ANNUITY AND PENSION BOARD

Minutes of the Regular Meeting held January 21, 1965.

The meeting was called to order at 2:10 p.m. by Vice-Chairman Alfred C. Hass.

PRESENT: Messrs. Alvin F. Fischer, Stephen A. Galligan, Charles G. Gumm, and Alfred C. Hass; also Harry G. Slater, Legal Adviser, and Miss Ruth A. Poehlmann, Secretary.

LATER: Messrs. O. N. Strobel for John E. Kalupa, William J. O'Malley, and Robert L. Sulkowski.

Minutes

The minutes of the meeting of December 17, 1964, were approved as submitted.

Financial Statements

The Financial Statements for the month of December, 1964, were approved and ordered placed on file. (Copies to be attached to and become part of these minutes.)

Mr. Strobel arrived.

Bills

The Secretary reported the following 1964 bills were paid out of 1964 funds as authorized at the December meeting:

Voucher No.	Vendor	Amount	
Expense Fund:			
E-3620	Peter A. Altenhofen Typographers Inc.	$ 15.70	
E-3621	Addressograph-Multigraph Corporation	6.60	
E-3622	Leedom, O'Connor & Noyes Co.	19.44	
E-3623	J. J. Krueger, City Treasurer	11.06	
E-3625	J. J. Krueger, City Treasurer	895.17	
E-3626	Milwaukee Public Library	20.00	
E-3627	George B. Buck (Fourth quarter retirement computation)	510.00	
E-3628	Siekert & Baum Stationery Co.	.37	
E-3629	Employes' Retirement System of the City of Milwaukee - 1964 Unused Expense Funds	18,952.71	
	Subtotal 1964 Bills		$ 20,431.05

On motion by Mr. Gumm, seconded by Mr. Fischer and unanimously carried, the payments were ratified.

The Secretary submitted the following bills:

1965 Bills

Voucher No.	Vendor	Amount	
Expense Fund:			
E-3630	Frederick C. T. John, Postmaster, Milwaukee	$ 469.00	
E-3632	Newton and Company	4,812.50	
E-3633	Friden, Inc.	11.15	
E-3634	Newell B. Walters, Secretary, National Conference on Public Employee Retirement Systems	100.00	
E-3635	Barron's, National Business & Fin. Weekly	15.00	
E-3636	George B. Buck	750.00	
E-3637	Dr. Joseph R. Caton	10.00	
	Subtotal 1965 Bills		$ 6,167.65
	Grand Total All Bills		$ 26,598.70

It was moved by Mr. Galligan and seconded by Mr. Strobel that the bills be approved and ordered paid. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, and Strobel.

NOES: None.

Mr. O'Malley arrived and assumed the Chair.

Report of Investment Committee

Immediately preceding this meeting, the Investment Counselors presented the "Year-End Investment Report and Appraisal" of the Employes' Retirement System as of December 31, 1964, at a special investment meeting. The meeting was attended by Board members: Messrs. Alvin F. Fischer, Stephen A. Galligan, Charles G. Gumm, Alfred C. Hass, John E. Kalupa, and William J. O'Malley; Deputy Comptroller O. N. Strobel; City Attorney John J. Fleming and Harry G. Slater, Legal Adviser; Ruth A. Poehlmann, Secretary; Rudolph Pede, Assistant Secretary; Roger Gorski, Accountant; members of the Committee on Finance-Printing of the Common Council: Aldermen Harold J. Jankowski and Fred F. Schallert; and representatives of Newton and Company, Investment Counselors.

Mr. Robert M. Krauskopf commented upon the valuation and transactions during the year 1964. The Report shows a total investment portfolio of $111,870,035 par value and a market value of $108,744,059 as of December 31, 1964; purchases for the year 1964 totaled $8,861,485; sales and redemptions, $2,067,364.

