work and the absence of a special fund or funds from which the cost of the professional services may be paid does not render the contract for the professional services enforceable against the general fund of the city, county or political subdivision which may be involved.

As to Question No. 2: No administrative body may enter into any such contract without a determination of the governing body that such contract would be expedient and in the best public interest.

As to Question No. 3: There is nothing in the 1965 Act, supra, which requires the contract to specify the fee, or a maximum fee, to be paid for services. However, the contract should specify the fee or state a reasonable standard from which the fee may be ascertained in order to satisfy the requirement of definiteness and certainty in contracting.

As to Question No. 4: The claim for payment of said contracts need not be referred to the governing body for approval. The administrative body which grants the contract would approve the claim.

OFFICIAL OPINION NO. 62
November 19, 1965

Mr. Eugene Garrison
Executive Secretary
Public Employes’ Retirement Fund
501 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Garrison:

This is in reply to your recent letter requesting an Official Opinion on the following question:

“Does the county board of tax adjustment have the power and authority to nullify the act of a governing body by eliminating the item budgeted for participation in the Public Employes’ Retirement Fund or by eliminating a tax levy fixed by the governing body?”
As stated in previous correspondence with the Attorney General's Office relative to this subject matter, the Acts of 1945, ch. 340, § 22, as amended, Burns IND. STAT. ANN., (1961), § 60-1622, authorizes municipalities to elect to participate in the Public Employees' Retirement Fund by ordinance or resolution of the governing body of the municipality. This section then proceeds as follows:

". . . When any such municipality shall be admitted to membership in the fund, such municipality shall be and it is hereby authorized and empowered by its proper legal officers to make appropriations, to make any and all payments and to do any and all things required by the provisions of this act without any limitation other than as contained in this act.

"It is further provided that a municipality, as herein defined, electing to become a participant in the fund, is hereby authorized and empowered to increase its annual tax levy, above the limitation now or hereafter imposed by law, to meet the cost of participation in the fund herein created. This increase shall be limited to a rate on each dollar of taxable property assessed for taxation in such municipality which will produce an amount not in excess of fifteen per cent [15%] of the annual average of total salaries of the employees of said municipality or participating unit during the period of five [5] years next preceding January 1, of the year in which the governing body of the municipality elects to participate. The increase in tax levy authorized in this section shall be made only for the purpose of meeting the obligations incident to participation in the fund." (Emphasis added.)

Municipalities, as defined by Burns IND. STAT. ANN., (1961), § 60-1604, shall have power to make payments into the Public Employees' Retirement Fund which is to be limited only by the restrictions of the act itself. It also provides that "municipalities" may further increase their tax levies to meet the obligation of participation in the fund and may also make any additional appropriations necessary from their general funds in the estimated amounts determined by the board of Public Employees' Retirement Fund. Thus, the
participating governing bodies have apparent autonomy in the use of their budget making and tax levying powers in cases where such powers are exercised in carrying out the statutory obligations imposed by membership in the Public Employes’ Retirement Fund.

Acts of 1937, ch. 119, § 5, as amended, and found in Burns IND. STAT. ANN., (1965 Supp.), § 64-1908, prescribes the powers and duties of the county tax adjustment board, including among other things the following:

“... It shall be the duty of such tax adjustment board to examine, revise, change or reduce, but not increase, any budget, tax levy, or rate, and to hold such budget within the total of the amount of revenue to be raised therefor from any source whatsoever, to reduce such budget in accordance therewith. ...”

It is further provided in the same section as follows:

“If the county tax adjustment board shall revise, change or reduce any such budget, levy and rate as fixed by the proper officers of any such municipal corporation, the budget, levy and rate (as fixed by the proper officers of any such municipal corporation, the budget, levy and rate) as so revised, changed or reduced by said board shall be the only budget, levy and rate upon which taxes shall be levied, collected and applied during the ensuing year, except as herein otherwise provided.” (Emphasis added.)

Burns IND. STAT. ANN., (1961), § 64-1909, makes certain exceptions as to which the act shall not apply. These include the funds necessary to meet the interest or principal upon outstanding obligations of any municipal corporation or of any judgment taken against any municipal corporation. In the statement of the exceptions or items over which the county tax adjustment board has no authority, payments into the Public Employes’ Retirement Fund are not by name, included, although the language “the interest or principal upon any outstanding obligations” is clearly included where a binding agreement has been entered into between the municipalities and the Public Employes’ Retirement Fund, and
such obligation would be a charge against the corporate entity making the agreement.

The county board of tax adjustment does not have the legal power and authority under the law to nullify the act of a governing body which has budgeted the employers' share of the Employes' Retirement Fund contribution for each office which has determined the cost of its participation in the fund according to law.

Therefore, it is my opinion that a county tax adjustment board is precluded from nullifying the act of a governing body by reducing the tax levy or rate adopted by the governing body when such rate or levy was adopted for the purpose of maintaining membership in the Public Employes' Retirement Fund and that such rate or levy was made in accordance with the provisions of the Public Employes' Retirement Act, Burns IND. STAT. ANN., § 60-1622, supra.

OFFICIAL OPINION NO. 63

November 19, 1965

Hon. William E. Wilson
Superintendent of Public Instruction
227 State House
Indianapolis, Indiana 46204

Dear Mr. Wilson:

I am in receipt of your letter of October 8, 1965, in which you propound four questions pertaining to the "School Transportation Code of 1965" and request my Opinion as to their answers.

Your four questions are:

"1. Article V State School Bus Committee Section 502. Do the Acts of 1965 Chapter 260 permit the State School Bus Committee to adopt and promulgate rules for safety and conduct of passengers and driver and for operation of the school bus, or is the scope of rule making authority limited as set out in Section 502 of the Act?"