"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.
Burns IND. STAT. ANN., § 48-8711 enumerates the powers of the commission:

"In carrying out its duties the commission shall have the following powers:

"(1) To acquire by purchase, gift, grant, condemnation, or lease, any real estate, interests in real estate, or personal property, needed for the purposes of this Act;

"(2) To hold, use, sell, lease, rent or otherwise dispose of any property, real or personal, on such terms and conditions as the commission shall determine to be for the best interests of the city and its inhabitants;"

Burns IND. STAT. ANN., § 48-8712, provides:

"If the commission finds by a written resolution that because of existing insufficient employment opportunities or insufficient diversification of industry, the economic welfare of the city would be benefitted by the acquisition and leasing to others of industrial facilities, and such resolution and findings shall be approved by the council, the commission may enter into negotiations with any person, firm or corporation concerning the terms of a lease. Preliminary expenses may be paid from money supplied by the proposed lessee, from money made available by the state of Indiana, the United States of America, or any department or agency thereof, by a special tax for such purpose which cities and towns are hereby authorized to levy or by an additional appropriation of other available funds, subject to the general laws relating to the levy of taxes and the appropriation of municipal funds."

Burns IND. STAT. ANN., § 48-8717, provides:

"Revenue bonds payable solely and only from the revenues derived from such facilities may be issued in such amounts as may be necessary to provide sufficient funds to pay all the costs of purchase or construction of such facilities, including site, engineering,
legal fees, costs of issuing bonds, and other expenses relating thereto during construction. The bonds shall be executed by the mayor and clerk of the city, and shall be sealed with the corporate seal of the city. The principal and interest of said bonds shall be payable solely and only from the special funds herein provided for such payments, and said bonds shall not in any respect be a general obligation of such city, nor shall they be payable in any manner by taxation. All details pertaining to the issuance of such bonds and the terms and conditions thereof shall be determined by ordinance of the city. Such bonds shall bear a rate or rates named by the best bidder after notice of sale has been given in the manner required for the sale of bonds of the city, but the net interest cost shall not exceed 6 per cent per annum."

Burns IND. STAT. ANN., § 48-8718, provides:

"In the discretion of the commission such bonds may be secured by a trust indenture by and between the city and a corporate trustee, which may be any trust company or national or state bank within the state of Indiana having trust powers, and such trust indenture may mortgage the land or buildings, or both, on account of which said bonds are issued, or any part thereof. The trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or lenders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the city and commission in relation to the construction of the facilities and the custody, safeguarding and application of all moneys received or to be received by the city on account of said facilities financed by the issuance of said bonds. Such indenture may set forth the rights and remedies of the bondholders and trustee, and provisions restricting the individual right of actions of bondholders. Except as in this act [§§ 48-8701—48-8725] otherwise provided, the commission may provide by resolution or in such trust indenture for the payment of the proceeds of the sale of bonds to such officer, board or
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depositary as it may determine for the custody there-
of, and for the method of disbursement thereof, with
such safeguards and restrictions as it may determine."

The import of §§ 48-8717 and 48-8718 is to give the munici-
pal corporation the power to issue limited obligation bonds to
provide revenue for the acquisition of renewal or potential
industrial property. Section 48-8717, supra, specifically pro-
vides that they shall not be general obligation bonds. Section
48-8718, supra, appears to manifest an intent by the Legis-
lature to replace the insecurity of limited obligations, by pro-
viding for an indenture trust. The act does not define inden-
ture trust nor is one provided by the common law. The
Federal Bankruptcy Act, 11 U.S.C., § 506(8), does, however,
provide such a definition as follows:

"'Indenture trustee' shall mean a trustee under a
mortgage, deed of trust or indenture, pursuant to which
there are securities outstanding, other than voting
trust certificates, constituting claims against a debtor
or claims secured by a lien upon any of its property;"

For an application of such a trust see In re Sponsor Realty

Burns IND. STAT. ANN., § 60-1614, in specifying the
duties of the trustees of the Public Employees' Retirement
Fund says:

"The board shall have, in addition to such duties and
other duties arising out of this act not otherwise spe-
cifically reserved or assigned to others, the following
powers and duties:

* * *

"(f) Invest all cash not required for current pay-
ments in securities eligible for investment under this
act, and reinvest proceeds from sale or redemption of
investments, as provided in section 18 [60-1618] hereof.

