PUBLIC INSTRUCTION, DEPARTMENT OF: Contracts with teachers by school boards when action is taken at an illegal meeting, whether same are binding. May State superintendent refuse reimbursement in such cases under School Relief Law? May State Board revoke commission on account of such action on teachers' contracts?

August 19, 1938.

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

Dear Sir:

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

"1. Are contracts entered into under such conditions valid?

"2. When contracts have been consummated under such conditions in state school relief corporations, is the State Board of Education within its legal rights in refusing approval for reimbursement under the state school relief law?

"3. When contracts have been entered into under such conditions, may the State Board of Education revoke the commission of the school?

"4. When contracts have been consummated under the conditions set out above, may the state superintendent withhold the state school tuition funds?

"5. May the state board require evidence that school commissioners' meetings have been held under the provisions of the law in those cases where contracts and other transactions are performed which require the approval of the board for reimbursement under the state school relief law?"

The above questions are predicated upon the assumption of the following statement, namely:

"Two members of a school board consisting of three, met without notice to the entire board or public, either by press or other notification, at a time not established by statute or by an official board action and transacted
business for the school city by the employment of a superintendent, principal and teacher."

Upon the basis of the statement of facts as above set out I think the answer to your question No. 1 should be in the negative. While it is true that the majority of such a board may bind the school unit by action taken in a meeting which has been legally convened and organized, I think the acquiescence or action of such a majority in a meeting which has not been legally convened and organized amounts to nothing more than the individual action of the members which is not sufficient.

See Eigemann v. Board of Commissioners of Posey County, 82 Ind. 413 at pages 415-416.

The answer to your first question is in the negative.

The answer to your second question is in the affirmative. In the first place I have held in my answer to your first question that the contracts are not valid. This would certainly be grounds for the withholding of approval by the State Board of Education. Moreover without the approval of the State Board of Education in cases as are covered by your second question, such contracts are null and void.

Burns' Indiana Statutes Annotated 1933, section 28-903;

In answering your third question I desire to say that the statute is not very clear as to the extent of the authority of the State Board of Education to revoke the commission of a school. The power to revoke a commission apparently must rest upon the failure to comply with standards fixed by the board related to the quality and character of work done; and I think the board has a pretty wide discretion in this matter except as to matters specifically set out in the statutes. Such action, however, should always be pursuant to rules and standards which operate uniformly throughout the state.

Question No. 4 presents a question which must be answered with reservations. In the first place, so far as concerns reimbursement under the state school relief law as already indicated, such reimbursement is predicated upon a legal contract and since, under the conditions set out, I have held that there
is no legal contract, there is no right to reimbursement under the state school relief law. The same is true as to the distribution of funds transferred to the school tuition fund from the general fund of the state, pursuant to sections 28-1001 and 28-1002 of Burns' Indiana Statutes Annotated 1933, Supplement of June, 1938. This distribution is based upon the number of legally licensed instructors employed and engaged in the work of instruction. The amount of this fund distributed to any particular unit would have to be based upon the number of teachers legally employed. Those who are not legally employed could not be considered. With the above exceptions I think your fourth question should be answered in the negative. The answer to the fifth question is in the affirmative.

CONSERVATION, DEPARTMENT OF: Notary public. State employe not entitled to payment of bond from public funds.

August 19, 1938.

Hon. Kenneth M. Kunkel,
Director, Division of Fish and Game,
Conservation Department,
State of Indiana,
Indianapolis, Indiana.

Dear Mr. Kunkel:

This will acknowledge receipt of your letter of August 18, in which you ask for an opinion as to whether or not the state may pay the costs necessary to the appointment of an employee in your department to act as notary public.

In reply to this question, your attention is called to section 49-115 of Burns' Indiana Statutes, 1933 Revision, which provides that:

"Every public official in the State of Indiana, elected or appointed to any public office, employment or position of trust, ** who, by virtue of the provisions of any law of this state, ** is required to execute and furnish a bond or other like obligation, conditioned for the faithful discharge and performance of the duties of the office, employment or position to which such public official or employee shall have been or shall be elected