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
OPINION 2

School City of Rockville. You will find enclosed copies of our correspondence relating to these institutions.

The Acts of 1915, ch. 182, § 14, as amended, as found in Burns IND. STAT. ANN., § 28-4511, Subsection (a) specifies persons who are eligible to be members of the Indiana State Teachers' Retirement Fund, in part, as follows:

“(a) The members and beneficiaries of this fund shall include any legally qualified and regularly employed teacher, teacher-clerk, supervising principal, principal, supervisor, superintendent of schools, persons in charge of any special department of instruction or training, or any other teacher or instructor legally qualified and regularly employed as such in any of the public schools of this state or any persons employed by the trustee or board of trustees of a public school corporation who were qualified under this act previous to their election or appointment; or in any public state normal school of the state, supported wholly by public money, and devoted to the preparation of teachers; or the legally qualified and regularly employed teachers, principals, superintendent and others named above in any other public state educational institution of this state supported wholly by public money and whose teachers devote their entire time to teaching; and the legally qualified and regularly employed teachers in state benevolent, charitable, and correctional institutions; and any other teacher or instructor legally qualified and regularly employed as such in any experimental school in any state university employed to and who is actually teaching elementary or high school pupils; and certain instructors as determined by the board who may be serving in any university extension division not otherwise covered by a state retirement law; and employees and officers of the state department of public instruction and the state teachers' retirement fund who were qualified under this act previous to their election or appointment. . . .” (Our emphasis.)

The Indiana Constitution, Art. 8, § 1, provides for a “system of common schools, wherein tuition shall be without
1965 O. A. G.

charge and equally open to all," and Art. 8, § 8, provides for election of a Superintendent of Public Instruction whose duties shall be prescribed by law. One such duty is that set out in the Acts of 1865, ch. 1, § 121, as found in Burns IND. STAT. ANN., § 28-303, thus:

"The superintendent shall be charged with the administration of the system of public instruction and a general superintendence of the business relating to the common schools of the state and of the school funds and school revenues set apart and appropriated for their support. . . ." (Our emphasis.)

The Acts of 1907, ch. 191, § 1, as found in Burns IND. STAT. ANN., § 28-3413 reads, in part, as follows:

"The public schools of the state shall be and are defined and distinguished as (a) elementary schools and (b) high schools. . . ." (Our emphasis.)

The Southeastern Indiana Vocational School is, according to correspondence enclosed with your request, apparently established under authority of the Acts of 1913, ch. 24, as amended, as found in Burns IND. STAT. ANN., § 28-4901 et seq., and particularly Burns IND. STAT. ANN., § 28-4904, thus:

"Two [2] or more school corporations may cooperate to establish and maintain schools or departments for vocational education, or in supervising the same, whenever the school boards of such school corporations shall so determine and apportion the cost thereof among the school corporations cooperating. Whenever such cooperative schools or departments have been determined upon by such cooperating school corporations, the heads of such cooperating corporations, or their delegated representatives shall constitute a board for the management of such school or department; such board may, by resolution adopted by a majority of the actual number of members of the board, designate three [3] or more of its number to constitute an executive committee, which committee, to the extent provided in said resolution, shall have and exercise all of the
authority of the board in the management of the school; Provided, That such committee shall submit a written summary of its actions to the full board at least semiannually. Such board may adopt a plan of organization, administration and support for such school or department, and the plan, if approved by the state board of education, shall constitute a binding contract between the cooperating school corporations, which shall be canceled or annulled only by the vote of a majority of the school boards of the cooperating school corporations and the approval of the state board of education. Such board may, following approval of said plan by the state board of education, enter into an agreement to acquire sites and buildings and the equipment thereof by lease or purchase, suitable for such program, including such facilities as might be made available under the provisions of chapter 273, of the Acts of 1947.

"The term 'school corporation' includes school cities, school towns, school townships, consolidated school corporations, county school corporations, community schools corporations, and any other corporation organized for the purpose of conducting public schools." (Our emphasis.)

