

Thus, it is the duty of the Attorney General, upon the submission to him of duly-adopted regulations, to examine the same, and if they are found to be legal, to approve the same only as to legality prior to their submission to the Governor for his approval and the filing of copies thereof as further required in Burns' 60-1505, *supra*. Therefore, the responsibility for determining the necessity and desirability of rules and regulations, for initiating and formulating such rules and regulations is, by statute, cast upon your department. Furthermore, inasmuch as the Indiana Department of State Revenue is governed by the Indiana Revenue Board, as provided by the Acts of 1947, Ch. 10, Sec. 3, as found in Burns' (1961 Repl.), Section 64-2503, the ultimate authority for the adoption and promulgation of such rules and regulations is the governing body of the Indiana Department of State Revenue which is the Indiana Revenue Board. *

It is, however, the function of the office of the Attorney General as prescribed by the Acts of 1943, Ch. 70, as found in Burns' (1951 Repl.), Section 49-1927 *et seq.*, as the sole attorney and legal counsel for the State of Indiana and its agencies and officers, to furnish, upon request, legal advice and assistance to such agencies and officers in the formulation by them of rules and regulations which are authorized to be adopted and promulgated by such agencies and officers.

OFFICIAL OPINION NO. 33

July 7, 1964

Mr. Earl M. Utterback
Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis 4, Indiana

Dear Mr. Utterback:

This is in reply to your letter of February 27, 1964, concerning the investment of Teachers' Retirement Funds in real estate instalment contracts offered for sale by the Veteran's Administration of the United States Government. Your

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specific question is contained in the last paragraph of your letter which reads as follows:

“Your official opinion is respectfully requested as to whether or not the purchase by the Board of Trustees of the Indiana State Teachers’ Retirement Fund from the Administrator of Veterans Affairs of such Instalment Contracts for the sale of Real Estate, under the assignment and guaranty above referred to, would constitute a legal investment for said Board under Section (2) of said statute as above set forth.”

The Section 2 referred to in your question is found in the Acts of 1915, Ch. 182, Sec. 11(2), as amended, the same being Burns’ (1963 Supp.), Section 28-4508, which provides, in part:

“The board of trustees of the Indiana state teachers’ retirement fund shall determine what part of said fund may be safely invested and how much shall be retained for the immediate needs, demands and exigencies of said fund. Such investments shall be made in interest-bearing securities as follows:

* * *

“(2) In bonds, notes, debentures and *other securities issued by any federal instrumentality and fully guaranteed by the United States;*” (Our emphasis)

You state in your letter that:

“The Veterans Administration of the United States Government is offering for sale Instalment Contracts for the sale of Real Estate entered into between the Administrator of Veterans Affairs and private buyers, and involving real estate which said Administrator has theretofore acquired title to upon the default of insured mortgage loans. A form of said Instalment Contract is enclosed herewith for your examination.

“Upon the sale of any such contracts, the following assignment and guaranty form would be utilized:

“VA Regional Office, Indianapolis, Indiana,
Date ----- For value received

the undersigned hereby sells, assigns, transfers and sets over unto -----
all of his right, title and interest in and to this instalment contract. Payment guaranteed under VA Regulation 4600 which says that the VA will repurchase a defaulted contract as outlined in paragraph D of this Regulation.

“J. S. GLEASON, JR., Administrator of Veterans Affairs

“By:

R. M. DEWEESE, Loan Guaranty Officer”

Paragraph (D) of VA Regulation 4600 referred to in your letter provides:

“[(D) The Administrator’s guaranty liability under this paragraph shall consist of and be limited solely to liability to repurchase the loan from the holder thereof whenever,

“(1) The debtor is in default by reason of non-payment of not less than two full installments and default has continued for 3 months or more on the date the holder submits its written request for repurchase by the Administrator; or

“(2) The property securing the loan has been abandoned by the debtor; or

“(3) The debtor has failed to comply with any other covenant or obligation of his loan contract and on the date of the holder’s request for repurchase such failure has continued for more than 90 days after the holder’s demand for compliance with the covenant or obligation, except that if the failure is due to nonpayment of real estate taxes the failure to pay when due has persisted for a continuing period of 180 days; or

“(4) The Administrator determines, upon request of the holder to repurchase any loan, that such repurchase is in the best interests of the Government notwithstanding that the account is ineligible for repurchase under subdivisions (1) through (3) of this subparagraph.] (March 22, 1962)”

