for in this act and for any and all other expenses connected therewith or otherwise provided for herein, and any part of such amount so appropriated remaining shall be used in beautifying and maintaining such memorial place.” (Our emphasis)

Thus it can be seen that the original intent of the Legislature was that any amount remaining after an expenditure of money appropriated for the purposes indicated in said Chapter 204 should be used in the beautification and maintenance of the memorial place which was the subject of the appropriation. The fact that the sum of money you are concerned with is interest accrued as a result of the appropriation rather than a part remaining from such appropriation is in my opinion a distinction without a difference and the use of such interest money would be within the legislative intent of Sec. 2 of Ch. 204 of the Acts of 1945.

In conclusion, it is my opinion that the accrued interest need not be shared with Marion County and that the amount may be used for beautification and maintenance purposes rather than be returned to the General Fund of the State of Indiana.

OFFICIAL OPINION NO. 22

May 26, 1960

Mr. Norval L. Martin
Executive Secretary
Indiana State Teachers’ Retirement Fund
145 West Washington Street
Indianapolis, Indiana

Dear Mr. Martin:

This is in reply to your recent request for an Official Opinion, which reads, in part, as follows:

“At present we would like your opinion on whether or not FHA Title II Section 203 Mortgages, which are the typical single-family dwelling type of mortgage, could be properly purchased by the Fund; and secondly, whether the so-called Veterans Administration Mortgage loans could properly be purchased by our Fund.”
The Board of Trustees of the Indiana State Teachers' Retirement Fund may purchase only those securities which meet the requirements prescribed by statute for investment of funds under the Board's control. Specific authority to invest in certain mortgages is found in the Acts of 1951, Ch. 96, Sec. 1, as found in Burns' (1959 Supp.), Section 28-4508a, which provides as follows:

"In addition to other authorizations concerning the investment of funds of the Indiana state teachers' retirement fund, any of the following stipulated investment securities shall be eligible investments for such funds:

* * *

"(B) Bonds, notes or mortgage certificates secured by a first mortgage, subject only to the liens of any taxes and special assessments not delinquent upon the fee simple title of improved real estate located in the state of Indiana. All obligations secured by such first mortgage may not exceed sixty per cent (60%) of the appraised value of the real estate securing the same and shall mature in not more than sixteen and two-thirds (16\(\text{\frac{2}{3}}\)) years from the date of such obligations. If the aggregate amount of such obligations shall exceed fifty per cent (50%) of the appraised value of the real estate securing the same and the term of such obligations does not exceed ten (10) years, a semiannual principal reduction of not less than two per cent (2%) shall be required by the terms of such obligations in addition to the payment of interest currently; and, if the aggregate amount of such obligations shall exceed fifty per cent (50%) of the appraised value of the real estate securing the same and the term of such obligation exceeds ten (10) years but does not exceed the maximum term permitted by this act, the terms of such obligations shall require principal and interest payments currently in at least semi-annual installments of equal or substantially equal amounts such as will amortize the obligations in full within the terms of the loan contract. If the principal and interest payments as provided are not required by the terms of the loan contract, the aggregate amount of the obligations secured by
such first mortgage shall not exceed fifty per cent (50%) of the appraised value of the real estate securing the same and the term of the obligations shall not exceed five (5) years. All appraisements shall be evidenced in writing and shall be made by not less than two (2) competent disinterested appraisers within one [1] year prior to the making of such an investment. If improvements constitute a part of the value of the real estate, such improvements shall be insured against fire and such other hazards as the board of trustees of the retirement fund may see fit to provide by regulation, for the benefit of the mortgagee, in an amount not less than the difference between the value of the land and the unpaid balance of the loan.”

By the terms of the Acts of 1951, Ch. 96, Sec. 2, as amended, as found in Burns’ (1959 Supp.), Section 28-4508b, the trustees of the Fund shall not make any investment in any class of securities referred to in Burns’ 28-4508a, supra, in excess of an amount which together with investments then held in such class of securities shall exceed ten per cent of the total investments of the Fund. Not more than one per cent of such investments may be in the securities of any one issuer, maker, or guarantor. The Fund is required to have at least twenty-five per cent of its entire investments at all times in United States government bonds or securities guaranteed by the United States government or an agency or instrumentality thereof.

From the foregoing, it is apparent that any mortgage certificate which meets the requirements set out in Burns’ 28-4508a (B) is a valid investment for the Indiana State Teachers’ Retirement Fund, whether or not it has been approved and insured by FHA or guaranteed by the Veterans Administration.