However, the representative board for management of a cooperatively established vocational school (required by Burns 28-4904, supra) is neither a corporate entity nor expressly empowered to employ persons to teach in such cooperatively established vocational school so such teachers are probably employees of one, more, or all of the cooperating school corporations rather than of the board for management of the vocational school.

Part-time attendance at an approved vocational school may be required of regularly employed youths between the ages of fourteen and eighteen years in the school corporation establishing such school. (See Burns 28-4910.) Residents of a school city, town or township which does not maintain an approved vocational school may be permitted to attend one elsewhere upon application approved by the State Board of Education—in which case the resident school corporation is
1965 O. A. G.

obligated to pay the tuition fee fixed by such board but entitled to reimbursement from state funds to aid in the cost of vocational education and levied as a part of the state common school levy. (Burns 28-4909, 28-4914 and 28-4915.)

It appears that such vocational schools as the Southeastern Indiana Area Vocational School are within the constitutional definition of the system of common schools (i.e., equally open to all without charge), are established and maintained by school corporations statutorily responsible for operating such common schools, and are approved by the constitutional officer charged with their superintendence. Furthermore, they are, according to Burns 28-4903, of “less than college grade.” It would, therefore, seem that the Southeastern Indiana Area Vocational School is a part of the common school system of public instruction despite being in a class other than elementary or high schools established as “public schools” by act of the 1907 Legislature.

It was held in State v. O’Dell, 187 Ind. 84, 118 N.E. 529 (1917), at page 87 of the official report, that the term “common schools” was synonymous with “public schools.” Therefore, it is my opinion that legally qualified teachers regularly employed to teach in the Southeastern Indiana Area Vocational School are employed as teachers in a public school of this state and, as such, are required to be members of the Indiana State Teachers’ Retirement Fund as a condition of employment, according to Burns 28-4511, Subsection (g).

The Indiana Youth Training Corps at Camp Atterbury is, according to enclosed correspondence, operated as a state agency and, inferentially, a project of the Indiana Youth Council under the authorization of the Indiana State Board of Education. This Council was created by the Acts of 1963, ch. 345, as found in Burns IND. STAT. ANN., § 63-2612 et seq., and is, by Burns 63-2613, “a department of state government” whose statutory purpose, as stated in Burns 63-2612, supra, is (among others):

“... to coordinate the ... services of the several agencies of state government which contribute to the prevention, control and treatment of juvenile delinquency. ...”
OPINION 2

Authority for the Indiana Youth Training Corps may be implied from the Indiana Youth Council’s power to help develop new programs where needed and to correlate youth programs conducted and administered by state or federal agencies when directed by the Governor or state agencies involved (with particular reference to “schools, colleges and universities” as departments of state government responsible for a phase of child life).

An agreement purportedly entered into between various departments of state government (including the department of public instruction, the highway, military and welfare departments as well as the Indiana State Youth Council) constitutes authority delegated to such Council for operation of the youth program known as the Indiana Youth Training Corps at Camp Atterbury and dedication of money or property in the control of state departments to the conduct of such program.

The Indiana State Board of Education has reportedly channeled monies derived from the federal manpower development training program for the payment of salaries to duly qualified teachers employed to teach in the Indiana Youth Training Corps program. Participation of the Indiana State Board of Education in the agreement for such youth program is indicative that such Board considered it to be an “educational” activity of the State of Indiana within the title of the Acts of 1945, ch. 330, which created the present Indiana State Board of Education and transferred to it all powers and duties of the predecessor board of such name. [See Burns IND. STAT. ANN., § 28-405, and annotation thereto.]

The agreement for establishment and operation of the Indiana Youth Training Corps provides for no financial support or contribution to such youth program other than that derived from departments of state government, or “public money,” as defined in Downey, Receiver v. Mayr, Secretary of State, 95 Ind. App. 179, 182 N.E. 872 (1932), as stated on page 186 of the official report, thus:

“The term ‘public money’ as used in the statutes of the United States has been construed to mean money of the government received from the public revenues or intrusted to its officers charged with the duty of
receiving, keeping or disbursing it. *Branch v. United States* (1876), 12 Ct. Cl. 281."

