Mr. Norval L. Martin, Executive Secretary
Indiana State Teachers’ Retirement Fund
145 W. Washington Street
Indianapolis 4, Indiana

Dear Mr. Martin:

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

“I would like to have your opinion as to whether or not the State Budget law supersedes the Indiana State Teachers’ Retirement Fund law in regard to the setting of salaries for employees of the Indiana State Teachers’ Retirement Fund.

“Does the Teacher Retirement Fund board have the authority to set salaries for members of the retirement fund office staff without approval by the State Budget Committee?”

Your question is substantially the same as one answered in a 1930 O. A. G., page 709, to-wit:

“To what extent, if any, does the retirement fund come under the budget law of 1925?”

Said Opinion quotes from the Teachers’ Retirement Fund Law, namely parts of Sections 9, 10, 11 and 13, of the Acts of 1915, Ch. 182, as amended, and then says on pages 711 and 712:

“The above provisions are sufficient to show that the teachers’ retirement fund board has full control of the ‘fund’ subject to the limitation that salaries must be approved by the governor. However, part of the fund is raised by taxation and as to so much as is thus raised, the board is required by the teachers’ retirement fund law to ‘submit its budget and estimated necessary tax levies to the governor, or to such other officer or committee as shall be by law authorized to recommend to the general assembly the necessary tax levies.’”
The 1930 Opinion construed pertinent parts of the Teachers’ Retirement Fund Law which was the Acts of 1915, Ch. 182, as then amended, and parts of two Acts of 1925: Ch. 29, which was the Budget Law, and Ch. 79, which concerned the tax levy for the Teachers’ Retirement Fund. Because Ch. 79 was the later enactment, it modified the provisions of the Budget Law in respect to the State Teachers’ Retirement Fund as a “department” within the general authority of the State Budget Committee. The Opinion was to the effect that the Board of the State Teachers’ Retirement Fund had the power to set salaries for its employees subject to approval of the Governor and that they should file their budgetary requirements with the Budget Committee as did other departments of state there defined to include “each and every * * * board * * * which * * * is by law entitled to receive appropriation of money from the state treasury,” but that the Budget Committee’s function in respect thereto was “purely ministerial” because the law specifically applicable to the tax levy for the State Teachers’ Retirement Fund provided that the State Board of Tax Commissioners should set the levy with the approval of the Governor and the Auditor and “the sum total thus raised is made available for that specific purpose and cannot be used for any other purpose.”

The 1939 O. A. G., page 202, at 203, was concerned with a related problem, and reviewed the 1930 Opinion, saying in part:

“It is unnecessary here to go into that opinion to any extent except to say that after discussing various sections of the Teachers’ Retirement Fund Law, the state tax levy law, and the budget law, the gist and the conclusion of the opinion was as follows:

‘I may say that I do not think your department comes under the budget law except in the limited way as indicated above, but I advise in the interest of uniformity that you make the budgetary request as in the past in order that your appropriation may be included in the general appropriation Act.’

“The several laws, or parts thereof, which were controlling with references to the question raised in that
opinion have undergone some change but not such as in any respect would modify the conclusion then reached therein.

* * *

"I find no reason for overruling the opinion of my predecessor, Attorney General Ogden. On the contrary, I concur in his opinion that your department hardly comes within the operation of the budget law except in the limited way pointed out in that opinion, and I fully agree also with the position that you should nevertheless file your budgetary requests, not only in the interest of uniformity but for other sufficient reasons."

The 1925 Budget Law was repealed and substantially re-enacted, including a 1935 definition of "department," by the Acts of 1941, Ch. 106, Sec. 10, the primary change being a shift of responsibilities from the State Examiner of the State Board of Accounts to the Budget Director and to the State Auditor.

It was said in City of New Albany v. Lemon et al. (1926), 198 Ind. 127, 137, 149 N. E. 350:

"* * * 'And where a later statute merely re-enacts the provisions of an earlier one, it does not repeal an intermediate act which has qualified or limited the earlier one, but such intermediate act will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first.' * * *"

The Acts of 1925, Ch. 79, supra, therefore, continued to modify the effect of the new Budget Law in the same manner as its predecessor.

There have been several subsequent amendments to the State Teachers' Retirement Fund Law but until the Acts of 1957, Ch. 293, Sec. 1, amended the Acts of 1915, Ch. 182, Sec. 9, as found in Burns' (1957 Supp.), Section 28-4506, there was no change which would affect your question. By that amendment there was added a new subparagraph (h) which provided that no tax should be levied "in the year 1958 and in each year thereafter" and which also provided that there should be an appropriation in lieu of any tax levy.
Therefore, Burns' 28-4506, supra, impliedly repealed the part of Burns' 61-103 (Acts of 1925, Ch. 79, Sec. 3) that contained provisions relevant to the state tax levy for the Teachers' Retirement Fund, and so removed the modifying effect of Burns' 61-103, supra, upon the Budget Law in respect to the State Teachers' Retirement Fund.