The Report shows the diversification of the portfolio as follows:

Type	Par Value	Percent of Total Portfolio	Market Value	Investment Return by Type
U. S. Government Bonds	$ 7,440,000	6.6 %	$ 7,131,434	3.87 %
Government-Guaranteed Bonds	1,555,000	1.4	1,545,170	4.42
Federal Agency Bonds	2,330,000	2.1	2,321,430	4.25
Municipal Bonds	810,000	.7	756,400	3.36
Canadian Securities	4,879,000	4.4	4,699,716	4.15
Industrial Bonds	23,385,550	20.9	22,941,034	4.27
Institutional Bonds	4,225,000	3.8	4,184,376	5.07
Public Utility Bonds	54,103,000	48.3	51,454,918	4.01
Railroad Bonds	6,256,380	5.6	5,470,388	3.67
Total Bonds	$ 104,983,930	93.8 %	$ 100,505,006	
Real Estate and Mortgages	1,156,845	1.0	1,156,846	4.31
Preferred Stock	2,420,220	2.2 *	2,383,438	4.56
Common Stock	3,309,060	3.0 *	4,698,769	4.63
Total Account	$ 111,870,055	100.0 %	$ 108,744,059	4.12 % average return

* Preferred and Common Stocks at cost.

Mr. Krauskopf reported that the return on the entire portfolio had increased from 4.09% in 1963 to 4.12% as of December 31, 1964.

Board members expressed appreciation to the Investment Counselors for the excellent report. The report was accepted and ordered placed on file.

The Investment Counselors recommended the following security transactions which were authorized by Board members present.

On motion by Mr. Galligan, seconded by Mr. Gumm, and unanimously carried, the Board ratified the actions taken at the Investment meeting and adopted the following resolutions:

RESOLVED, By the Annuity and Pension Board of the Employes' Retirement System of the City of Milwaukee that the following securities be sold:

$300,000 General Motors Corp.
3¼% Debentures due January 1, 1979

607 shares International Harvester Co.
7% Cumulative preferred stock

500 shares Phillips Petroleum Corporation common stock

1,000 shares Greyhound Corporation common stock.

RESOLVED, By the Annuity and Pension Board of the Employes' Retirement System of the City of Milwaukee that the following securities be purchased:

$500,000 U. S. Treasury 4 1/4% Bonds - 8/15/92-87

$200,000 Texas Power & Light Co. 1st Mortgage Bonds
4½% due 1-1-95

300 shares General Motors Corporation common stock

400 shares General American Transportation Corporation common stock

300 shares Monsanto Company common stock

300 shares Union Carbide Corporation common stock

1,000 shares McGraw Edison Company common stock

$300,000 Atchison, Topeka & Santa Fe Ry. General 4% Bonds due 1995 At a price to yield 4.40% or better

$300,000 Norfolk & Western Ry. 1st Consolidated 4% Bonds due 1996 At a price to yield 4.40% or better

$200,000 International Harvester Company subordinated debentures 4 5/8% due 1988 at 4.40% or better.

The Secretary reported the following investment transactions since the last meeting:

REDEMPTIONS

	Securities	Yield	Rate	Maturity
$ 1,337.99	Howard Avenue Shopping Center, Inc.	5 3/4 %	5 3/4 %	3- 1-70
2,275.02	Butler Warehouse Lease Rental	-	4 1/8	-
289.86	Grafton State Bank Mortgages	-	-	-
100,000.00	Wabash R. R. Equip. Trust	4.15	4	1-15-65
2,000.00	San Diego Gas & Electric Co. S. F. Deb.	4 5/8	4 5/8	1-15-84
8,000.00	U. S. Merchant Marine, S. S. Brazil	4.20	4.20	7- 1-83
2,000.00	Wisconsin Power & Light Co.	4.59	4 5/8	3- 1-89
8,000.00	Southern Natural Gas Co.	4 3/4	4 3/4	1- 1-79
2,500.00	Tidewater Oil Co. $1.20 Pref. Stock (100 sh.)	4.66	4.8	-