The legal status of the Indiana Youth Training Corps as a project of the Indiana Youth Council appears to be similar to that of Purdue University when it was the object of consideration by the Supreme Court of Indiana in the case of *Russell v. Trustees of Purdue University*, 201 Ind. 367, 168 N.E. 529 (1929). The Court said, at page 382 of the official report:

"Purdue University constitutes no part of our system of common schools and has no direct connection with that system; but it is an institution of learning primarily endowed by Congress, and continued in existence very largely by appropriations made by the General Assembly of this state. It is, therefore, an educational institution sustaining relations to the people at large analogous to those occupied by other public schools and colleges of the state, maintained at public expense, and one in which all the inhabitants of the state have a common interest. The general principles underlying the educational system of the state are, consequently, applicable to the government and control of Purdue University, and, in the absence of express legislative provisions, must be invoked in determining the powers which that institution may exercise. . . ." (Our emphasis.)

There is, obviously, a direct connection between our common school system and the Indiana Youth Training Corps which was not found above in the case of Purdue University; however, such Corps differs markedly in its establishment and purpose from the public schools operated and maintained by school corporations. Nevertheless, the Indiana Youth Training Corps is, at least in part, a state educational institution maintained at public expense and it is unnecessary to determine whether such educational institution is a part of the common school system in order to determine eligibility to membership in the Indiana State Teachers' Retirement Fund of legally qualified teachers regularly employed to devote their entire time to teaching in the Indiana Youth Training Corps pro-
gram at Camp Atterbury. Insofar as the Indiana Youth Training Corps program is that of a state educational institution wholly supported by public money, legally qualified teachers regularly employed to devote their entire time to teaching in the Indiana Youth Training Corps program at Camp Atterbury are, by Burns 28-4511, Subsection (a), quoted above, eligible to membership in the Indiana State Teachers' Retirement Fund.

The Parke County Children's Memorial Activity Center is markedly dissimilar from the Southeastern Indiana Area Vocational School and from the Indiana Youth Training Corps in that, among others, it neither offers an approved vocational, elementary or high school curriculum, is established by plan approved by the Superintendent of Public Instruction nor is supported wholly by public funds.

The Parke County Children's Memorial Activity Center (according to the Director's enclosed correspondence) serves retarded children excluded from the county school system and is not under the supervision of the Rockville City Schools but "sponsored by the Parents and Friends of Retarded Children." Other information is that the Center is approved by the Division of Mental Retardation under the State Department of Mental Health, as provided by the Acts of 1963, ch. 300, § 1, as found in Burns IND. STAT. ANN., § 22-3013.

The Parke County Children's Memorial Activity Center is, by such statute, not a school but a "community center for the mentally retarded" incorporated under the provisions of the Indiana General Not For Profit Corporation Act, and "organized for the purpose of providing services for the mentally retarded."

Nevertheless, every school corporation is authorized by the Acts of 1947, ch. 276, as amended, as found in Burns IND. STAT. ANN., § 28-3521 et seq., to establish and maintain instructional facilities for the instruction of handicapped children, including those between the ages of five [5] and twenty-one [21] years who, because of mental disability, are incapable of being educated properly and efficiently through normal classroom instruction. If instruction of the mentally disabled were maintained by a school corporation which established classes under the laws of this state applying to
the operation of public schools and under the supervision of the division of special education of the department of public instruction, teachers for handicapped children would be required to be appointed as are other public school teachers and must possess the usual qualifications required of teachers in the public schools and in addition thereto such special training as the division of special education should require. (See Burns 28-3523.)

However, it appears that the Parke County Children's Memorial Activity Center which serves children excluded from the public school system by employing licensed teachers and receives the majority of its income from public money (federal, state and county) also receives donations from various sources and is not a public state educational institution although it may be educating mentally retarded children under the authority of the division on mental retardation. It is my opinion, based upon the foregoing, that no teacher employed by the Parke County Children's Memorial Activity Center is a regularly employed teacher in "any of the public schools of this state" nor in any "public state educational institution of this state supported wholly by public money," nor in any other category enumerated in Burns 28-4511, Subsection (a), supra, which would entitle such teachers to membership in the Indiana State Teachers' Retirement Fund.

