From careful examination of all sections and provisions of the law, and taking into account as well practices and customs followed in the insurance business and by the Department of Insurance of long standing which have never recognized the institution of "life insurance broker," it is my opinion that the law does not contemplate and does not authorize a "life insurance broker" either as a corporation or as a natural person.

PUBLIC INSTRUCTION: Teachers' contracts, whether same must be supported by prior appropriations.

Teachers' Contracts: Whether same must be supported by prior appropriations.

School: Whether teachers' contracts must be supported by prior appropriations.

September 10, 1940.

Hon. Floyd I. McMurray,
State Supt. of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that school budgets and appropriations are made on the basis of the calendar year, such budgets and appropriations being made sometime in September of each calendar year for the subsequent calendar year.

Under date of June 1, 1938, in a letter addressed to the State Examiner this Department held, basing its opinion upon the case of Mitcheltree School Township v. Baker, 53 Ind. App. 472, that:

"It is apparent from the above authorities that teachers employed by the township trustee can force payment of the minimum salary authorized by law regardless of the existence of an appropriation providing funds for such purpose."
The Department further held that:

"* * * only such contracts in excess of the minimum wage scale are enforceable where funds are appropriated to meet such obligations."

Opinions Attorney General 1938, page 224.

The decision in the Mitcheltree School Township v. Baker case, supra, was based upon the provision of the township reform act which the court held applied to township trustees acting as trustees of their respective school townships, and applied likewise to contracts made by such trustees with their teachers as well as to all other contracts made in behalf of the township. The obvious result of this holding was to make it impossible for a township trustee to contract with his teachers prior to the usual opening of school for a longer period than until December 31st of that year, since the appropriation for the following calendar year would not then have been made unless the contract was also for the calendar year which manifestly would not be very satisfactory.

In an opinion subsequently rendered by the Department, it was pointed out that the above limitation did not apply to teachers' contracts made by school cities and school towns since there was no provision with respect to school cities and school towns comparable with the Township Reform Act.

Opinions of Attorney General 1930, pages 137, 139.

The Legislature in 1939 enacted further legislation on the subject of teachers' contracts as embodied in Chapter 77 of the Acts of 1939, and in view of such legislation you now submit for an official opinion the following question:

"Can a school corporation legally contract teachers for the school year of 1940-41 at a salary which is in excess of the minimum wage law, prior to the actual appropriation in September?"

The requisite of a prior appropriation to sustain a teacher's contract, as already indicated, is based upon the Township Reform Act. However, since the passage of that Act in 1900 certain changes have taken place in the legislation of the
State, which have modified the Township Reform Act as applied to teachers' contracts. An example of this, of course, is the Teachers' Tenure Law. Obviously, the prior appropriation is not a fundamental requisite as applied to such a contract. In the case of Rutherford School Township v. Craney, 51 Ind. App. 236, it was held that such legislation did not apply to defeat the collection of the minimum wage as provided by statute.

We pass now to a consideration of Chapter 77 of the Acts of 1939 to which you have referred. This Act reads as follows:

“That every contract of employment hereafter made by and between a teacher and a school corporation shall be renewed and continue in force on the same terms and for the same wages unless increased by the Teachers' Minimum Wage Law, for the school year next succeeding the date of termination fixed therein unless on or before the date fixed for the termination of said term of school, but in no case later than the first day of May, the teacher shall be notified by the school corporation in writing that such contract will not be renewed for such succeeding year or unless such teacher shall deliver or mail by registered mail to such school corporation his or her written resignation as such teacher or unless such contract is superseded by another contract between the parties.”


(Note: The dots indicate omissions which are not regarded as important in the consideration of your question.)

This Act went into effect on June 14th, 1939, at one o'clock P. M., and by the terms of the Act its provisions apply to every contract of employment made between a teacher and a school corporation thereafter, and what I shall hereafter say applies to such contracts.

Obviously, this Act appears to effect a renewal of every contract to which it applies unless at least one of three things occurs to prevent.
First. The renewal may be prevented by the notice required by the Act given by the township trustee to the teacher within the time set out therein.

Second: The renewal may be prevented by the resignation of the teacher.

Third: The renewal may be prevented by entering into a contract superseding it.

Obviously, a prior appropriation is not a requisite of such a renewal contract because the notice to the effect that the contract is not renewed in order to prevent its renewal must be given not later than the first day of May, long before the appropriations for the next calendar year are made. In this connection I think I should call your attention to the fact that such renewal is “for the school year next succeeding the date of termination fixed therein.” This doubtless refers to the period from August 1st to July 31st of the next succeeding calendar year. (See on this subject Acts of 1935, p. 1511, which seems to give recognition to a school year as being the year beginning on August 1st and ending on July 31st of the succeeding calendar year, although I do not find any very definite definition of the term “school year.”)

It follows from what has been said that as to contracts within the provisions of Chapter 77 their renewal is not predicated upon a prior appropriation. The express provision of the statute, except in the contingencies above stated, requires that these contracts shall be renewed “for the school year next succeeding”, etc., clearly carrying the same beyond the period of the time for which an appropriation has been made. Thus, the provisions of the Township Reform Act, which led to the decision in the case of Mitcheltree School Township v. Baker, supra, no longer has application to the tenure contracts, nor to contracts renewed under Chapter 77 of the Acts of 1939, nor to contracts where the wage provided is only the minimum wage. Moreover, as already held in the opinion referred to, Opinions of Attorney General, 1939, p. 137, the provision has no application to school cities and school towns in their contracts with teachers.

Your question is answered accordingly.