PURCHASES

$ 196,000.00	Belt Railway Co. of Chicago 1st Mtge.	4.50 %	4 5/8 %	8-15-87
200,000.00	C. I. T. Financial Corp.	4.49	4 5/8	5- 1-89
200,000.00	Northern States Power Co.	4.40	4 1/2	8- 1-94
2,200,000.00	U. S. Treasury Bills	3.80	3.80	4- 1-65
500,000.00	U. S. Treasury Bonds	4.23	4 1/4	8-15-92/87
200,000.00	Cincinnati Gas & Elec. Co.	4.40	4 3/8	5- 1-87
200,000.00	U. S. Treasury Bonds	4.17	4 1/8	5-15-94/89
50.95	Monsanto Co. Common Stock (6/10ths share)	-	-	-

(Received 20 4/10ths shares common stock of Monsanto Company as a 2% stock dividend to shareholders of record November 2, 1964.)

It was moved by Mr. Hass and seconded by Mr. Galligan that the action of the Investment Committee be ratified. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, Strobel, and O'Malley.

NOES: None.

#P-10801 - Harry A. Race

The Secretary reported that, in accordance with instructions of the Board at the meeting December 17, 1964, a letter was sent to Mr. Race on December 21, 1964, stating the amount to be repaid to the Employes' Retirement System for the pension paid him from July, 1963, through June, 1964, and requesting that arrangements be made for such repayment.

A communication was presented from Attorney Charles Galin, dated January 18, 1965, submitting an affidavit from E. M. King, Secretary of Jim King Chevrolet Company, dated December 24, 1964, reporting Harry Race's earnings as $5,880.81 for the period July, 1962, through June, 1963 (see minutes of December 17, 1964, page 158).

Mr. Sulkowski arrived at 2:35 p.m.

After discussion, the Board determined that Mr. Race's earnings for the period July, 1962, through June, 1963, exceeded the limit under the law and, therefore, the pension paid to him during that period will have to be repaid to the Employes' Retirement System and that interest shall be added at the rate of 4% calculated annually.

Upon advice of the Legal Adviser, the Chairman directed the Secretary to send a communication to Harry Race stating that pension payments made to him during the period July 9, 1962, through June 30, 1964, amounting to $7,554.35 would have to be repaid, together with interest at the rate of 4% computed annually, and that immediate payment was demanded. There being no objection, it was so ordered.

Coordinated Plan Offset

The Secretary reported that the Legal Adviser had discussed with the Social Security Administration the matter presented by Mr. John Zinos (see minutes of November 19, 1964).

Mr. Slater stated he had telephoned the Counsel for the Social Security Administration in Chicago and that he has an appointment to meet with Mr. MacMillin, Director of Social Security, and Mr. Wedlake of the Attorney General's Office, in Madison, on January 26, 1965, and will then submit his report and opinion to the Board.

Mr. Fischer requested that a special meeting of the Board be called upon receipt of the communication from Mr. Slater, and that members of the Finance Committee be invited to the meeting. There being no objection, it was so ordered.

Mr. Sulkowski was excused at 2:55 p.m.

Election of Employe Member of Board

The Secretary read the following letter:

"Annuity and Pension Board
City of Milwaukee

January 18, 1965

Gentlemen

In compliance with your request to conduct the nomination and election of one employe member of the Annuity and Pension Board of the City of Milwaukee, I hereby report the following on the primary held January 15, 1965:

"Four employes filed nomination papers in due time and with the required number of signatures on each. Those filing nomination papers were: Gerald K. Brzycki, Chester E. Czajkowski, Alvin F. Fischer, Joseph J. Kurszewski.

