Mr. T. M. Hindman  
State Examiner, State Board of Accounts  
304 State House  
Indianapolis 4, Indiana

Dear Mr. Hindman:

This is in reply to your request for an Official Opinion concerning the duties of the Treasurer of State and the treasurers of several subdivisions of government who act as "legal custodians" of government securities acquired under the provisions of Acts of 1945, Ch. 9, Sec. 1, as found in Burns' (1951 Repl.), Section 61-677.

Your letter reads, in part, as follows:

"This department has become concerned about the practice of the state and its political subdivisions accepting safe-keeping receipts, in lieu of actual custody, for securities which are held by banks some of which are located outside of the state. For example, we find on the state and local level instances where the bank holding the securities is an out-of-state bank which has issued a receipt to the local bank which in turn issues a receipt to the treasurer or legal custodian. This procedure complicates an inventory of securities by this department.

"We are aware of the fact that the treasurers or legal custodians have followed this procedure because of the cost of transporting short term investments.

"This has grown to such proportions that we feel we need an official opinion on the following questions:

"1. Does the Treasurer of State have authority to accept safe-keeping receipts in lieu of actual custody of securities?

"2. Do the treasurers of the several subdivisions of local government have authority to accept safe-keeping receipts in lieu of actual custody of securities?"
"3. If the answers to 1 or 2 are in the affirmative must the receipt be issued directly to the treasurer or legal custodian by the bank holding the securities?"

Burns’ 61-677, supra, reads, in part, as follows:

"The state board of finance of the state of Indiana, the board of county commissioners of each county of the state and the governing body of each city, town, township, school city, school town and any other political subdivision of the state may by an ordinance or resolution authorize the proper legal officers to invest and reinvest any money which shall include money raised by bonds issued for a future specific purpose, sinking funds, depreciation reserve funds, and gift, bequest or endowment, which are under the control of any department, board, commission or utility of the state or of any unit of government within the state, in the bills, certificates of indebtedness, notes, and bonds of the United States of America: * * * The treasurer of state and the treasurers of the several subdivisions of government shall be the legal custodians of any securities acquired under the provisions of this act."

With regard to the Treasurer of State, Acts of 1957, Ch. 178, Sec. 1, as found in Burns’ (1959 Supp.), Section 49-1824 authorizes the Treasurer of State to place securities in safety deposit boxes or vaults of banks located in the State of Indiana or to place the securities in the hands of banks or trust companies as custodians. This section reads as follows:

"The treasurer of state or his authorized agent may rent safety deposit boxes or vaults of one or more banks or trust companies located in the state of Indiana and deposit and keep therein any or all securities in his custody; or place the securities in the hands of a bank or trust company as custodian.

"Any bank or trust company which accepts such securities as custodian shall clip coupons, surrender matured issues for collection, and receive the proceeds of all collections and remit the same to the treasurer of state."
I can find no statute similar to the above authorizing the treasurers of political subdivisions to so handle the securities in their custody.

The Public Depository Law, which is Acts of 1937, Ch. 3, as amended, as found in Burns' (1951 Repl., 1959 Supp.), Section 61-622 et seq., provides for the deposit of public funds received by certain public officials in banks or trust companies constituted as depositories of public funds under the terms of the act. Section 3 of the Act, as found in Burns' (1951 Repl.), Section 61-624 reads as follows:

“(a) All public funds paid into the treasury of the state, or the treasuries of the respective counties, cities, towns, school cities, school towns and municipal corporations shall be deposited daily in one [1] or more depositories in the name of the state or municipal corporation by the officer having control thereof. All public funds collected by state officers, other than the treasurer of state, who have offices in the state capitol buildings shall be deposited with the treasurer of state not later than the day following the receipt thereof. Such deposits shall not relieve any state officer from the duty of maintaining a cash book as required by section two hereof. The treasurer of state shall deposit all public funds collected by him as hereinbefore in this section provided. All other state officers who collect public funds of the state shall deposit such funds daily in the depository or depositories designated by the department of treasury. All state officers shall make monthly settlements with the auditor of state for all public funds deposited in the state treasury or in any public depository.

“(b) All local officers, except the township trustee, who collect public funds of their respective municipal corporations shall deposit such funds daily in the depository or depositories selected by the several boards of finance which have jurisdiction of such funds. The public funds collected by the township trustee shall be deposited in the depository designated therefor on or before the first and fifteenth days of each month. On or before the fifth day of each month all local officers shall file with the secretary of the proper board of
finance a verified statement which shall reconcile, as of the last day of the preceding month, the balance of public funds as disclosed by his records with the statement of the balance made by the respective depositories used by such officer.”