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If the Teachers' Retirement Fund has authority to invest its funds in such contracts, the authority will be found, as you suggest in your letter, in Burns' 28-4508 (2), *supra*. It is, therefore, necessary to construe the language found in this section to determine whether such authority does in fact exist. As an aid to statutory construction, the General Assembly in 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201, has provided the following guide:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

In this regard, the Appellate Court of Indiana in the case of Board of Commissioners of County of Marion, etc. v. Board of School Commissioners of the City of Indianapolis (1960), 130 Ind. App. 506, 515, 166 N. E. (2d) 880, stated, in part, as follows:

"There are many principles of statutory interpretation stated in the opinions of our courts. The one principle which we believe should be considered before any others may be resorted to, however, is that a statute which is clear and unambiguous must be given its apparent or obvious meaning. *Cheney v. State ex rel.* (1905), 165 Ind. 121, 74 N. E. 892; *Reome v. Edwards* (1948), 226 Ind. 229, 79 N. E. 2d 389. Where there are such statutes, the courts have no power to supply supposed defects or omissions, or to resort to construction for the purpose of limiting or extending its operation. *Taelman v. Bd. of Fin. of School City of South Bend* (1937), 212 Ind. 26, 6 N. E. 2d 557 * * *"

See also: 26 I. L. E. Statutes § 116;

Sutherland Statutory Construction, 3rd Ed., Vol. 2,
Sec. 4502;

1953 O. A. G., pages 81, 84, No. 17.

Webster's New International Dictionary, 2nd edition, page 2263, defines the word "security" as:

"4. Chiefly *pl.* An evidence of debt or of property, as a bond, stock certificate, or other instrument, etc.; a document giving the holder the right to demand and receive property not in his possession. *Securities* are: *personal*, giving a claim against a particular person; *on property*, giving a lien or claim on property, which may be specified, the security then being termed *specific*, or may be designated in a general way so that the identity of the property is subject to change, the security then being *shifting* or *floating*; and of various other kinds disclosed by their names, as *corporation*, *trustee*, or *government*, etc."

Webster's, *supra*, at page 1319 defines the word "issue" in law, as:

"12. *Law.* The first delivery of a negotiable instrument, as a bill or note, complete in form, to a person who takes it as a holder. This is the definition of the British Bills of Exchange Act, 1882, and of various American codes."

The real estate instalment contracts offered for sale by the Veterans' Administration would not, in my opinion, qualify as "bonds, notes, debentures and other securities issued by any federal instrumentality." Clearly, the legal and financial definitions of the words "bonds," "notes" and "debentures" are well-settled and cannot in any way be expanded to include "real estate instalment contracts." Bonds, notes and debentures have one common feature; they each represent promises to pay money. On the other hand, a real estate instalment contract is only promise to convey real estate. Therefore, if the subject real estate instalment contracts are to be a quali-

fied investment under Burns' 28-4508 (2), *supra*, the authority must necessarily be found in the language "other securities issued by any federal instrumentality."

In this regard, the rule of statutory construction known as *ejusdem generis* must be invoked. This rule is founded on the theory that when the Legislature intends general words to be used in an unrestricted sense it does not mention words denoting particular classifications. For example, when a law prohibits the exclusion of any person because of his color from "barber shops, eating houses or *other places of public resort*," the latter *underscored* phrase will be restricted to places of the same general character as those specifically enumerated.

Rhone v. Loomis (1898), 74 Minn. 200, 77 N. W. 31.

See also: Wiggins v. State (1909), 172 Ind. 78, 87 N. E. 718;

Chief Eagle Feather v. State (1929), 89 Ind. App. 500, 107 N. E. 147.

In Burns' 28-4508 (2), *supra*, our Legislature used the words "bonds, notes, debentures" just prior to "and other securities issued by any federal instrumentality." Applying the rule of *ejusdem generis*, it is my opinion the Legislature intended thereby the phrase "and other securities issued by any federal instrumentality" to mean instruments representing the indebtedness of a federal instrumentality, such indebtedness being represented by instruments promising to pay money at a time certain, i.e. instrument similar to bonds, notes or debentures.

By way of summary and conclusion, it is my opinion, that the Board of Trustees of the Indiana State Teachers' Retirement Fund is without statutory authority to purchase from the Administrator of Veterans' Affairs real estate instalment contracts, even though the payment of such contracts is guaranteed by the Veterans' Administration, an instrumentality of the Federal Government.