The drawing for position on the primary ballot for the four candidates was held at 10:00 a.m. on December 3, 1964 with the following result:

1. Chester E. Czajkowski
2. Joseph J. Kurszewski
3. Gerald K. Brzycki
4. Alvin F. Fischer

Votes received:

Alvin F. Fischer	4009	Chester E. Czajkowski	765
Gerald K. Brzycki	920	Joseph J. Kurszewski	460

Alvin F. Fischer and Gerald K. Brzycki having received the first and second highest number of votes cast, were nominated. The drawing for position on the ballot will be held at 10:00 a.m. in the office of the Election Commission on January 18, 1965 for the final election on Friday, February 19th.

Respectfully submitted

(Signed)
WILLIAM J. O'MALLEY, Secretary
BOARD OF ELECTION COMMISSIONERS"

The Secretary submitted a letter from Mr. Brzycki inquiring about withdrawing his name from the election so that it would not be necessary to hold the final election.

An opinion from the Deputy City Attorney, Mr. Harry G. Slater, dated January 19, 1965, was read, stating the following:

* *

"In replying to your letter, please be advised that one of the nominees in the primary may withdraw if he files a proper statement indicating that he does not wish to be a candidate and that his actions are clearly voluntary and not based upon any conditions or representations whatever.

"You will, nevertheless, have to conduct your election, because until the election is conducted there will not be a member elected to fill the term of Alvin F. Fischer, which expires in February, 1965."

The Secretary reported that Mr. Brzycki was informed of the opinion and on January 21, 1965, submitted a letter revoking his previous request to withdraw from the election.

After discussion, the Board declared that the election on February 19, 1965, would be held in accordance with the rules and directed the Secretary to inform Mr. Brzycki that his name would appear on the ballot.

Report of the Medical Council

The Secretary reported that the Medical Council reviewed the disability retirement of #C-1574, Walter Polaczyk, on January 20, 1965, and certifies that he is unable to return to work and recommends that he be continued on ordinary disability retirement.

It was moved by Mr. Gumm and seconded by Mr. Galligan that the Board concur in the recommendation of the Medical Council and that Mr. Polaczyk be continued on ordinary disability retirement. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, Strobel, and O'Malley.

NOES: None.

Ordinary Disability Retirement

The Secretary reported receipt of an application for Ordinary Disability Retirement from #C-13532, Walter Grabowski, Special Laborer, Bureau of Electrical Services, and presented the Medical Council certification that Mr. Grabowski is incapacitated for the further performance of duty and such incapacity is likely to be permanent and that he should be retired.

The Ordinary Disability Retirement Resolution was presented.

It was moved by Mr. Gumm and seconded by Mr. Galligan that the Board concur in the recommendation of the Medical Council to retire Walter Grabowski and that the Ordinary Disability Retirement Resolution, listing Walter Grabowski, retirement effective January 27, 1965, be adopted. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, Strobel, and O'Malley.

NOES: None.

Retirements

The Secretary presented the following resolutions:

The Service Retirement Resolution for January, 1965, retirements, listing:

C- 9958	Clarence Filler	January 4, 1965
C- 6302	Frank Scalzo	January 6, 1965
C- 799	Edward C. O'Rourke	January 21, 1965

The Service Retirement Resolution for February 1, 1965, retirements, listing:

C- 2651 Frank Earle Casper C-5086 Schobert C. Kessel

It was moved by Mr. Fischer and seconded by Mr. Hass that the resolutions be adopted. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, Strobel, and O'Malley.

NOES: None.

Retirements Granted: 3,331 Terminated: 1,590 Balance: 1,741

Death Claims

The Secretary presented the following resolutions:

The Ordinary Death Benefit Resolution listing the following deceased members:

C-27180	Patrick W. Coleman	A-1230	Edward F. Semrad

the total amount to be paid being $4,302.94.

The Option Number One Resolution listing the following deceased members:

R- 2578	John P. Wingers	R-2742	Hugo R. Rossow
R- 1038	Paul M. Johanning		

the total amount to be paid being $8,053.34.

The Fractional Installment Retirement Allowance Resolution listing the following deceased members:

R- 3245	Julia M. Gross	R-2348	Helen G. Nagle
R- 1988	Cora R. Dambruch (Option #3 beneficiary of William H. Dambruch)		

the total amount to be paid being $420.37.