The Board is further authorized to invest in certain interest-bearing securities under the provisions of the Acts of 1915, Ch. 182, Sec. 11, as amended, as found in Burns’ (1959 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:

"(1) In bonds, notes, certificates and other valid obligations of the United States;

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

It would be possible for a mortgage which did not meet the terms and conditions of Burns' 28-4508a (B), supra, to be a valid investment for the Fund under Burns' 28-4508, supra, provided such mortgage was either (1) a valid obligation of the United States, or (2) was issued by a federal instrumentality and fully guaranteed by the United States. Whether or not the mortgage has been issued by a federal instrumentality, and would thus be an eligible investment under the latter alternative, is a question for factual determination in each individual instance, and not one which can be determined conclusively in a legal opinion. However, if an FHA-insured mortgage has been issued by a federal instrumentality and is determined to be fully guaranteed by the United States, then it would be a valid investment for the Teachers' Retirement Fund under Burns' 28-4508 (2), supra, regardless of whether it met the conditions of Burns' 28-4508a (B), supra.

Your letter specifically asks whether the Fund can properly purchase FHA Title II, Section 203 mortgages. Authorization to purchase such mortgages must come from either Burns' 28-4508, supra, or Burns' 28-4508a (B), supra. Provisions concerning the mortgages to which you refer are found in Title II of the National Housing Act, being Act of June 27, 1934, Ch. 847, Title II, § 201, 48 Stat. 1247, as amended; 12 U. S. C. A., §§ 1707 to 1710. Title II, entitled "Mutual Mortgage Insurance," created a "Mutual Mortgage Insurance Fund" of $10,000,000 as a revolving fund for the insurance of mortgages of the types therein specified, upon the payment of a fee or premium by the mortgagee. Under the terms of 12 U. S. C. A. § 1709, the Commissioner is authorized, upon application by the mortgagee, the lender, to insure mortgages which are eligible under the statute. To be eligible for insurance under this section, a mortgage shall have been made to,
and be held by, a mortgagee approved by the Commissioner; involve a principal obligation not to exceed prescribed limits in the case of property upon which is located a dwelling unit designed principally for residential use for not more than four families; mature within thirty years; contain complete amortization provisions satisfactory to the Commissioner; bear interest up to six per cent per annum; and contain certain other conditions. The premium charge for such insurance is payable by the mortgagee. The Title provides in detail the method of realizing upon the insurance in case of default, which may be summarized as follows: Upon conveyance of the mortgaged property to the Commissioner, and the assignment to him of all claims of the mortgagee against the mortgagor arising out of the mortgage transaction, the Commissioner is required to issue to the mortgagee certain debentures equal in amount to the unpaid principal due on the date of the delivery of the property to the Commissioner plus other items provided for in the statute, and a certificate of claim for the balance of the mortgagor's indebtedness. Such debentures, issued by the Commissioner, are executed in the name of the Mutual Mortgage Insurance Fund as obligor. They are negotiable, bear interest, and mature twenty years after date. 12 U. S. C. A. § 1710 (d) provides, in part:

"* * * Such debentures as are issued in exchange for property covered by mortgages insured under section 1709 or section 1713 of this title prior to February 3, 1938 * * * shall be a liability of the Fund, but such debentures shall be fully and unconditionally guaranteed as to principal and interest by the United States; * * * Such debentures as are issued in exchange for property covered by mortgages insured after February 3, 1938, * * * shall be paid out of the Fund * * * which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the debentures. In the event that the Fund or the Housing Fund fails to pay upon demand, when due, the principal of or interest on any debentures issued under this section, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated,
and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures."

The Attorney General of the United States had occasion to review certain provisions of the National Housing Act shortly after its passage. In 38 Ops. Atty. Gen. 259 (1935), at page 261, he stated:

"While, as above indicated, Title II provides for the 'insurance of mortgages,' more accurately it is the secured debt or its payment, rather than the mortgage itself, which is insured. In practice the insurance is accomplished by endorsing upon the original credit instrument, 'Insured under the National Housing Act and Regulations of the Federal Housing Administrator * * *.'" ("Commissioner" was substituted for "Administrator" by Act Apr. 20, 1950.)

That Opinion held that the insuring of a mortgage under Title II of the National Housing Act, as amended, and the Regulations issued thereunder, creates a valid obligation on the part of the Federal Housing Administrator (Commissioner) to issue the debentures therein provided for, and the debentures so issued are valid obligations enforceable against the Mutual Mortgage Insurance Fund. The Opinion further held that the guarantee by the United States of such debentures, in accordance with the provisions of Section 204 (d) of the Act, as amended, constitutes a valid and binding obligation of the United States.

