Since the Board has set May 1, 1941, as the time for adoption of textbooks and since it is now too late to set a date prior to May 1, we suggest that you proceed to act on the assumption that the action of the Board will be legal. If any question is subsequently raised relative to the legality of the adoption, it can be settled by litigation.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION:

Minimum Wage Law. Whether 1941 Act applies to contracts for school year beginning August 1, 1941.

April 21, 1941.

Hon. C. T. Malan, State Supt.,
Public Instruction,
State House,
Indianapolis Indiana.

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following question:

"Could a teacher's contract entered into by teacher and trustee before May 1st be so written as to avoid the minimum wage law of one thousand dollars ($1,000) which will become effective August 1, 1941?"

The minimum wage law to which you refer is Chapter 41 of the Acts of 1941 which amends sections 2 and 3 of Chapter 315 of the Acts of 1935. Chapter 41, supra, did not contain an emergency clause either in its body or preamble, nor did it contain any specifically named effective date, in consequence of which the Act will become effective when published in conformity with the Constitution, which ordinarily will not be later than sometime in May or June, 1941.

The first problem raised by your question is a problem of construction of Section 2 of the 1941 Act which provides as follows:

"All teachers' contracts entered into for the school year beginning August 1, 1935, and ending July 1, 1936, shall be made in accordance with the provisions of section 1 of this act. All teachers' contracts entered into
for the school year beginning August 1, 1941, and each year thereafter, shall be made in accordance with the provisions of section 2 of this act: Provided, however, that no contract for the school year, beginning August 1, 1940, shall be increased under the provisions of section 2 of this act.” (Our italics).


I think it is obvious that the language “section 2 of this act,” supra, refers to section 2 of the original act as amended, which is section 1 of the 1941 act. Such underlined language, therefore, freely expressed, means simply this—that all teachers’ contracts entered into for the school year beginning August 1, 1941, and each year thereafter shall be made in accordance with the higher minimum wage scale contained in section 1 of the 1941 Act. Thus the contracts affected by the Act are clearly defined as the ones entered into for the school year beginning August 1, 1941, and for each year thereafter. In this connection, it is perhaps significant that the provision is not “All teachers’ contracts hereafter entered into,” which would limit them to those entered into after the effective date of the Act. The purpose seems to be to affect all contracts for the school year beginning August 1, 1941, and for each year thereafter.

The next question, therefore, is whether this legally can be done, notwithstanding a contract previously entered into upon the basis of the minimum wage existing prior to the effective date of the 1941 Act.

Chapter 77 of the Acts of 1939 in providing for the renewal of teachers’ contracts given recognition to the fact that conditions may arise between the date of a contract and its renewal under said Chapter 77 which under the Minimum Wage Law would require an increase in salary. In other words, the required renewal under the terms of that act at the same wage as for the previous years is expressly limited by the provision “unless increased by the provision of * * * the Teachers’ Minimum Wage Law.” That increase might conceivably come about from an additional year’s experience, from additional professional training (Chapter 315, Acts of 1935; also Chapter 41, Acts of 1941) or from legislation. (Chapter 41, Acts of 1941.)

I do not think the statutes provide any particular date when a teacher’s contract must be actually signed. In view of that fact, the question arises as to whether the appropriate school
officer could, by the early securing of the teacher’s signature to a contract, deprive the teacher of the increase provided by law for an additional year’s experience; or could a teacher be deprived of the increase allowed upon the basis of additional professional training, because the contract was signed before the additional training (which ordinarily is taken during the summer vacation period), is received? I think this question must be answered in the negative. That is, the increase becomes operative when the conditions of the increase actually are met. And as the contracts arising out of Chapter 77, supra (Acts of 1939, page 457), I think the same rule might, with equal reason, be held to apply where the increase is brought about by legislation.

But there is a group to which Chapter 77, supra, does not apply. What rule shall govern in their case? The question involved, of course, is the question of the impairment of the obligation of a contract. This question, however, is not available to the teacher. He has been benefited by Chapter 41 of the Acts of 1941. Is the question available to the various school units?

