should be noted that perhaps not all of the three procedures outlined at the commencement of this Opinion would necessarily comply with Burns § 18-2123, *supra*, which refers to loans “secured by mortgage on real property.” While procedures No. 1 and No. 2 would result in the investor or state-chartered building and loan association either receiving a mortgage on or deed to the subject real estate, procedure No. 3 does not provide for the investor or state-chartered building and loan association to receive any security interest in such property. While recognizing that the 100% repurchase guaranty by the United States or the Veterans Administration would apparently provide sufficient protection, such procedure No. 3 would seem not to conform to Burns § 18-2123, *supra*, requiring the security of a mortgage, implying that such mortgage security be in the name of the state-chartered building and loan association.

There is authority in both “The Financial Institutions Act,” as amended, and in the Acts of 1945, ch. 47, § 3, Burns § 18-3303, *supra*, for the Department of Financial Institutions to make and promulgate whatever rules and regulations the Department finds to be necessary and proper to supplement such statutory powers, including the making of a regulation respecting the form of security for such loans. Thus, it would be proper for such supplementary rules and regulations to authorize (as relating to the form of security) what type of evidence must be furnished to substantiate that the particular investment is, in fact, protected by the 100% repurchase guaranty of the United States or the Veterans Administration.

OFFICIAL OPINION NO. 67

November 24, 1965

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

Dear Mr. Wilson:

Your recent letter has been received and reads as follows:

“I would appreciate your giving me your Official Opinion on Acts of 1965, Ch. 99, Sec. 1, as found in
Burns’ (1965 Supp.) Sec. 28-4331, the particular question being:

"Is it mandatory for the school board to withhold money from teachers’ salaries for dues of the Indiana State Teachers Association, National Education Association and local teachers’ Associations affiliated with the ISTA and NEA where 20% or more of the teachers request such withholding?

"For the purpose of answering the above question, you may assume as a fact that a portion of the dues of each teacher as a member of the Indiana State Teachers Association is paid to the Horace Mann Insurance Company for a policy of insurance issued to each of said teachers covering them in the amount of $50,000 against liability for personal injuries to others resulting from their teaching activities. Said Indiana State Teachers’ Association is also the holder of a Master Policy of Insurance issued to it by Horace Mann Insurance Company to which the members of the Association may and in many instances have acquired health and hospital insurance at a low cost to them due to the large number of members of the Association participating in such insurance benefits. That similar benefits are accorded to teachers who are members of the NEA and to local teachers’ Associations affiliated with the Indiana State Teachers’ Association."

This letter presents the question as to whether or not Acts 1945, ch. 84, as last amended by Acts 1965, ch. 99 and as found in Burns IND. STAT. ANN. (1965 Supp.), § 28-4331 makes it mandatory for the trustee or board of trustees of a school corporation of the State of Indiana to withhold dues from a teacher’s salary to be paid to the Indiana State Teachers’ Association, National Education Association and local teachers associations affiliated with the ISTA and NEA, when twenty per cent (20%) or more of the teachers request such withholding and when a portion of such dues will be
used by such organizations to provide, extend, supervise or pay for any insurance or protection of any kind or for the establishment of or payment on an annuity account for such teacher.

Acts 1945, ch. 84, as amended by Acts 1965, ch. 99, and as found in Burns IND. STAT. ANN. (1965 Supp.), § 28-4331, is as follows:

"SECTION 1. Acts of 1945, c. 84, s. 1, is amended to read as follows: Section 1. That it shall hereafter be required, upon written request of any teacher, and lawful, upon written request of any beneficiary of the Indiana State Teachers' Retirement Fund, for the trustee or board of trustees of any school corporation in this state to withhold a requested amount of money from the salary of such teacher or receive from such beneficiary of the Indiana State Teachers' Retirement Fund a given amount of money, the same to be held by such school trustee or board of trustees and paid in accordance with the direction of such teacher or beneficiary to any insurance company or other agency or organization in the state of Indiana which provides, extends, supervises, or pays for any insurance or protection of any kind or for the establishment of or payment on an annuity account for such teacher; Provided, however, that if there is any dividend accruing on any policy or policies, such dividend shall be paid or credited to such teachers; and, Provided, further, that it shall be discretionary with the trustee or board of trustees of any school corporation to withhold any such amounts of money for insurance, dues, or other purposes in instances where fewer than twenty percent (20%) of the teachers of such corporation shall make requests to withhold funds for the purpose of paying such amounts of money to a single recipient.