The Attorney General of the United States further held in 38 Ops. Atty. Gen. 319 (1935) that if the Federal Housing Administrator (Commissioner) should fail, upon demand by a bona fide and accredited holder of debentures of the Federal Housing Administration, to pay either principal or interest when due, the United States would thereupon become obligated under its guaranty to make such payments; and such obligation of the United States would not be conditioned upon the institution of any proceeding by the holder of the debentures against the Administrator (Commissioner) or against the fund set up as provided in the statute.

A mortgage insured under Title II, Sec. 203 of the National Housing Act is the obligation of the original borrower under
the mortgage and his successors and assigns. It may conceivably be possible (but quite unlikely) for a federal instrumentality to issue a mortgage which is eligible for insurance under the provisions of Title II, Sec. 203. If so, and if that mortgage is determined to be fully guaranteed by the United States, such mortgage would be a valid investment for the Fund. However, the mortgagor in such cases is generally a private individual who occupies the mortgaged premises himself. Thus the mortgage itself is the obligation of the individual and not the obligation of the United States government, and as such is an eligible investment for the Teachers’ Retirement Fund only if such mortgage can meet the conditions prescribed for investment in mortgages by Burns’ 28-4508a (B), supra. Under Title II, Sec. 203, the approved mortgage is insured by an agency of the United States, which insurance creates an obligation on the part of the Federal Housing Commissioner to issue debentures under certain circumstances. The debentures, once properly issued by the Federal Housing Commissioner in the name of the Mutual Mortgage Insurance Fund, are the valid and binding obligations of the United States, fully guaranteed as to principal and interest. Such debentures would be proper investments for the Teachers’ Retirement Fund although the original mortgage itself was not. A mortgage insured under Title II, Sec. 203 of the National Housing Act can only be a valid investment for the Teachers’ Retirement Fund if it was issued by a mortgagor which is a federal instrumentality (and is fully guaranteed by the United States); or if the mortgage meets the conditions prescribed by Burns’ 28-4508a (B), supra; or if the mortgage itself is a valid obligation of the United States as mortgagor.

Your letter further asks whether the so-called Veterans Administration mortgage loans could properly be purchased by the Teachers’ Retirement Fund. In answer to inquiries made to the Indianapolis Regional Office of the Veterans Administration, we received the following reply from their Loan Guaranty Attorney:

“The United States acting by and through the Veterans Administration guarantees and insures loans made to WW II and Korean veterans and their unremarried widows for home, farm and business loans. The
statutory authority will be found in Title 38, Sections 1801 to 1824, USCA.

“This office has no insured loans because all lenders processing loans through the Indianapolis Regional Office have requested that the loans be guaranteed instead of insured. We have only a few farm and business loans so this letter will relate only to guaranteed home loans. A home loan is guaranteed by the United States in the amount of 60% thereof with a maximum guaranty of $7,500.00. The unguaranteed portion is not an obligation of the United States. If the loan is sold the guaranty follows the loan and if the Retirement Fund purchases guaranteed home loans the United States will be obligated on its guaranty in the amount of 60% of the unpaid balance due on each loan.

“* * * VA Direct Loans are those wherein the government is the lender and the Administrator of Veterans Affairs is the payee in the Note and Mortgagee in the Mortgage. We have authority to sell these loans and when they are purchased by an investor a guaranty will be issued on each loan in the amount of 60% thereof with a maximum guaranty of $7,500.00. * * *” (Our emphasis)

The basic provisions relating to the guarantee by the Veterans Administration of loans made to veterans is found in 38 U. S. C. A. § 1803, which provides, in part, as follows:

“(a) (1) any loan made to a World War II veteran, if made before July 26, 1960 (or, in the case of a veteran described in section 1801 (a) (1) (B) of this title, before the expiration of thirteen years after World War II is deemed to have ended with respect to him), or to a Korean conflict veteran, if made before February 1, 1965, for any of the purposes, and in compliance with the provisions, specified in this chapter, is automatically guaranteed by the United States in an amount not more than 60 per centum of the loan if the loan is made for any of the purposes specified in section 1810 of this title and not more than 50 per centum of
the loan if the loan is for any of the purposes specified in section 1812, 1813, or 1814 of this title.

* * *

“(b) * * * The liability of the United States under any guaranty, within the limitations of this chapter, shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.”

Provision is made in 38 U. S. C. A. § 1815 for insurance of loans made to veterans, and provides as follows in subsection (a):

“(a) Any loan which might be guaranteed under the provisions of this chapter, when made or purchased by any financial institution subject to examination and supervision by an agency of the United States or of any State may, in lieu of such guaranty, be insured by the administrator under an agreement whereby he will reimburse any such institution for losses incurred on such loan up to 15 per centum of the aggregate of loans so made or purchased by it.”

As pointed out above with reference to FHA-insured mortgages, any mortgage certificate which meets the requirements of Burns’ 28-4508a (B), supra, would be a valid investment for the Teachers’ Retirement Fund, whether or not the mortgage has been guaranteed by the United States or insured by the Administrator of Veterans Affairs.

In the case of a VA-guaranteed loan, only sixty per cent of the unpaid balance is guaranteed by the United States and only that percentage of the loan can be considered an obligation of the United States. The entire loan is the obligation of the individual veteran-mortgagor. Thus such a mortgage cannot qualify for investment by the Teachers’ Retirement Fund under Burns’ 28-4508 (1), supra. Since the mortgage certificate is issued by an individual veteran, it cannot qualify under Burns’ 28-4508 (2), supra, as that section requires that the security be issued by a federal instrumentality, as well as be fully guaranteed by the United States.
It is therefore my opinion that the Board of Trustees of the Indiana State Teachers' Retirement Fund is not authorized to invest in the so-called Veterans Administration mortgage loans, under the current statutory investment restrictions, unless such mortgages meet the requirements of Burns' 28-4508a (B), supra.

By way of conclusion, I would make the following observations:

(1) *Any* mortgage certificate which meets the requirements set out in Burns' 28-4508a (B), supra, would be a valid investment for the Teachers' Retirement Fund, whether or not such mortgage is insured by FHA or the Veterans Administration, or guaranteed by the United States.

(2) An FHA-insured mortgage which was issued by a federal instrumentality and is determined to be fully guaranteed by the United States would be a valid investment for the Teachers' Retirement Fund under Burns' 28-4508 (2). However, it appears unlikely that such a mortgage would be issued and insured under Title II, Sec. 203 of the National Housing Act.

(3) A mortgage insured under Title II, Sec. 203 of the National Housing Act, which was issued by an individual mortgagor, would not be an eligible investment for the Teachers' Retirement Fund under the current investment restrictions, unless such mortgage could also meet the requirements of Burns' 28-4508a (B), supra.

(4) *Debentures* executed in the name of the Mutual Mortgage Insurance Fund and issued by the Federal Housing Commissioner in case of default on a mortgage insured under the provisions of Title II, Sec. 203 of the National Housing Act are valid obligations of the United States and are also issued by a federal instrumentality and are fully and unconditionally guaranteed as to principal and interest by the United States, and such debentures would thus be eligible investments for the Teachers' Retirement Fund.

(5) Loans to veterans guaranteed by the United States or insured by the Veterans Administration do not meet the current statutory requirements for investments permitted to be
made by the Board of Trustees for the Indiana State Teachers’ Retirement Fund, unless such loans secured by mortgages meet the specific requirements of Burns’ 28-4508a (B), supra.

OFFICIAL OPINION NO. 23

June 17, 1960

Hon. William P. Birchler
State Representative
Armistice Hill
Cannelton, Indiana

Dear Representative Birchler:

Your letter of June 6, 1960, has been received and reads as follows:

“The township trustee and advisory board of Troy School Township, Perry County, has completed all procedural steps for the formation of a metropolitan school district in Troy School Township, under the provisions of Chapter 226, Acts 1949 of the Indiana General Assembly as amended by Chapter 151, Acts 1955; Chapter 349, Acts 1957; and Chapter 261, Acts 1959 (Burns 28-2453a).

“The final or confirming resolution has now been adopted, there being no opposition to the proposed change in administration, and the metropolitan district is scheduled to become effective on July 1, 1960.

“At the time this procedure was initiated, it was our understanding that this action did not have to be approved by the State Commission for the Reorganization of School Corporations established under the provisions of Chapter 202, Acts of 1959. Although section 10 of the aforesaid act provides that the State Commission shall approve any ‘reorganization’ after the effective date of this act, the definitions section of Chapter 202 (Sec. 3) does not include any definition embracing the creation of a metropolitan school district where there is no change in the territory involved.