The term “public funds” is defined in Section 1 of the Act and is found in Burns’ (1959 Supp.), Section 61-622, supra, in part, as follows:

“(e) The term ‘public funds’ means and includes all funds coming into the possession of the treasurer of state, treasurer of the board of trustees of any state benevolent, penal or educational institution, and all funds coming into the possession of any state officer by virtue of such office, and all funds coming into the possession of any local officer by virtue of such office, but shall not mean nor include funds coming into the possession of any public officer which are not impressed with a public interest nor designed for a public use: Provided, That the term ‘public funds’ shall mean and include all fees and funds of whatever kind or character received by judges or clerks of city courts or justices of the peace courts by virtue of their offices.”

In order to answer your questions it is necessary to determine whether government securities purchased pursuant to Burns’ 61-677, supra, are public funds within the meaning of the definition of “public funds” in the Public Depository Law. An examination of the authorities reveals that the word “funds” has a variety of slightly different meanings. However, with respect to the “funds” of a government the word has been defined in Black’s Law Dictionary, 3rd Ed., p. 828, as follows:

“Assets, securities, bonds, or revenue of a state or government appropriated for the discharge of its debts. * * *”

The above source defines “public funds” at p. 829 as follows:

“An untechnical name for (1) the revenue or money of a government, state, or municipal corporation; (2)
the bonds, stocks, or other securities of a national or state government. Money, warrants, or bonds, or other paper having a money value, and belonging to the state, or to any county, city, incorporated town or school district. * * *"

In Jewett et al. v. The State ex rel. Harrod (1883), 94 Ind. 549, an action was brought on the official bond of a clerk of a circuit court alleging the conversion of notes, accounts, choses in action and a warrant which constituted the funds of an estate. A statute authorized the clerk, if ordered by the Court, to receive any of the funds of an administrator of an estate. The Court held that the word "funds" as used in the statute had a much broader meaning than is ordinarily applied to the word "moneys" and further held that the clerk was required to receive into his custody "such articles of property as either constitute money or the representative, or in some sense the equivalent, of money, as may be conveniently kept and taken care of by him."

In United States v. Smith (1907), 152 F. 542 it was held that the word "funds" in a statute making it a criminal offense for any officer or agent of a national bank to embezzle funds of such bank, referred to government, state, county, municipal, or other bonds, and to other forms of obligations and securities in which investments may be made.

In State of North Dakota v. W. V. O'Connor (1929), 58 N. D. 554, 226 N. W. 601, the Court held that the word "funds" as used in connection with banking institutions refers to quick assets other than money or bank notes and includes cash items and valuable securities such as government, state, county, or municipal bonds or obligations, and other forms of obligations and securities in which investment of a bank's funds may be made.

The Iowa Supreme Court in W. H. Sherwood v. The Home Savings Bank (1906), 131 Iowa 528, 109 N. W. 9, held that the term "funds" as used in an act providing that savings banks may receive on deposit the savings and funds of others was intended to include notes, bills, stocks, bonds and other securities appropriate for deposit in such an institution, and which it has long been customary to leave there for safekeeping.
From the above authorities I must conclude that government securities acquired under the provisions of Burns' 61-677, *supra*, are public funds within the meaning of the Public Depository Law and must be deposited pursuant thereto, with the exception of securities in the hands of the Treasurer of State. As above noted Burns' 49-1824, *supra*, allows the Treasurer of State to place securities in safety deposit boxes or vaults of banks located in the State of Indiana or to place the securities in the hands of banks or trust companies as custodian. Burns' 49-1824, *supra*, constitutes an exception to the provisions of the Public Depository Law; however, if the Treasurer of State does not choose to deposit securities in safety deposit boxes or place such securities in the hands of banks or trust companies as custodian, he must necessarily comply with the Public Depository Law with respect to such securities. Therefore, in view of the fact that securities purchased pursuant to Burns' 61-677, *supra*, are public funds within the Public Depository Law, it is my opinion that the Treasurer of State and the treasurers of the several subdivisions of local government have authority to accept safekeeping receipts or other appropriate receipt evidencing the deposit of such securities in any authorized public depository in lieu of actual custody of securities acquired under the provisions of Burns' 61-677, *supra*, and such receipts must be issued directly to the Treasurer by the public depository. Your questions Nos. 1, 2, and 3 must therefore be answered in the affirmative, with the qualification that the public depository issuing the safekeeping receipt must be one so designated and authorized to accept public funds by the procedure provided by the Public Depository Law.

OFFICIAL OPINION NO. 7

January 27, 1960

Mr. Jay L. Foster
State Fire Marshal
145 West Washington Street
Indianapolis 4, Indiana

Dear Mr. Foster:

In your letter of January 4, 1960, you requested my Official Opinion concerning Acts of 1913, Ch. 192, Sec. 13, as found