"SECTION 2. The title of Acts 1945, Chapter 84, is hereby amended to read as follows: 'An Act concerning the withholding of funds from the salaries of teachers for annuity or insurance purposes.'" (Emphasis added.)
Prior to the 1965 amendment, the Ind. Acts of 1945, ch. 84, read as follows:

"SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That it shall hereafter be lawful, upon written request of a teacher, for the trustee or board of trustees of any school corporation in this state to withhold a requested amount of money from the salary of such teacher, the same to be held by such school trustee or board of trustees and paid in accordance with the direction of such teacher to any insurance company or other authorized agent in the state of Indiana for insurance protection, Provided, however, that if there is any dividend accruing on the policy or policies, such dividend shall be paid to such teacher."

Under the 1945 Act it was mandatory that the funds withheld be paid directly to an insurance company by the trustee or board of trustees of the school corporation or to an agent in the State of Indiana for insurance protection.

The 1965 amendment provides that the funds withheld shall be paid in accordance with the direction of the teacher to any insurance company or other agency or organization in the State of Indiana which provides, extends, or pays for any insurance or protection of any kind or for the establishment of or payment on an annuity account for the teacher. The act as amended in 1965 does not direct that the entire sum of the funds withheld be paid to an insured company or to an authorized agent for insurance protection as does the 1945 Act.

In the case of Steiert v. Coulter, 54 Ind. App. 643, 102 N.E. 113 (1913), the Indiana Appellate Court on page 652, in setting out principles of law to be used as an aid in interpreting statutes states the following:

"... If the meaning of an act is doubtful, the title if expressive, may serve the purpose of removing the doubt either by extending the purview of the body of the act or by restraining or limiting it to the evident intention of the legislature. 2 Lewis' Sutherland, Stat. Constr. (2d ed.) §340; City of Rushville v. Rushville
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Nat. Gas Co., supra, 582. If two constructions are possible, that one should be adopted which makes effective, rather than one which defeats the purpose of the law. Greenbush Cemetery Assn. v. Van Natta (1912), 49 Ind. App. 192, 94 N.E. 899. The legislative intention is to be kept in view in construing and applying any statute. If the language is unambiguous, the intention expressed thereby must be carried into effect. The legislative intent, however, is to be ascertained by an examination of the whole, as well as the separate parts of the act, and when so ascertained, the intention will control the strict letter of the statute or the literal import of particular terms or phrases, where to adhere to the strict letter or literal import of terms would lead to injustice, absurdity, or contradict the evident intention of the legislature. United States Sav., etc., Co. v. Harris (1895), 142 Ind. 2, 26, 231, 40 N.E. 1072, 41 N.E. 451; Greenbush Cemetery Assn. v. Van Natta, supra, 199.”

The above law of statutory interpretation is precedential and is followed and cited by our courts and the Attorney General.

City of Indianapolis v. Evans, 216 Ind. 555, 22 N.E. 2d 822 (1939);
Grubb v. Auburn Hotel, 96 Ind. 672, 179 N.E. 574 (1932);

Considering Acts 1945, ch. 84, as amended, as a whole, it is apparent that the clear intention of the Legislature in passing the Act in its amended form was to provide for an orderly system whereby an Indiana teacher, acting through groups of teachers, could purchase an annuity, or insurance program under specified conditions, when such teacher voluntarily participates in such annuity or insurance program and requests that the payment therefor be made through a system of salary withholding.

A careful reading of the act shows that in order to apply the statute so as to make it mandatory for a trustee or board of trustees of a school corporation to withhold a designated
amount from a teacher's salary four conditions must be met, to wit:

(1) each teacher must request same in writing; (2) twenty (20) per cent or more of the teachers of the school corporation must request same in writing; (3) amounts requested withheld from salaries must be paid in accordance with the direction of such teacher or beneficiary to any insurance company or other agency or organization in the state of Indiana which provides, extends, supervises, or pays for any insurance or protection of any kind or for the establishment of or payment on an annuity account for such teacher; (4) payment of the funds withheld must be to one Indiana recipient in which at least twenty (20) per cent of the teachers participate.