It was moved by Mr. Strobel and seconded by Mr. Gumm that the resolutions be adopted and the claims be paid. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, Strobel, and O'Malley.

NOES: None.

Annuity

The Secretary presented the Annuity in Lieu of Ordinary Death Benefit Resolution listing the following deceased members and their beneficiaries:

AR-3324	Salvatore J. Sanfelipo	Emma Sanfelipo, wife
AR-3325	Frank C. Schweitzer	Jeanette Schweitzer, wife

It was moved by Mr. Fischer and seconded by Mr. Galligan that the resolution be adopted. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, Strobel, and O'Malley.

NOES: None.

Return of Contributions

The Secretary presented Resignation Resolutions listing 24 withdrawals, paid December 18, 1964, in the amount of $14,960.52; 11 withdrawals, paid December 31, 1964, in the amount of $1,981.28; and 25 withdrawals, paid January 15, 1965, in the amount of $30,387.47.

It was moved by Mr. Hass and seconded by Mr. Strobel that the payments be ratified and the resolutions be adopted. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, Strobel, and O'Malley.

NOES: None.

Termination of Membership - Section 36.03 (6)

The Secretary presented the Resolution for the Return of Contributions - Section 36.03 (6), Termination of Membership, listing returns to 4 members, the total amount to be paid being $33.78.

It was moved by Mr. Hass and seconded by Mr. Strobel that the resolution be adopted. The motion prevailed by the following vote:

AYES: Messrs. Fischer, Galligan, Gumm, Hass, Strobel, and O'Malley.

NOES: None.

Option Number 3 Benefits Continued

The Secretary reported that Alvin C. Bromm, R-2786, retired September 1, 1961, under Option No. 3, died January 13, 1965, and that an amount of $126.46 a month will be continued to his wife, Mrs. Mary N. Bromm, for her lifetime.

Termination of Annuity

As a matter of record, the Secretary reported the following annuity has been terminated:

AR-1865 Mrs. Ella C. Prellwitz, widow of Emil E. Prellwitz, A-2237
10 year annuity in the amount of $38.46 per month
beginning January 1, 1955, terminated December 31, 1964.

Report on Vested Rights

The Secretary reported that the following members have elected deferred retirements under Section 36.05 (6) (d) 2 (Vested Rights) during the year 1964:

C-10663	Norbert Phillip	C-17747	Vincent L. Lung
C-13675	Jane F. Schmechel	A-20864	Eugene M. Cox
C-16564	Joyce D. Shields	C-21537	George L. Hensel

The Secretary also reported that the following, who had elected Vested Rights in prior years, withdrew contributions and membership was terminated in 1964:

F- 9681	Frederick R. Eaton	P-15081	James H. Oelke
A-10893	Robert A. Geske	C-20220	Rosemary O'Rourke

City Comptroller's Financial Summary

The Secretary read a communication dated January 15, 1965, from Mr. O. N. Strobel, Deputy Comptroller, relative to including financial statements of the Employes' Retirement System in the Comptroller's annual Financial Summary.

After discussion, and upon advice of the Legal Adviser that since the Employes' Retirement System receives funds from various boards and commissions it is not a city department and the assets of the System are not a part of city assets, the Secretary was instructed to inform the Comptroller that the Board does not think it proper to include the Employes' Retirement System financial statements in the Comptroller's Summary.

The Chairman suggested that requests for financial statements of the Employes' Retirement System be referred to the Pension Office so that the names may be added to our mailing list for the Employes' Retirement System Annual Report.

Reclassification of Positions

The Secretary reported that requests for reclassification of positions for the 1966 budget are to be submitted before February 1, 1965, and reported that the Accountant's position should be reviewed.

The Board instructed the Secretary to submit the request for reclassification.