Nevertheless, it is noted that your question in respect to the Indiana Youth Training Corps at Camp Atterbury, the Southeastern Indiana Area Vocational School and the Parke County Children's Memorial Activity Center not only asks whether legally qualified teachers employed by such employers are entitled to membership in the Indiana State Teachers' Retirement Fund under Burns 28-4511, Subsection (a), supra, but also whether the service of any such teachers is creditable in such fund under Burns 28-4511, Subsection (m), which reads, in part, as follows:

"(m) Any teacher may be given a leave of absence . . . In such instances and for . . . other educational employment as defined and approved in each case by the board such teacher shall be regarded as a teacher and entitled to the benefits of this act, provided that . . . he shall pay or continue to pay into such fund the
OPINION 2

amount of assessment payable. . . . Credit shall be
given under this act for all years of service rendered
under its provisions, before, as well as after, the taking
effect of this act. Members of this fund whose service
is now recognized as creditable may be granted service
credit by the board for years served in the same
capacity prior to the time when such service was recog-
nized by this act as creditable service. . . .” (Our
emphasis.)

Therefore, it is my opinion that one employed by the Parke
County Children's Memorial Activity Center who is a duly
licensed and legally qualified teacher may, if and when a
member of the Indiana State Teachers' Retirement Fund,
submit to the Board of Trustees of the Indiana State Teach-
ers' Retirement Fund for its approval as “other educational
employment” the years of that member's service to such
Center and, if approved in such case, the member would be
“regarded as a teacher” and granted service credit, provided
that such member should pay into the fund for such period
the amount of assessment payable as provided by applicable
laws. Such amount would be payable either during the mem-
ber's “other educational employment” or afterwards.

167, No. 50.

However, it is also my opinion that the Board of Trustees
of Indiana State Teachers' Retirement Fund has no authority
to approve service to the Parke County Children's Memorial
Activity Center by one who is not a member of the fund.
Since “other educational employment” is not recognizable
as creditable except in cases individually considered, failure
to be a member of the fund at the time of rendering service
to the Parke County Children's Memorial Activity Center
would not prevent the Board's approval of such service as
“other educational employment” and granting credit therefor
to one who became a member of the fund after having ren-
dered such service, provided that payment was made.

It is my further opinion that any person teaching in the
Indiana Youth Training Corps or in the Southeastern Indiana
Area Vocational School who is eligible to be a member of
the Indiana State Teachers' Retirement Fund by being legally qualified and regularly employed to teach is entitled to credit for such service under the provisions of Burns 28-4511, Subsection (m), supra.

In summary and conclusion, it is my opinion that persons licensed as teachers by the State of Indiana and regularly employed to teach at the Indiana Youth Training Corps at Camp Atterbury are eligible to membership in the Indiana State Teachers' Retirement Fund if they devote their entire time to teaching, and such teaching service is creditable under the provisions of the Acts of 1915, ch. 182, §14, as last amended and found in Burns IND. STAT. ANN., § 28-4511, Subsections (a) and (m), supra.

It is also my opinion that persons licensed as teachers by the State of Indiana and regularly employed to teach in the Southeastern Indiana Area Vocational School are eligible to membership in the Indiana State Teachers' Retirement Fund as teachers in the public schools and that their service is creditable under the same authority.

It is my further opinion based on the same statute that no person licensed as a teacher by the State of Indiana and regularly employed by the Parke County Children's Memorial Activity Center is eligible to membership in the Indiana State Teachers' Retirement Fund by virtue of such service, but that one who is a member of such fund may be granted credit for service in such employment, whether eligible for membership in the fund before or after employment by the Parke County Children's Memorial Activity Center, if such service is recognized and approved by the Board of Trustees of the Indiana State Teachers' Retirement Fund as creditable educational employment in such member's case and if payment of assessment is made for such period of service.