In the case of Bolivar Township, etc. v. Hawkins et al., 207 Ind. 171, the court had before it the question of the constitutionality of Chapter 78 of the Acts of 1933 releasing personal sureties without compensation who had signed depository bonds within a designated period of time. The court affirmed the decision of the lower court upholding the Act, by a two to one decision, and on the subject of the impairment of the obligation contracts used the following language on page 189:

"The appellant contends that the act violates Section 10, of Article 1 of the Constitution of the United States, and Section 24, of Article 1 of the Constitution of Indiana.

"Both of these sections provide that no law shall be passed impairing the obligation of contracts.

"Does the act impair the obligation of a contract?

"The appellant, in the instant case, is a political subdivision of the state, and a creature of the legislature and acts as the agent of the state. It acts pursuant to statutory authority. The real contracting party is the state and it has been held in many cases that the state may withdraw the power to so contract, that it may release the liability created and without the consent of the
agent. And by the great weight of authority this does not amount to the impairment of contracts as provided for in the Federal and State Constitutions."

While this opinion was by only two judges, it has since been followed by the court in State ex rel. v. Jackson, 215 Ind. 219, where the court said on page 226:

"It appears to have been settled by this court that the release of a public official from liability for funds lost on account of the failure of the bank in which such funds were deposited does not impair the obligation of contracts. Bolivar Twp. Bd. of Fin. of Benton Co. v. Hawkins (1934), 207 Ind. 171, 191 N. E. 158, 96 A. L. R. 271, McClelland, Trustee v. State ex rel. Speer, supra, and Johnson v. Board of Commissioners of Randolph County (1895), 140 Ind. 152, 39 N. E. 311, were in effect overruled by the Bolivar case, supra. The decisions of this court now appear to be in accord with the weight of general authority upon the subject."

It was again followed in the case of Kassabaum, Admr., et al. v. Board of Finance of the Town of Lakeville, 215 Ind. 491, where the court said on pages 498 and 499:

"The remaining questions raised by the appellee as to the validity of the Public Sureties Relief Act of 1933 were fully considered, discussed and decided in the case of Bolivar Township Board of Finance of Benton County v. Hawkins (1934), 207 Ind. 171, 191 N. E. 158. The appellee insists that the opinion in the Bolivar case, supra, does not constitute a controlling precedent because only two of the judges joined in the opinion of the court in that case. ** *

"When the provisions of the 1907 General Depository Act were repealed in 1932 the class of sureties who could possibly be affected by the 1933 Relief Act became sealed. The 1933 act only purported to release those sureties who had become obligated prior to 1933. This relief statute only applied to situations which had been created prior to the passage of the act. It acted only retrospectively in so far as the class of those to be relieved was concerned. It is only fair to assume that in the intervening six years since the passage of said Act, practically all of the claims which could possibly
arise under said act have been fully settled and the sureties released pursuant to the terms of said statute and on the authority of the Bolivar case. For this court at this late date to repudiate the decision in the Bolivar case and now hold the act unconstitutional would only add confusion to the situation. This court could not now be justified in holding the statute invalid without the most convincing and unanswerable reasons therefor. *We find no such overwhelming reasons for holding this act unconstitutional.*” (Our italics.)

The principle announced in the above decisions, I think, is equally applicable here, and while there was a vigorous dissenting opinion in each of two of the cases, it would seem that the court is definitely committed to the principle upon which the decisions are based. Applying the same reasoning to your question, Chapter 41 of the Acts of 1941, as herein construed, does not unconstitutionally impair the obligation of a contract so far as concerns the State or its subdivisions.

The answer to your question is in the negative.

AUDITOR OF STATE: Distribution of gasoline tax to cities and towns where town has been organized subsequent to a decennial census.

April 21, 1941.

Mr. Richard T. James,
Auditor of State of Indiana,
State House,
Indianapolis Indiana.

Dear Sir:

Your letter of the 17th inst. relating to your inability to determine if the Town of ........... of .......... County is entitled to share in the distribution of gasoline tax monies under Chapter 168 of the Acts of 1941, has had my attention.

Your letter points out that the Town of ........... in the County of ..........was incorporated after the United States Census had been taken in the year 1940. The Act above cited makes distribution of these monies and funds to depend upon the population of the towns, cities and counties involved, ac-