PUBLIC INSTRUCTION, STATE BOARD OF: Minimum Salary: Whether the Minimum Salary Law applies to the legally licensed teacher who teaches part time.

January 17, 1942.

Mr. Ellis H. Bell,
Asst. Supt. of Public Instruction,
State Department of Education,
Indianapolis, Indiana.

Dear Mr. Bell:

You have asked for an opinion upon the following questions:

1. May a legally licensed teacher, who is teaching regularly one day per week in some special teaching field be paid less than one-fifth of a month's salary based on the minimum salary law?

2. May a legally licensed teacher, who teaches regularly one-third of a day each day in the week of a school year be paid less than one-third of a month's salary based on the minimum salary law?

3. May a legally licensed teacher be employed to teach from day to day where no other teacher has been regularly employed and be paid less than an amount based on the minimum salary law?

The foregoing questions require consideration of Secs. 28-4302 and 28-4304, Burns' Indiana Statutes Annotated 1933 and also Sec. 28-4319 Burns’, etc., Supp. 1941. The first cited statute requires all contracts between teachers and school corporations to be in writing, signed by the parties, and by Sec. 28-4304, they are required to “state the date of the beginning of the school term, the number of months in the school term, the total amount of salary to be paid during the school year and the number of payments that shall be made during the school year”. This section also provides that a month shall mean not more than twenty school days. Sec. 28-4319 fixes a minimum compensation of $100.00 per month for a minimum term of eight months, with specified additions to such minimum, based upon professional training and teaching experience. This section also contains the following:
"The term 'teacher', as used in this Act, shall be construed to include legally licensed and regularly employed teachers and all the provisions of this Act shall apply to all such teachers, with the exception that kindergarten teachers may be employed for a term of less than eight months."

Whether the teachers referred to in your question are to be paid at a rate controlled by the minimum salary law depends upon whether they are "regularly employed teachers" within the meaning of that term as used in Sec. 28-4319. I do not find that the precise question of what constitutes a regularly employed teacher, within the meaning of the Minimum Salary Law has ever been before our courts.

In deciding a case arising under the Teacher Tenure Law, the Indiana Supreme Court held that a teacher may be a regularly employed teacher of a school corporation, even though she is not employed to teach every school day of the term or every period of every day. (Sherrod v. Lawrenceburg School City (1938), 213 Ind. 392, 394.) In that case it was held that a part time teacher who was regularly employed to teach some subject twelve days a month became, after the required number of years, a tenure teacher and entitled to the benefits of the Teacher Tenure Law. The Court there indicated that a distinction exists between such a teacher and one who is an occasional teacher, teaching intermittently as a substitute or otherwise.

"The law does not require that teachers shall teach every day, or every hour of every day. Such subjects as art or music may require fewer hours of teaching. This is in the discretion of the school authorities. But appellant was undoubtedly regularly employed, teaching the same subject a given number of days per month, over a period of years, and must be considered a regular teacher. The statute, Section 28-4304 Burns' Annotated Statutes 1933, Section 5990 Baldwin's Indiana Statutes 1934, provides that all teachers' contracts shall be in writing, shall state the date of the beginning of the school term, the number of months in the term, the total amount of the salary to be paid during the school year, the number of payments that shall be made during the school year, and provides
that, ‘in this Act, a month shall mean not more than twenty (20) school days’. A contract otherwise conforming to the statute, and in which the month shall consist of less than twenty school days, is not prohibited, and no reason is seen why such a contract is not valid and sufficient to establish tenure rights. It will be noted that, if school is conducted for the ordinary five days of each week, there are more than twenty school days in some months. It is conceivable that a curriculum might be so designed, with subjects so distributed, that no teacher’s services would be required more than twelve days a month. Nothing is seen in the statute which prevents such teacher from attaining tenure status. The evidence shows that the appellant was also teaching in other schools, and it is argued that, if one teaching for less than the full time of the school can acquire tenure status, then tenure rights may be acquired in two school corporations. But there is nothing in the statute that forbids it.”

