Minimum Wage Law. This would include payment of the minimum compensation required by Section 28-4319, Burns’ 1943 Supp., supra, for the school term of the contract.

SECRETARY OF STATE: Corporations. Amendment of articles of incorporation increasing shares of stock.
CORPORATIONS: Fees on increase of capital stock.

June 24, 1944.

Opinion No. 61

Hon. Rue J. Alexander,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of June 16th, in which you ask my opinion as to the amount of fee to be paid by a corporation desiring to increase its authorized capital stock, as follows:

"* * *

, an Indiana corporation, which now has an authorized capital of two hundred thousand (200,000) shares of Two Dollar par value Common Stock and fifteen hundred fourteen (1514) shares of One Hundred Dollar par value Preferred Stock, is considering amending its Articles of Reorganization, increasing the number of authorized shares from two hundred one thousand five hundred fourteen (201,514) to one million five hundred thousand (1,500,000) shares, all of which will be Two Dollar par value Common Stock."

In your letter you refer to the fact that the corporation in question presents for consideration that in December, 1928, it changed its authorized capital stock from 5,000 shares of $100.00 par value common stock to 200,000 shares of no par value common stock and 5,000 shares of preferred stock of $100.00 par value, and that at that time the Secretary of State did not require payment of filing fee of one-tenth of one per cent on the assumed par value of $10.00 per share, upon the filing of an affidavit of an officer of the corporation that no benefit would accrue to the corporation.
The provision of the present law is Section 25-602, Burns' R. S. 1933, Pamphlet Part, being Section 2 of Chapter 219 of the Acts of 1929 as amended in 1939, and is as follows:

“For filing with the secretary of state a certificate of increase of capital stock, whether par value or no par value, of a domestic corporation for profit, one cent (1¢) per share where the increase is more than one thousand (1,000) shares, and where the increase, whether par value or no par value, is one thousand (1,000) shares or less, ten dollars ($10.00) minimum fee.”

Prior to 1929 the statute provided as follows (Section 7865, Burns 1926):

“For filing with such secretary a certificate of increase of capital stock of any corporation having a capital stock where the amount of increase is ten thousand dollars or under, ten dollars; where the amount of increase is over ten thousand dollars, one-tenth of one per cent. upon the proposed amount of increased capital.”

You will note that the language “a certificate of increase of capital stock” is the same in both the old and present laws. The Appellate Court of this state in the case of Schortemeier, Secretary of State v. Auburn Automobile Company, 88 Ind. App. 513, had before it the question of the method of determining the fee for filing a certificate of increase of capital stock and in determining that question it considered only the par value of the capital stock originally authorized, the par value of the capital stock as authorized by the certificate of increase and deducted the former from the latter and based the fee upon the difference computed according to the method then prescribed. Said opinion gives no consideration to the fact that a part or all of the new stock was to be exchanged or whether there would be an actual increase in the capital account of the company. The amendment of 1929 came after this decision and therefore evidences an intention of the legislature to change the basis from that of par value to a share basis. It would seem to follow that under the present statute you should deduct the number of shares originally
authorized from those authorized by the certificate of increase and charge a filing fee of one cent (1¢) a share upon the difference.

That construction of the statute is fortified by a 1935 amendment (Section 1, Chapter 192, Acts 1935; 25-601 (e) Burns’ Pocket Supplement) to the Corporation Fee Act, which added a definition of capital stock in the following terms:

“(e) The term ‘capital stock’ shall mean the aggregate number of shares into which the capital of either a domestic corporation for profit or of a foreign corporation for profit is divided, whether such shares are declared to have a par value or are declared to have no par value.”

Reading this definition into the section of the act relating to fees for filing a certificate of increase, it would be as follows:

For filing with the secretary of state a certificate of increase of the aggregate number of shares into which the capital is divided, whether par value or no par value, of a domestic corporation for profit, one cent (1¢) per share where the increase is more than one thousand (1,000) shares, and where the increase, whether par value or no par value, is one thousand (1,000) shares or less, ten dollars ($10.00) minimum fee.

I am informed that it has been the practice of your office since the passage of the 1929 Act to compute the filing fee of a certificate of increase in capital stock upon the basis of deducting the number of shares authorized immediately prior to filing the certificate from the number of shares authorized by the certificate of increase and charging one cent (1¢) per share where the increase is more than one thousand (1,000) shares, and where less than one thousand (1,000) shares, ten dollars ($10.00).

This practice is not controlling, but such a practice by a department acquiesced in for a period of years, is taken into consideration as influential by the courts.

Therefore, in my opinion, you should take the number of shares authorized by the certificate of increase, deduct therefrom the number of shares authorized before the filing of said certificate of increase and charge a filing fee at the rate of one cent (1¢) per share on the difference. There will, of course, be certain other fees to be added to this sum.

PURDUE UNIVERSITY: Agronomist—stating legal weight per bushel of shelled corn and corn in the ear.

June 28, 1944.

Opinion No. 62

Hon. S. R. Miles,
Associate in Agronomy,
c/o Purdue University,
Lafayette, Indiana.

Dear Sir:

Your letter of June 15, 1944, received as follows:

"Is there a legal weight per bushel for shelled corn and/or for ear corn? If so, can you give me these legal weights? If there is a law on this subject I should also like to know whether the moisture content of corn is a factor in the legal weight of a bushel."

I wish to advise each of these questions is controlled by Section 69-305, Burns' R. S. 1943 Repl., same being Sec. 1, Ch. 153, Acts of 1917, which in part reads as follows:

"** A bushel of the respective articles hereinafter mentioned shall mean the amount of weight, avoirdupois, in this section specified, as follows:

"**

"Of shelled corn, fifty-six (56) pounds;

"Of corn in the ear until December 1, seventy (70) pounds; corn in the ear after December 1, sixty-eight (68) pounds; **"