The Acts of 1941, Ch. 106, as found in Burns' (1951 Repl.), Section 60-421, the basic Budget Law, defines the relationship between the Budget Committee and "departments" of the state (which term has always been broadly defined) and now reads as follows:

"The term 'department' as used in this act shall be construed to mean and include all offices, officers, boards, bureaus, commissions, divisions, agencies and departments of government of the state of Indiana now existing by law or which may hereafter be created by the general assembly; the several institutions of higher learning, viz., Indiana University, Purdue University, Indiana State Teachers' College, and Ball State Teachers' College; the judicial branch of the state government; and all nongovernmental organizations receiving financial support or assistance from the state treasury. The term 'director' shall mean the director of the budget." (Our emphasis)

Since the State Teachers' Retirement Fund receives an appropriation from the state treasury, it is a state department within the meaning of the Budget Law, and its employees are state employees, in which case the Acts of 1941, Ch. 106, Sec. 1, as amended and found in Burns' (1957 Supp.), Section 60-412 would be applicable, thus:

"* * * The salaries of all appointive state officers and employees, except those now being paid as fixed by statute, shall be fixed by the appointing power or if otherwise provided by law then in the manner provided subject to the approval of said committee consisting of the governor and the budget committee. * * *" (Our emphasis)

This should be read together with Burns' 28-4506, supra, which, since the 1957 amendment reads:
"* * * The board shall, subject only to the approval of the governor, fix the salary of the executive secretary, and shall employ other assistants and fix their compensation."

It is, therefore, apparent that the Board of Trustees of the State Teachers' Retirement Fund may fix the compensation of its employees subject to approval of a committee consisting of the Governor and the members of the Budget Committee.

The 1957 amendment to Burns' 28-4506, supra, substituting an appropriation for a tax levy, removed the only obstacle recognized by earlier Official Opinions to full operation of the Budget Law in respect to the State Teachers' Retirement Fund.

It is recognized that Burns' 60-412, supra, is partially superseded by the Acts of 1947, Ch. 280, as found in Burns' (1951 Repl.), Section 60-422 et seq., which provides generally that the Budget Committee and the Governor are empowered to fix the annual compensation of "employees of each and every state agency."

It appears that the Legislature did not intend for Burns' 60-422, supra, to affect the power of the Board of Trustees of the State Teachers' Retirement Fund to fix compensation of its assistants because Burns' 28-4506, supra, was amended by every session of the Legislature from 1945 to 1957 and every one of those amendments restated that power of the Board of Trustees of the State Teachers' Retirement Fund (with no change in wording until 1957 when approval of the Governor was deleted from said provision). Deletion of the requirement for the Governor's approval of salaries fixed for assistants employed by the Board by the same 1957 amendment, as found in Burns' 28-4506, supra, that impliedly repealed Burns' 61-103, supra, is indicative that the Legislature then intended for Burns' 60-412, supra, to provide the power to approve compensation fixed for assistants employed by the Board of Trustees of the State Teachers' Retirement Fund.

Salaries for members of the retirement fund office staff are clearly for personal service as defined in the Acts of 1959, Ch. 114. By Section 2 of that Act there are appropriated sums for personal service, equipment and all other operating ex-
pense of the State Teachers’ Retirement Fund and “the amounts above appropriated are to be paid from the Indiana State Teachers’ Retirement Fund.”

The Acts of 1915, Ch. 182, Sec. 10, as amended, and as found in Burns’ (1948 Repl.), Section 28-4507 reads, in part, as follows:

“* * * The board shall receive and receipt for all moneys coming into the fund and deposit the same with the treasurer of state as is required by the depository law as it affects other state funds, and make such quarterly reports to the auditor of state as are required by law to properly transfer the fund to the books of the auditor of state’s office. *The board shall direct all disbursements from this fund and the auditor of state shall issue his warrant on the treasurer of state, on properly itemized vouchers, officially approved by the president and executive secretary of the board of trustees of the Indiana state teachers’ retirement fund or in the absence or incapacity of both officers, by such other member of [or] members of the board as the board shall by order direct.” (Our emphasis)

The Acts of 1959, Ch. 114, Sec. 3 reads as follows:

“SEC. 3. No payment for Personal Service shall be made by the Auditor of State unless such payment shall be approved by the State Budget Committee as provided in Chapter 280, Acts of 1947, or the State Budget Director.”

Since all disbursements from the State Teachers’ Retirement Fund are made by warrant issued by the Auditor of State pursuant to legislative appropriations, and since the Auditor of State is prohibited from making payments for personal service from current appropriations unless approved by the State Budget Committee, or by the Budget Director, and also since the only previously recognized obstacle to the operation of the Budget Law upon the State Teachers’ Retirement Fund was removed by termination of the state tax levy for such fund, it is my opinion that the Board of Trustees of the State Teachers’ Retirement Fund may fix the compensation of members of its office staff subject to approval of a com-
OFFICIAL OPINION NO. 7

April 21, 1959

Mr. William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Wilson:

Your letter of April 2, 1959 has been received and reads as follows:

"Questions have arisen concerning interpretation of Senate Bill #160 (Chapter 217) Acts of 1959 pertaining to school bus transportation and I am in need of an Official Opinion on the following questions:

"Question 1. Can a contract be made with the school bus operator for a fleet of buses consisting of two or more vehicles?

"Question 2. If the answer to the above question is yes, under what condition can this contract be let?

"Question 3. Can we hire a fleet of buses under one contract to transport mentally and physically handicapped children?

"Question 4. If the answer to number 3 is yes, under what condition may we employ a fleet contractor for the transportation of mentally and physically handicapped children?"

The principal statute concerning school-bus contracts is Acts of 1945, Ch. 210, as amended, as found in Burns' (1948 Repl., 1957 Supp.), Section 28-3930 et seq. Said statute requires individual contracts with individual school-bus drivers who may or may not own all or part of the school-bus.