $8500 annually in addition to their contributions for Social Security. Section 13(b) provides:

"(b) Each board administering a retirement system the members of which are covered by federal social security shall maintain a separate account to be known as the ‘annuity savings account’ in which shall be deposited all contributions of members of such system made pursuant to subsection (a) of this section 13 [this section] and each member thereof shall be credited individually with the amount of all contributions made by him pursuant to said subsection (a). There also shall be deposited in such annuity savings account for each member and credited individually to such member an amount equal to his prior contributions as a member of a retirement system and the past interest earnings thereof as determined by such board. Such deposit shall be made from any funds heretofore accumulated in the hands of any such board and any deficit therein shall be made up by the state as to all state employees and teachers and by each participating political subdivision with respect to its employees."

Section 14 of the Act, Burns IND. STAT. ANN., § 60-1925, provides, in part, as follows:
“(a) Each board administering a retirement system, the members of which shall become covered by federal social security under this act [§§ 60-1911—60-1940], shall also maintain a separate account to be known as the ‘retirement allowance account’ in which shall be credited contributions made by the state and each participating political subdivision, including all funds now held by such board after crediting to each member the amounts required under section 13(b) [§ 60-1924(b)] of this act. The state shall have the obligation to contribute biennial amounts which, when added to the funds on hand on account of prior contributions credited to the state hereunder, shall be sufficient to provide for each employee who becomes eligible for retirement benefits to be paid by the state under the provisions of this act, the benefits hereinafter specified.

* * *

“(c) Notwithstanding any provision of this act every member of an existing retirement system which becomes subject to social security shall be entitled to receive as a normal retirement benefit at least an amount, which, when added to the primary social security benefit to which he may become entitled under the Federal Social Security Act [F.C.A., tit. 42, §§ 301-1305], would equal the normal retirement benefit to which he would have been entitled under the provisions of said system in effect at the effective date of this act if he had continued contributions, for the period during which contributions shall have been made under this act, at the amount then required by such provisions or at the total amount required under this act if in excess of said amount. The provisions of this act shall not work any diminution, abridgement, or cancellation of any of the other rights, privileges, or benefits provided by such pre-existing system for persons who were members of such system.

“(1) If a member shall have earnings recorded under the Federal Social Security Act from employment with more than one [1] employer, the amount of his primary social security benefit for the purposes of this
subsection shall be computed by applying to his total primary social security benefit the percentage which his earnings recorded for service covered by article II of this act [§§ 60-1913—60-1922] constitute of his total earnings recorded under the Federal Social Security Act. The federal social security benefit thus determined will be presumed payable for the purposes of this plan, even though a member may fail to apply for such benefit or may lose all or part of it through delay in applying for it or by engaging in covered employment or otherwise.

“(2) The benefit to which a member would have become entitled under an existing retirement system shall be determined on the assumption that his contributions subsequent to the date on which such system becomes subject to federal social security shall have been made on the minimum basis required by such existing retirement system, or on the basis of his contributions actually made to the supplemental retirement benefit system and to federal social security, whichever is the greater.

“(3) The normal retirement benefit in the case of retirement at any age under existing systems and in the case of retirement at or after age sixty-five (65) under the supplemental retirement benefit system is the benefit payable for life without special election. In the case of retirement before age sixty-five (65) under the supplemental retirement benefit system it is the benefit payable under the option which integrates with social security at the youngest age of eligibility for social security benefit to provide a uniform total benefit.

