PUBLIC INSTRUCTION, DEPARTMENT OF: Uniform teacher's contract form of such contract. Distribution of school funds, whether superintendent can withhold same from units not using the uniform contract.

April 7, 1938.

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

Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

"1. Enclosed you will please find a teacher's contract form. Does this form comply with the statutes pertaining to the employment of teachers?

"2. May the State Superintendent of Public Instruction penalize a corporation which does not use this form in the employment of its teachers by withholding any state funds which are provided by statute for the distribution to school corporations?"

By section 1 of an Act enacted by the General Assembly in 1899 (Acts of 1899, page 173), it is provided:

"That 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 2 of said Act (there being only two sections) provides as follows:

"For the purpose of carrying this Act into effect the school trustees of the several school corporations of this state shall provide a public record of uniform blank contracts to be carefully worded under the direction of the superintendent of public instruction, and cause such contracts to be signed therein, which record shall be deemed a public record open to inspection by the people of their several school corporations."

It is the above section 2 which provides the authority for the preparation of the form accompanying your request, which

Your first question is as to whether this form complies with the statutes. I think it does, and the question, therefore, is answered in the affirmative. In arriving at this conclusion, I am persuaded that the authority conferred by the Act does not give an unlimited authority to the superintendent to do more than to prepare a form which shall include the essential elements of a binding agreement between the parties, so worded as to suggest to the parties by the wording and the blanks the necessary points upon which an agreement should be consummated and to enable them thereby to provide a sufficiently definite written agreement as to prevent controversy. In addition, the superintendent doubtless was empowered to write into the form such provisions as the statutes required and as to which there could be no difference of opinion, and I think it was his duty to do so. It will be noted, however, that the Act gives no directions to the superintendent as to what the contract forms are to contain, the directions being limited to the direction that they shall be "carefully worded."

In 1921, a further Act was passed (Acts of 1921, page 195), providing, among other things, that such contracts "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." This legislation, of course, furnished more definite directions as to what the contract should contain, and after its enactment, a contract form which did not provide for the insertion of the above data would not strictly comply with the law, although in Brumfield, Tr., vs. State, ex rel. Wallace, 206 Ind. 647, the absence in the contract of the date of the beginning of the school term was held not to invalidate such contract where the parties acted upon it, the teacher teaching, and the corporation paying for the service.

The contract form submitted seems to anticipate and provide for all the absolutely statutory requirements with respect to such contracts and, in my opinion, complies with the law. Your first question is answered in the affirmative.
Your second question requires a consideration of the statutes providing for the distribution of certain state funds to local school corporations for school purposes, but before I call attention to them, I desire to point out that in the above statute with respect to uniform contracts, there is no provision authorizing the state superintendent to withhold his distribution of state funds to any corporation for the reason that said corporation does not use the uniform contracts. The sole penalty which attaches to such failure, so far as that particular Act is concerned, is that "no action shall be brought upon any contract not made in conformity to the provisions of the act." Acts of 1899, page 173.

My attention has also been called to the Act of 1933 amending the Teacher Tenure Act, and especially to that provision which provides that teachers' contracts "shall be uniform and of the form and wording as prescribed by the state superintendent of public instruction" (Acts of 1933, page 717); but neither that provision nor any other part of that Act authorizes the state superintendent to withhold distribution of state funds to any school corporation otherwise entitled to it upon the sole ground that the uniform contract is not used, and apparently the sole effect of the provision is to penalize the parties by not allowing an action to be brought upon a contract unless the contract is in conformity with the terms of such provision and possibly to limit the rights of teachers in acquiring a tenure status.

If the superintendent, therefore, has any right to withhold distribution because of the failure to use the uniform contract, that right must be found in some statute other than the statutes providing for such contracts. I turn, then, to an examination of the statutes governing the distribution of state funds to local school units. There is certainly nothing in the Act for the distribution of the School Relief Fund which expressly authorizes the withholding of funds by the superintendent upon the sole ground that the uniform contracts are not used, although the state department of education can, for all practical purposes, control the matter through its action on teachers' contracts. See section 28-903 of Burns' Indiana Statutes Annotated (1933). I take it that you are chiefly concerned with the distribution authorized by section 28-1001 of Burns' Indiana Statutes Annotated December 1937 Cumulative Pocket Supplement, which provides as follows: