PUBLIC INSTRUCTION, DEPARTMENT OF: Teacher's contracts, whether mandatory that they be written; if not written, whether school corporation is entitled to state funds.

February 7, 1940.

Mr. Floyd I. McMurray,
Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in part as follows:

"In order to clarify the law respecting whether or not it is mandatory upon the trustee to enter into written contracts with teachers, I respectfully request that you render an official opinion on the following:"

You submit the following questions:

"1. Is it obligatory upon township, town and city schools to enter into a written contract with such teacher?

"2. If said officials do not enter into a written contract with a teacher, is that school corporation entitled to receive state funds?"

Section 28-4302 of Burns' Indiana Statutes Annotated (1933) provides as follows:

"All contracts hereafter made by and between teachers and school corporations of the state of Indiana shall be in writing, signed by the parties to be charged thereby, and no action shall be brought upon any contract not made in conformity to the provisions of this act."

Section 28-4304 of Burns' Indiana Statutes Annotated (1933) provides as follows:

"All contracts hereafter made by and between teachers and school corporations shall be in writing; shall state the date of the beginning of the school term, the number of months in the school term, the total amount of the salary to be paid during
the school year, and the number of payments that shall be made during the school year: Provided That, in this act, a month shall mean not more than twenty (20) school days.”

I think from the foregoing provisions of the statute that it is obvious that no binding teacher’s contract exists until the same has been reduced to writing containing the provisions required by the statute and signed by the parties to be charged. Moreover, in view of the requirement of the statute that school trustees “shall employ teachers” etc., while mandate would not lie to compel a trustee to employ any certain or fixed number of teachers, it seems to me that the plain duty exists requiring the employment of such teachers as are used.

See Burns’ Indiana Statutes Annotated (1933), Section 28-2410.

In other words the duty to employ seems to me to contemplate the entering into valid written contracts. Your first question is answered accordingly.

In answering your second question, I think it is clear that in order to entitle a school corporation to a distribution of State Funds as provided in Section 28-1001 et seq. of Burns’ Indiana Statutes Annotated (1933), December, 1939, Pocket Supplement, the instructors, the number of whom is used to fix the amount, must be employed under contract which means, of course, a written contract complying with the law. Note the language of the statute:

“For every unit determined according to the provisions of section three (Section 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 (12) 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 (Section 28-1003) of this act, shall be certified to by the state superintendent of public instruction to the auditor 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 superin-
tendent of public instruction. 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.”

Burns’ Indiana Statutes Annotated, 1933 (our italics), December, 1939, Supplement, Section 28-1002.

Your second question is too broad to admit of a clear and satisfactory categorical answer, but I think the intention is that in order to be able to use a teacher in making up the basis for distribution, such teacher should be legally employed under a written contract complying with the statute. In other words, in view of the fact that the only binding teacher’s contract which may be entered into is a written contract complying with the statute, the words “is employed” or, as later used in the section supra “employed under contract”, means employed under a written contract.

See Board of School Commissioners v. State ex rel., 209 Ind. 498 at p. 505.

LABOR, DEPARTMENT OF: Use of funds, issuance of bonds by township or county officers to sponsor W.P.A. projects.

February 8, 1940.

Hon. Thomas R. Hutson,
Commissioner of Labor,
State House,
Indianapolis, Indiana.

Dear Mr. Hutson:

I have your letter of February 6, 1940, in which you ask the following questions:

“1. Can county or township trustees legally apportion their funds to sponsor W.P.A.?