“The employer responsible for the employer's contribution with respect to any employee going on retirement shall make any contributions required to carry out the provisions of this subsection in addition to all other payments required by this act.” (Emphasis added.)
Certain retirement benefits are guaranteed under § 17 of the Act, Burns IND. STAT. ANN., (1965 Supp.), § 60-1928, as follows:

“(a) An employee subject to the supplemental benefit provisions of this act [§§ 60-1911—60-1940] who retires after he has reached age sixty-five [65] years and completed at least ten [10] years of service will be entitled to receive monthly retirement income payments which will be guaranteed for five [5] years and as long thereafter as he lives, consisting of the sum of (1) a pension provided by the contributions of the employer, and (2) an annuity provided by the employee’s contributions. The pension supported by the employer’s contributions shall be computed upon the average of the annual compensation of the employee during any five {5} of the ten {10} years of service immediately preceding his retirement date, or during his entire period of service subsequent to the date of this act if higher; the annual amount of such pension shall be equal to the sum of (1) six-tenths of one percent [.6%] of such average not in excess of $3,000.00 and (2) one and one-tenths per cent [1.1%] of such average in excess of $3,000.00, if any, multiplied by his number of years of creditable service completed at retirement up to forty-five [45] years of service or age seventy [70] whichever is later. The amount of the annuity provided by the employee’s contributions shall be that purchasable on his retirement date (based on actuarial tables adopted by the board pursuant to section 22 (§ 60-1933)) by the total amount of his contributions and any interest credits thereon. In establishing the basis for credit to be used in computing average annual compensation for the purposes of this subsection, the employee may include his compensation in any five [5] of the last ten [10] years prior to retirement.

“(b) An employee, subject to the provisions of this act, who retires in accordance with section 16(b) [§ 60-1927(b)] before age sixty-five [65] shall receive retirement income payments which will be the sum of (1) the normal pension otherwise payable be-
ginning at age sixty-five [65], computed on the basis of service and earnings to the early retirement date, reduced by one-fourth per cent \( \frac{1}{4} \% \), for each full month not in excess of sixty [60], and five-twelfths per cent \( \frac{5}{12} \% \), for each full month in excess of sixty [60], that the employee's retirement date precedes his sixty-fifth birthday anniversary, and (2) the annuity purchasable by his own contributions and any interest credits thereon.

*(iii)* If an employee retires prior to age of eligibility for social security benefit payments, he may elect to receive an increased retirement benefit up to such age and decreased retirement benefit thereafter, thereby providing a more nearly level retirement benefit when such decreased retirement benefit is added to his anticipated primary benefits under the Federal Social Security Act [F.C.A., tit. 42, §§ 301-1305]." (Emphasis added.)

Clearly, in arriving at the minimum benefit guaranteed by the State under Chapter 239 of the Acts of 1955, as amended, to be received by any member of the teacher's retirement fund who has become subject to the 1955 Act, *supra*, Social Security benefits for which such member has paid are not to be taken into consideration. Such a re-employed person receives whatever Social Security benefits earned while a participating member of the Fund, persons who retired prior to 1955 and were re-employed after the effective date of ch. 329 of the Acts of 1955 should not suffer a reduction in the amount of the state's guarantee because they have paid in sufficient quarters to earn Social Security benefits.

In 1957, the General Assembly passed a law entitled an act concerning additional benefits of persons who receive retirement benefits from the Indiana State Teachers Retirement Fund, Acts of 1957, ch. 219, § 1, reads as follows:

"SECTION 1. Every person who shall be receiving a retirement benefit from the Indiana State Teachers' Retirement Fund shall be eligible to receive and shall receive from such fund an additional retirement bene-
fit equal to five dollars ($5.00) per month for a person with thirty (30) years of creditable service and a greater or less amount per month for more or fewer years of service, adjusted on an actuarial basis by the actuary of the fund. Said benefit shall be payable beginning July 1, 1957, and shall be paid from an appropriation from the General Fund of the State of Indiana from moneys not otherwise appropriated; and there is hereby appropriated for the Indiana State Teachers' Retirement Fund from moneys not otherwise appropriated in the General Fund an amount sufficient to satisfy the requirements of this act.

"Provided however that no retired teacher shall receive the benefits of this act unless and until such retired teacher shall submit to the Teachers' Retirement Fund Board a signed statement that no primary social security benefits are being received by such retired teacher." (Emphasis added.)

