PUBLIC INSTRUCTION: Average Daily Attendance,—May attendance at night schools and summer schools be considered in determining number of units to be used in fixing amount of State Aid under Chapter 96 of Acts of 1933 as amended?

March 5, 1943.

Mr. Clement T. Malan,
Superintendent of Public Instruction,
Department of Education,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 20, 1943, as follows:

"Will you kindly give me your opinion relative to the following question:

"1. May the attendance of pupils enrolled in evening and summer classes be included in the average daily attendance in determining the number of units for which a public school corporation may qualify for state support as provided for in Chapter 96 of the 1933 Acts, sec. 3, p. 671, as amended in 1937?"

The right to maintain night schools, special schools or vacation schools is provided by several different statutes, same being Sections 28-2324, 28-1407 and 28-2055, Burns' R. S. 1933. When such schools are maintained in accordance with the terms and provisions of said statutes, they become a part of the course of instruction of the common schools of the state the same as any other courses of instruction.

Section 28-1002, Burns' R. S., December, 1942, Supplement, being Section 2 of the Act referred to in your letter, provides as follows:

"For every unit determined according to the provisions of section three (Sec. 28-1003) of this act, for which a legally licensed instructor is employed and engaged in the work of instruction in grades from one (1) to twelve inclusive, the employing school corporation shall be paid an amount not less than seven hundred dollars ($700). The number of units for which
each corporation qualifies according to section three
(Sec. 28-1003) of this act, shall be certified to by the
state superintendent of public instruction to the audi-
tor of state on or before the tenth day of January and
the tenth day of July of each year, from the records
in the office of the state superintendent of public in-
struction. The term ‘persons engaged in the work of
instruction’ and the term ‘instructor’ shall include
those persons legally licensed as teachers, principals
or supervisors, who are employed under contract and
receive not less than the minimum wage provided for
by the teacher’s minimum wage law. (Acts 1933, ch.
96, Sec. 2, p. 670; 1935, ch. 161, Sec. 2, p. 586; 1937,
ch. 194, Sec. 2, p. 921.)”

It is, therefore, my opinion that your question should be
answered in the affirmative providing said classes are estab-
lished and maintained in accordance with the foregoing stat-
utes and that said classes are conducted by an “instructor”
who is legally licensed as teacher, principal or supervisor,
and who is employed under written contract and receives not
less than the minimum wage provided for by the teacher’s
minimum wage law.

As to the necessity for a written contract, this office has
heretofore ruled:

“* * * in order to be able to use a teacher in mak-
ing up the basis for distribution, such teacher should
be legally employed under a written contract comply-
ing with the statutes * * *.” 1940 Opinions Attorney
General, 24, 26.