Hon. J. Russell Townsend, Jr.
State Senator
811 Board of Trade Building
Indianapolis 4, Indiana

Dear Senator Townsend:

This is in reply to your letter requesting an Official Opinion as follows:

"Several school districts and one of the four state colleges and universities have asked me to obtain the answer to the problem arising out of the teachers who are participants in the Indiana Teachers' Retirement Fund and who wish to take advantage of the Tax-Favored Annuity Program.

"In the opinion of your office, will the reduction in a teacher's salary brought about by participation in the Tax-Favored Annuity Program reduce the amount of pension to which the teacher would have been eligible under the Indiana Teachers' Retirement Fund?"

Your letter of request refers to 1962 O. A. G., page 102, No. 24, which answered four questions involving the purchase of tax-favored annuities for school teachers by school corporations, and also determined to be legally acceptable certain proposed insertions in the standard form of teacher's contract, including spaces to be filled in if a teacher voluntarily desired to have a certain amount of the salary paid to the teacher in cash and the balance of such salary used by the school corporation to purchase an annuity for the teacher. The official form of Teacher's Contract as prescribed by the State Superintendent of Public Instruction was thereafter revised in 1962, and the proposed insertion incorporated therein. Such contract is required by the Acts of 1943, Ch. 202, Sec. 1, as found in Burns' (1948 Repl.), Section 28-4330, to be used by all school city corporations and school town corporations in the State of Indiana to employ all public school teachers except certain casual substitutes.
Of this contract form, the 1962 Opinion, No. 24, supra, said at pages 108 to 110:

"It should be noted here that the second sentence in the proposed alteration for the standard teacher's contract form is new and does not appear in the contract form in current use. That sentence reads as follows:

"'Said sum shall be deemed to constitute the annual compensation of the teacher as referred to in Chapter 329 of the Acts of 1955 as amended, the same being the teachers' supplemental retirement benefit system.'

*   *   *

"The act does not define the term 'compensation,' and thus such term must be given its ordinary and usual meaning. Black's Law Dictionary, Fourth Edition, page 354, defines 'compensation' as 'the remuneration or wages given to an employee or, especially, to an officer. Salary, pay, or emolument.' Webster's Third New International Dictionary defines it as 'payment for value received or service rendered.' In Words and Phrases, Perm. Ed., Vol. 8, p. 308, is the following:

"'The word "compensation" accurately used means payment in money or other benefits which will compensate in the strict sense, that is, make even, or be measurably the equivalent of that for which it is given. * * *'

"'It is therefore my opinion that the term 'compensation' as used in Burns' 60-1924, supra, would include that part of a teacher's salary paid in some other form as well as that amount paid in cash. Thus the entire contract amount, including any amounts paid direct to an insurance company for an annuity for the teacher, should be included in the amount of compensation upon which the 3% contribution for the Teachers' Retirement Fund is based. In this situation, the actual compensation received by the teacher remains the same, although the teacher has elected to receive a part of it in some form other than direct cash payment." (Our emphasis)
It was, therefore, established by the 1962 Opinion, supra, that the actual amount of a teacher's compensation is not reduced by election to receive a part of it in some other form than direct cash payment, and that contributions to the Teachers' Retirement Fund must be based upon the entire contract amount, including any amount paid direct to an insurance company for an annuity for the teacher.

In 1963 O. A. G., page 303, No. 56, at pages 305 and 306, it was said, in part:

"* * * all boards of school trustees, or similarly named boards which are empowered to contract with teachers are bound by the above teachers' contract provisions and by the so-called Minimum Salary Law, being the Acts of 1945, Ch. 231, as amended, as found in Burns' (1963 Supp.), Sections 28-4332 and 28-4333, and are required to adopt salary schedules. Contracts with individual teachers are based on such salary schedules.

"The school governing body has wide discretion in determining what elements should be considered as 'salary' in adopting a salary schedule.

* * *

"As stated above, no authority is found to make any payments to teachers other than as the result of a duly adopted salary schedule.

* * *

"The Acts of 1959, Ch. 325, Sec. 5, as amended, and found in Burns' (1961 Repl.), Section 60-1928, sets forth the method of computing payments by teachers to the retirement fund and bases such payments on 'annual compensation.'

"Although the word 'compensation' may, in certain circumstances have a broader meaning than 'salary,' these terms would appear to be synonymous in the present case. There is no provision for paying a teacher any money other than a salary set according to a duly adopted salary schedule.

"Therefore, in answer to your third question, all payments made to a teacher as salary would be con-
1964 O. A. G.

_sidered as part of the annual compensation and should be considered as such by the Indiana State Teachers' Retirement Fund Board and used in calculating retirement benefits._” (Our emphasis)

1962 O. A. G., No. 24, _supra_, and 1963 O. A. G., No. 56, _supra_, together establish that there is no reduction in a teacher’s compensation brought about by authorizing a school corporation to purchase an annuity for the teacher, and that a teacher’s compensation and his or her salary are synonymous. It follows that participation in a Tax-Favored Annuity Program by a contract teacher employed by an Indiana public school corporation would not bring about a reduction in such teacher’s salary.

While you state that a college or university is interested in an answer to your question, it is assumed that it was not intended to apply to teachers employed by such institution as state colleges and universities are not included in the statutory requirements for a uniform teacher’s contract form. No determination may be made concerning the right of teachers otherwise employed, except in consideration of the actual term of employment and whether their “Tax-Favored Annuity Program” is a part of their compensation.

Inasmuch as all members of the Teachers’ Retirement Fund presently employed will, upon retirement, have a vested right to receive no less than the benefits provided under the Acts of 1955, Ch. 329, Sec. 17, as amended, as found in Burns’ (1961 Repl.), Section 60-1928, being the sum of a pension provided by the contributions of the employer computed upon annual compensation of the employee and an annuity provided by the employee’s contributions (a percentage of such compensation), it is my opinion that authorizing the employer to purchase an annuity for a teacher with a part of the teacher’s compensation would not reduce the benefits which such teacher would be entitled to receive from the Indiana Teachers’ Retirement Fund.