The proviso in the above statute indicates that the Legislature did not intend for persons who were receiving Social Security benefits which were earned while they were contributing to the Teachers' Retirement Fund to receive the raise in the amount of the "state's guarantee." However, that statute was amended in 1959, ch. 244, Acts of 1959 and that proviso was omitted. That proviso was also omitted in the 1961 amendment. Acts of 1961, ch. 281; it was omitted in 1963 amendment, and the 1965 amendment, Acts of 1963, ch. 389; and the Acts of 1965, ch. 440, § 1, which reads as follows:

"Acts of 1957, c. 219, s. 1, as last amended by Acts of 1963, ch. 389, s. 1, is further amended to read as follows: Sec. 1. Every person who shall be receiving or eligible to receive a retirement benefit from the Indiana State Teachers' Retirement Fund shall be eligible to receive and shall receive from such fund an additional retirement benefit of an amount sufficient when added to his pension benefit derived from state sources and his social security benefit earned as a teacher to equal one hundred seventeen dollars and fifty cents ($117.50) per month from said sources for a person with thirty (30) years of creditable service,
and a greater or less amount per month for more or fewer years of service, adjusted on an actuarial basis by the actuary of the Fund. Said benefit shall be payable beginning July 1, 1965 from an appropriation from the General Fund of the State of Indiana from moneys not otherwise appropriated; and there is hereby appropriated for the Indiana State Teachers’ Retirement Fund from moneys not otherwise appropriated in the General Fund an amount sufficient to satisfy the requirements of this act.”

Apparently, some injustice resulted with respect to the amount of total retirement benefit received by persons who retired under the Teachers’ Retirement Fund prior to the effective date of Acts of 1955, ch. 329, and were re-employed thereafter subject to the protection of the Teachers’ Retirement Fund and ch. 329 of Acts of 1955 and received a smaller benefit on second retirement. This injustice received the attention of the Legislature by Acts of 1961, ch. 213, which reads as follows:

“SECTION 1. Any teacher who is or who has been at the time of retirement a member in good standing of the Indiana State Teachers’ Retirement Fund and who has retired or who may retire under any retirement plan and subsequently withdraws from retirement and resumes active teaching and again retires, upon such second or subsequent retirement shall be paid a monthly retirement of no less than the highest amount such teacher has at any time ever received theretofore as retirement pay.

“SEC. 2. Any teacher coming within the provisions of section 1 of this act who, prior to the effective date of this act has been paid any sum less than that provided by this act shall be reimbursed from the Indiana State Teachers’ Retirement Fund for the full amount of such deficiency and to this effect as necessary this act shall be retroactive in its application.

“SEC. 3. The provisions of this act shall be administered and enforced by the Board of Trustees of the Indiana State Teachers’ Retirement Fund.
"SEC. 4. The purpose of this act is declared to be to correct an injustice inflicted upon persons who give or who may give further service, but upon subsequent retirement receive less and to this effect this act shall be given a liberal construction." (Emphasis added.)

Therefore, to conclude here that the amount of the state's guarantee on retirement to members of Teachers' Retirement Fund should be determined by the amount of Social Security earned by such member would frustrate the obvious legislative intent and would deter competent teachers who have effected early retirements from re-entering the teaching profession in which profession competent persons are sorely needed.

It is therefore, my opinion that a teacher who retires prior to Acts 1955, ch. 329, and is re-employed as such subsequent to Acts 1955, ch. 329, should not have her Social Security earned as a teacher on re-employment considered in determining the minimum state's guarantee.

OFFICIAL OPINION NO. 56

October 26, 1965

Mr. Charles W. Kirk, Jr.
Executive Director
Department of Commerce and Public Relations
333 State House
Indianapolis, Indiana

Dear Sir:

This is in response to your inquiry as to whether the Public Employees' Retirement Fund and the Indiana State Teachers' Retirement Fund may purchase municipal revenue bonds issued pursuant to Acts of 1965, ch. 402.

The Municipal Economic Development Act of 1965 provided for cities to create a Department of Economic Development under the control of commissioners appointed by the Mayor.