Sherrod v. Lawrenceburg School City, supra, 394, 395.

The Supreme Court of Minnesota in the case of McSherry v. St. Paul (1938), 202 Minn. 102, 277 N. W. 541, held that “a substitute teacher” came within the classification of “regularly employed” teachers referred to in that State’s tenure act, when she taught continuously in that capacity for a long period, with substantial continuity. The existence of a continuing engagement to serve at such times as the essential service should be required was considered as the test of whether the teacher was a regular or a casual employee. The Court also said:

“Plaintiff’s employment was as regular as that of any of the regular teachers, but rendering the service as to time and place was not. She had to keep herself in constant and immediate readiness to go to any school when and as called upon so to do by the school authorities. The very nature of her work was such that she could take no other job. The record bespeaks her availability at all times and that defendant made use of her services with substantial continuity cannot be denied.”
A similar view was taken in the case of Frye v. Leicester (1938), — Mass. —, 16 N. E. (2d) 41, where the portion of a year during which the teacher was employed only as a part time teacher at a pro rata salary was counted in computing the period required to gain tenure status, the Court expressly refraining from indicating its decision if the employment had been of a merely casual nature.

In Pennsylvania the tenure statute used the term "any regular full time employee duly certified as a teacher" which was construed to include a permanent supply teacher, whose duties were to act as a full time substitute in all grades, (Jones v. Kulpmont School District (1939), 333 Pa. 581, 3 A. (2d) 914) but not to include a temporary supply teacher whose employment was definitely limited to the completion of the school term. (Com. ex rel. Hetrick v. Sunbury School Dist. (1939), 335 Pa. 6, 6 A. (2d) 279.) The absence of the words "full time" from the definition of a teacher, as contained in the Minimum Salary Law, *supra*, makes the reasoning of our own Supreme Court in Sherrod v. Lawrenceburg School City, *supra*, and the highest courts of Minnesota and Massachusetts especially applicable to the question herein involved.

From those holdings it may be concluded that in the absence of a statutory requirement that a teacher shall be a full time employee, she comes within our Minimum Salary Law if duly licensed and employed to teach regularly, though less than full time.

Therefore, in answer to your first question, it must be said that such a teacher who is teaching regularly one full day per week in some special teaching field shall not be paid less than one-fifth of a month's salary based on Minimum Salary Law.

Your third question apparently contemplates a situation wherein a teacher is not a substitute in the sense that she is taking the place of one regularly employed, but temporarily absent, but rather is teaching in a position which has never been filled by any other regularly employed teacher. While the requirement of Section 28-4304 that the total amount of salary to be paid during the year should be contained in the contract cannot be complied with, yet the other requirements of the statute can be complied with. Such a teacher would be considered as regularly employed to fill a designated teaching position and under such circumstances would be required to
render continuous, as distinguished from occasional or casual service.

Therefore, the provisions of the Minimum Salary Law would be applicable.

DIVISION OF PUBLIC SAFETY: Jurisdiction of the chief hearing judge in matters of revocation of licenses to operate motor vehicles by juveniles.

January 20, 1942.

Mr. Mahlon Leach,
Chief Hearing Judge,
Division of Public Safety,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of December 23, 1941, reading in part as follows:

"I am requesting an official opinion as to whether the department has jurisdiction over juvenile cases relative to suspension or revocation of license.

"In view of the provisions of Section 5, Chapter 233, 1941 act, does the Chief Hearing Judge of the Driver's License Enforcement Department of the Division of Public Safety have authority to cite juveniles in for hearing to determine a revocation or suspension of a license and etc."

The section of the Acts of the Indiana General Assembly of 1941, above referred to, reads in part as follows, to-wit:

"Sec. 5. (A) Jurisdiction. The court shall have exclusive original jurisdiction in proceedings concerning any child living or found in the county:

"(1) Who has violated any law of the state or any ordinance or regulation of a subdivision of the state."

We quote only the above part of the section because, after examination of the remainder of the section, we feel that the