Burns IND. STAT. ANN., § 60-1618 provides:

"The board shall, from time to time, determine the
current requirements for benefit payments and admin-

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istrative expenses, which shall be maintained as a cash working balance except that such cash working balance shall not exceed at any time an amount necessary to meet the current obligations of the fund for a period of ninety [90] days. Any amounts in excess of such cash working balance shall be invested by the board of trustees in the following classes of securities:

* * *

“(c) Bonds, notes, certificates and other valid general obligations of the state of Indiana, or of any county, city, township, town or other political subdivision of the state of Indiana;

* * *

“The total amount of investments, at par value, in the securities of any one [1] state, or in the securities of any one [1] political subdivision of any state, or of any corporation or of any opened-end-investment trust or mutual fund, shall not at any time exceed ten per cent [10%] of the total amount of investments of the fund at par value.”

Burns IND. STAT. ANN., (1965 Supp.), § 28-4508, provides:

“Investments of Indiana state teachers retirement fund at the time they are made shall conform to the following categories, conditions, limitations and standards:

* * *

“(4) Bonds, notes or other evidences of indebtedness issued, guaranteed or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a state, territory or possession of the United States, of the District of Columbia, or of any province of the Dominion of Canada, providing such obligations are authorized by law and are (a) direct and general obligations of the issuing, guaranteeing or insuring governmental unit, administration, agency, authority, district, subdivision
or instrumentality, or (b) payable for designated revenues pledged to the payment of the principal and interest thereof, or (c) improvement bonds or other obligations constituting a first lien, except for tax liens, against all of the real estate within the improvement district or on that part of such real estate not discharged from such lien through payment of the assessment. The area to which such improvement bonds or other obligations relate shall be situated within the limits of a town or city and at least fifty per cent [50%] of the properties within such area shall be improved with business buildings or residences;” (Emphasis added.)

It is to be noted that both § 60-1618 (c) and § 28-5408 (4) require bonds to be general obligations of the state or the political subdivision. The bonds which are the subject of your inquiry are not general obligation bonds. Section 48-8717 specifically states that the municipal bonds to be issued “shall not in any respect be a general obligation of such city, nor shall they be payable in any manner by taxation.”

The reasoning behind the legislative requirement that retirement fund investment be made in general obligation bonds is obviously security. While the Legislature has attempted to provide the retirement funds with the tools for the widest possible investment diversification, it has simultaneously limited investments to those offering at least minimum security or protection. A limited obligation bond does not offer sufficient security to meet the tests here manifested by the Legislature. The provision for the use of the indenture trust does not cure this problem. The creation of such a trust arrangement is left to the discretion of the cities’ economic development commission. Only suggestions are made as to the content of the indenture trust. There is nothing mandatory in § 48-8718. But even if it were mandatory, it is doubtful that the indenture trust scheme is sufficient to cure the security deficit patent in § 48-8717.

This makes unnecessary a consideration, at this time, of other problems raised by your inquiry.

It is my opinion that the Public Employees’ Retirement Fund and the Indiana State Teachers’ Retirement Fund may
not purchase municipal revenue bonds issued pursuant to Acts of 1965, ch. 402.

OFFICIAL OPINION NO. 57

October 26, 1965

Mr. Richard L. Worley
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Worley:

I have your letter requesting an Official Opinion as follows:

"1. In view of Burns' Indiana Statutes (1948 Repl.), Volume 6, Part 2, Section 28-5141 et seq. and Acts of 1965, Chapter 307, Section 202, may a school corporation operating under laws of school cities operate the school lunch program either as a separate fund in the 'School Extra-Curricular Account', or as a separate fund in the official records and account of the school corporation in custody of the school corporation treasurer?

"2. Would your answer to Question No. 1 also apply to a school township?

"3. In view of Burns' 28-638 and Acts of 1965, Chapter 307, Section 202, must a school corporation (after July 1, 1965) operate the school textbook rental program as a separate fund in the official records and account of the school corporation in custody of the school corporation treasurer, or is it permissible to operate such a program as a part of the School Extra-Curricular Account under Burns' 28-5141 et seq.?

"4. If a school corporation operates a bookstore for the sale of textbooks, pursuant to Burns' 28-614, and incidental thereto sells workbooks, supplies and work materials necessary for the efficient use of such textbooks, shall the receipts from said sales be accounted for in the records and account of the school corporation