It should also be emphasized that the 1965 Act, ch. 99, contains the following proviso:

"... Provided, further, that it shall be discretionary with the trustee or board of trustees of any school corporation to withhold any such amounts of money for insurance, dues, or other purposes in instances where fewer than twenty percent (20%) of the teachers of such corporation shall make requests to withhold funds for the purpose of paying such amounts of money to a single recipient."

By the proviso, trustees or the board of trustees of a school corporation may volunteer to withhold designated sums from a teacher's salary if fewer than twenty (20) per cent of the teachers agree to participate in a program. Further, under this proviso, a trustee or board of school trustees of a school corporation may agree to withhold from salaries "amounts of money for insurance, dues or other purposes."

Since the intent of the act is to require school trustees to withhold sums of money from a teacher's salary in payment of an annuity or an insurance program when the designated conditions are met, a problem arises where dues are paid to and for the support of an association and a part of said dues are earmarked for the payment of annuity and/or insurance program for the teacher.
Keeping in mind the purpose of the act as expressed by the title and the context and applying the cited rules of law that the act should not be so strictly interpreted as to defeat the intended purpose thereof, I am of the opinion that it is mandatory for the trustee or the board of trustees of a school corporation if at least twenty (20) per cent of the teachers request that the funds be withheld to be paid to a single recipient.

It should also be pointed out that Acts 1945, ch. 84, as amended by Acts 1965, ch. 99, provides as follows:

"... it shall hereafter be required, upon written request of any teacher ... for the trustee or board of trustees of any school corporation in this state to withhold a requested amount of money from the salary of such teacher ... the same to be held by such trustee or board of trustees and paid in accordance with the direction of such teacher ... to any insurance company or other agency or organization in the state of Indiana which provides, extends, supervises, or pays for any insurance or protection of any kind or for the establishment of or payment on an annuity account for such teacher. ..." (Emphasis added.)

In my opinion, an Indiana association supported by dues which are used in part to pay for an annuity or an insurance program for the teacher is an "other agency or organization ... which provides, extends, supervises, or pays for any insurance or protection of any kind for the establishment of or payment on an annuity account" for the teacher.

Obviously, such an act was passed with the intent that the teacher be the beneficiary thereof and the Act should be further construed to make it operative for said beneficiary.

Steiert v. Coulter, supra;


Thus, in answer to your question, Acts 1945, ch. 84, as last amended by Acts 1965, ch. 99, and as found in Burns IND. STAT. ANN. (1965 Supp.), § 28-4331 makes it mandatory for the trustee or board of trustees of a school corporation
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to withhold association dues from a teacher's salary if an indivisible part thereof is used to pay for a teacher's annuity and/or insurance program, including staff time and association publications on such insurance, and when the necessary provisions of the act are met.

OFFICIAL OPINION NO. 68

November 30, 1965

Hon. Roger D. Branigin
Governor of Indiana
206 State House
Indianapolis, Indiana

Dear Governor Branigin:

This is in response to your inquiry as to whether the State Personnel Board can appoint a hearing officer as its agent to hear appeals by state employees who are challenging their dismissals.

The Legislature has stated that public policy regarding the State Personnel Act, as amended, shall be to give such Act a liberal construction so as to effectuate its purpose. Acts 1965, ch. 369, § 1, Burns IND. STAT. ANN., § 60-1301.

The Act envisions the appointment of hearing examiners when the need arises. Acts 1949, ch. 235, § 2, Burns IND. STAT. ANN., § 60-1307 (a) (3), in setting forth the duties of the Director of State Personnel, who is appointed by the Indiana Personnel Board, states:

“(a) The director shall direct and supervise all administrative and technical activities. In addition to the duties imposed upon him elsewhere in this act, it shall be his duty:

*    *    *

“(3) To appoint, under the provisions of this act, such employees of the bureau and such experts and special assistants as may be necessary to carry out effectively the provisions of this act.”