Social Security - Medicare

The Chairman called attention to the proposed amendments to the Social Security Act and suggested that we determine whether another choice will be included in the bill.

Pre-Retirement Counseling

Mr. Fischer proposed that consideration be given to Pre-Retirement Counseling for members of the System. No action was taken.

The meeting adjourned at 3:30 p.m.

Ruth A. Pohlmann

Secretary

EMPLOYES' RETIREMENT SYSTEM - Retirement Fund

Statement of Receipts and Disbursements

for December, 1964

Cash Balance November 30, 1964			$ 30,236.92
Add: December Receipts			
Redemptions:			
Central Telephone Co. 3.80%	$ 3,000.00		
U. S. Treasury Bills due 12/31/64	150,000.00		
Child Care Centers, Inc.	4,000.00		
Northern Illinois Gas Co. 5%	4,025.60		
Northern Illinois Gas Co. 4 5/8%	4,013.60		
U. S. Treasury Bills due 6/22/65	450,000.00		
U. S. Treasury Bills due 1/28/65	650,000.00		
Alberta Municipal Fin. Corp. 5%	6,000.00		
U. S. Treasury Bills due 1/21/65	100,000.00		
Wisconsin Power & Light Co. 4 5/8%	2,010.40		
Butler Warehouse Lease Rental	2,267.22		
Grafton State Bank Mtges.	289.86		
Howard Ave. Shopping Center, Inc.	1,331.33	$ 1,376,938.01	
Interest Income		404,209.80	
Members' Contributions - Regular		307,355.21	
Members' Contributions - Excess		3,468.73	
Fire and Police Survivorship Contributions		1,251.39	
Reimbursement of Pension - Retired Deaths		647.66	
Unused 1964 Expense Funds transferred from Expense Fund		18,952.71	
Total Receipts			2,112,823.51
Total Receipts and Disbursements			$ 2,143,060.43
Deduct: December Disbursements			
Investments:			
U. S. Treasury Bills due 6/22/65	$ 450,000.00		
U. S. Treasury Bills due 1/28/65	500,000.00		
U. S. Treasury Bills due 1/21/65	100,000.00		
Witco Chemical Co. Inc. 4.65% Note	400,000.00		
U. S. Treasury 4 1/8% Bonds	199,132.94		
Monsanto Co. Comm. Stk. (60/100 sh.)	50.95	$ 1,649,183.89	
Members' Contributions Refunded		27,514.54	
Active Death Claims		15,127.85	
Retired Death Claims		9,923.47	
Fire and Police Survivorship Payroll		1,275.00	
Pension Payroll		260,283.12	
Total Disbursements			1,963,307.87
Cash Balance December 31, 1964			$ 179,752.56

EMPLOYES' RETIREMENT SYSTEM - Expense Fund

Statement of Receipts and Disbursements

for December, 1964

Cash Balance November 30, 1964		$ 31,530.60
Add: December Receipts		
Witness fees		5.50
Total Receipts and Balance		$ 31,536.10
Deduct: December Disbursements		
Salaries and Wages	$ 6,474.35	
Employer Social Security Taxes	23.94	
Employes' Insurance - Group Life	24.65	
Employes' Insurance - Blue Cross	130.56	
Printing	361.08	
Office Supplies	40.22	
Postage	229.16	
Binding Records	20.00	
Miscellaneous Expense	12.14	
Newspapers and Periodicals	5.20	
Tabulating Expense	360.33	
Repair and Maintenance of Equipment	52.58	
Actuarial Fees	1,260.00	
Election Expense	222.13	
Registration and Postage	86.40	
Insurance - Investment	19.44	
Unused 1964 Expense Funds transferred to Retirement Fund	18,952.71	
Total Disbursements		28,282.89
Cash Balance December 31, 1964		$ 3,253.21

ANNUITY AND PENSION BOARD

Minutes of the Special Meeting of the Annuity and Pension Board held January 29, 1965.

The meeting was called to order at 1:45 p.m. by Chairman William J. O'Malley.

