In reply to your last question your conclusions as to the proper distribution of funds to counties containing a city of the first class are correct, namely, in counties wherein is located a city of the first class the funds annually allocated to such counties shall be divided so the county shall receive 2/5 of the allotment and the city of the first class shall receive 3/5 of the allotment. As to counties containing cities of the second class, or cities of the second class and cities of the third class, your attention is directed to an opinion from this office rendered to Honorable William P. Cosgrove on May 7, 1937, as to the proper distribution of these funds as between second and third class cities.

I think this opinion will be sufficient to answer your questions with reference to such counties in which second and third class cities are located.

---

PUBLIC INSTRUCTION, DEPARTMENT OF: County Superintendent of Schools—Salary increase, how fixed.

March 16, 1938.

Hon. Grover Van Duyn,
Assistant Superintendent of Public Instruction,
Department of Education,
Indianapolis, Indiana.

Sir:

This will acknowledge receipt of your letter of March 11, in which you submit the following questions:

"1. May the county council appropriate an amount less than that fixed by the township trustee in their recommendation for the salary of the county superintendent?

"2. What recourse is left for the county superintendent of schools in case the appropriation is less than the amount fixed in the recommendation by the trustees?

"3. Is the salary, as fixed by the legally authorized bodies as referred to herein, fixed for the entire term for which the county superintendent is elected or may it be adjusted and reestablished annually"?
In answer to question No. 1, your attention is directed to Section 49-1014, Burns' Indiana Statutes, 1933 Revision, which reads as follows:

"The salaries of the county superintendent as herein stipulated may be increased upon written request of a majority of the township trustees to the county council, who may increase such salary to an amount which in the judgment of the county council may seem proper."

This statute above quoted gives the county council authority to increase the statutory salary of the county superintendent to any amount which the council may deem proper. This is not controlled by the amount suggested by the township trustees.

Since the county council is given authority to fix the amount of increase, if any, their action is final and conclusive so far as the county superintendent is concerned, providing, of course, that such action of the county council does not operate to reduce statutory salary provided for said office.

In answer to your third question, your attention is directed to the case of State, ex rel., Fox v. Board of County Commissioners, 203 Ind. 23, wherein it is held that "county superintendents of schools are not hired as contended by appellee, they are elected for a specific term of four years. The salary such officer was to receive was fixed by law. The salary pertains to the official and not to the individual in a contractual relationship."

The salary having been fixed for the office, in my opinion can not be increased during the term of such official.

Section 2, article 15 of the Constitution of the State of Indiana provides as follows:

"nor shall the term of office or salary of any officer fixed by this constitution or by law be increased during the term for which such officer was elected or appointed."

It is my opinion, therefore, that the above provisions prevent an increase in salary during the term of office.