PRESENT: Messrs. Alvin F. Fischer, Stephen A. Galligan, Charles G. Gumm, Alfred C. Hass, O. N. Strobel for John E. Kalupa, Robert L. Sulkowski, and William J. O'Malley; also Harry G. Slater, Legal Adviser, and Miss Ruth A. Poehlmann, Secretary.

LATER: Members of the Common Council Committee on Finance-Printing: Aldermen James J. Mortier, Fred F. Schallert, Harold J. Jankowski, and Norman J. Hundt.

The meeting was called to consider the communication from Mr. John C. Zinos, dated October 23, 1964, relative to the Coordinated Plan offset (see minutes of November 19, 1964, page 149), and the opinion from the Legal Adviser dated January 27, 1965.

The Secretary read the opinion from Mr. Harry G. Slater, Deputy City Attorney, dated January 27, 1965 (copy attached).

The communications were discussed at length by members of the Board.

Mr. Gumm was excused at 2:00 p.m.

Members of the Finance Committee were invited to the meeting and the matter was reviewed.

After discussion, it was moved by Mr. Hass, seconded by Mr. Fischer and unanimously carried, that a communication be sent to Mr. John C. Zinos, Director of Milwaukee District Council 48, in reply to his communication of October 23, 1964, stating that we have received a Legal opinion in regard to his request and are forwarding a copy of the opinion dated January 27, 1965.

It was moved by Mr. Hass, seconded by Mr. Fischer and unanimously carried, that a copy of the opinion from the City Attorney, dated January 27, 1965, be sent to the Committee on Finance-Printing together with a copy of Mr. Zinos' communication of October 23, 1964, as a matter of information for consideration with File Number 64-1613 & a relative to the Coordinated Plan offset.

The meeting adjourned at 3:10 p.m.

Ruth A. Poehlmann

Secretary

C O P Y

OFFICE OF CITY ATTORNEY

800 City Hall

Milwaukee, Wisconsin 53202

January 27, 1965

Miss Ruth A. Poehlmann
Secretary & Executive Director
Employes' Retirement System
610 City Hall

Dear Miss Poehlmann:

Under date of November 23, 1964, you forwarded to the City Attorney's office, my attention, a communication in which you noted that Mr. John C. Zinos, Director, Milwaukee District Council 48, communicated with the Employes' Retirement Board and you requested a legal opinion with reference to the "Social Security offset."

You submitted with your communication of November 23, a letter that had been written to you by Mr. Zinos, dated October 23, 1964, which I quote:

"On behalf of over 4,500 City employee members of the City Annuity and Pension System, we respectfully request that your honorable body seek an opinion as to the legality of the provision in the charter ordinance of the Employees' Retirement Act, providing for a fifty percent (50%) offset of the Social Security primary insurance benefit or any other diminution of the benefits provided by the retirement system prior to the adoption of social security."

In your communication of November 23, you also call attention to the experience of the City of Philadelphia and you asked me on behalf of your board to contact Mr. Isador Kranzel, Assistant City Solicitor of that city.

In a succeeding communication I was authorized by your board to contact the Regional Attorney for the Department of Health, Education and Welfare, Social Security Administration, in Chicago, and Mr. Frederick N. MacMillin, Director of the employes Social Security fund of the State of Wisconsin.

In response to your communication sent at the request of the Annuity and Pension Board relating to the letter that they received from Mr. Zinos, please be advised as follows:

I contacted Mr. Kranzel, Assistant City Solicitor, City of Philadelphia, and the Regional Attorney for the Department of Health, Education and Welfare, Social Security Administration, by telephone. I also had a personal conference with Mr. Frederick N. MacMillin.

From these telephone conversations and the personal conference which I held, I was unable to obtain specific information which would indicate that there has been any determination or a final adjudication of the question concerning the Social Security offset. Your question is raised by virtue of the fact that paragraph 418 of the Social Security Act, particularly subsection (d), subparagraph (2) (United States Code Annotated in Title 42), which is identified as the Public Health & Welfare Provisions of the United States Code, provides as follows:

"(2) It is declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employeed in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof."

A brief recitation of the historical origin of the Social Security offset provisions which were included as a part of the Coordinated Plan of the Employes' Retirement System Act, demonstrates that the retirement coverage which prior to January 1, 1955, did not include Social Security benefits, was expanded as of January 1, 1956, so as to provide such benefits through what is termed a "Coordinated Plan." As a part of the Coordinated Plan the so termed "Social Security offset" is provided for against the employes' retirement allowance because of Social Security benefits granted. The offset becomes effective when the member of the system becomes 65 years of age and is under Social Security as a part of the Coordinated Plan.

The Common Council of the City of Milwaukee authorized the consummation of an agreement between the State, as agent of the Federal Social Security System, for the purpose of providing Social Security coverage. As a condition to such an agreement, it was necessary to hold a referendum by secret written ballot on the question of whether services and positions covered by the Employes' Retirement System Act should be included under Social Security coverage. A majority of the eligible members voted in favor of placing such positions under Social Security and the agreement thereafter followed. Every person who became a member of the Coordinated Plan originally, did so entirely as a result of his own free choice. Persons who entered the employ of the city and other agencies covered by the Employes' Retirement Act after the Coordinated Plan became effective, were not given a choice and if their positions were covered by Social Security they were required to become members of the Coordinated Plan.

The Congressional declaration to which we have alluded and quote, emphasizes that the protection afforded employes in positions covered by the Employes' Retirement System on the date the agreement under that section is made applicable to services performed in such positions or receive periodic benefits under such retirement System, at such time "will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof." (underscoring supplied) We must assume that Congress in enacting this declaration had a specific purpose in mind, since it is elementary that in construing legislative enactments, the language employed in such enactment should not be interpreted in such manner so that the words become merely meaningless. Accordingly, it would appear that Congress intended that there shall be no impairment of benefits in a pension system because of Social Security allowances.

We hasten to add, however, that there has not come to our attention any judicial adjudication of this precise question. We have attempted to explore this subject through several channels, including as we have mentioned, telephone conversations with the Regional Attorney for the Department of Health, Education and Welfare, Social Security Administration, and the Assistant City Solicitor of the City of Philadelphia.

Section 66.99 (4), Wisconsin Statutes, provides in effect that the director of the Wisconsin retirement fund with the approval of the Governor, upon the submission to him of a certified copy of a resolution adopted by the governing board of any public agency, may execute upon behalf of the state, an agreement with the United States

Secretary of Health, Education and Welfare, for the inclusion of a coverage group of the employes and officers of such public agency under the Federal Old-age Survivors' Insurance System. In accordance with that provision, the state and the public agency included under such agreement "shall be bound by federal regulations." (underscoring supplied) It is manifest that the congressional declaration contained in previously quoted paragraph 418 (d) (2) of the Social Security Act, must be deemed to be a federal declaration which has applicability here.

In the absence of any decisive court determination on the issue which is raised by your question, we cannot at this time anticipate how a court may apply paragraph 418 of the Social Security Act, subsection (d), subparagraph (2), supra, without attempting to be unduly prophetic. We are aware, however, that courts generally are inclined to give effect to a legislative enactment of this type. Whether they would apply the above section of the Social Security Act in such a manner so as to determine that the offset provision which we have included in our Coordinated Plan constitutes an impairment of benefits payable from our retirement system, may be a possibility. If a legal question were raised, paragraph 418 may be construed in a manner favorable to one claiming that his rights have been impaired by such offset.

We do not consider that it is within our province at this time on the basis of what is before us to state decisively that this would be the result.

Very truly yours,

(Signed)

HARRY G. SLATER
Deputy City Attorney

HGS:q

APPROVED BY:

(Signed)

John J. Fleming
City Attorney