"The auditor of the state shall transfer semi-annually, upon the order of the department of treasury, from the general fund of the state treasury to the school tuition support fund, such amount of money, computed as hereinafter provided, as may be available for the respective school corporations of this state to be distributed according to the provisions of this Act, provided that the amount of money transferred and distributed shall not be less than seven hundred dollars ($700) for each unit as provided in section two (sec. 28-1002) of this Act. One-half of the amount of money so transferred shall be transferred on the fifteenth day of January and the other half shall be transferred on the fifteenth day of July of each year or as soon thereafter as possible in each instance."

"Section two of this Act" above referred to in section 26-1002 of the above Cumulative Pocket Supplement, and provides as follows:

"For every unit determined according to the provisions of section three (sec. 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 qualified according to section three (sec. 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 superintendent 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." (Our italics.)

It has been urged that the language in italics of the above quotation operates to prevent a distribution except as based upon such number as the unit otherwise qualifies for and
except within that number where it is shown that there are teachers holding contracts written upon the uniform blank forms. This suggests a consideration of the question as to when a teacher is employed under contract. It apparently is the theory of those who urge that a distribution of the above described state funds cannot be made where the same depends upon the actual employment of licensed teachers under contract, that such contract must be in the exact wording of the form prepared by the state superintendent. In other words, that any deviation from the uniform form prescribed by the state superintendent operates to render the contract void so that there is no employment. It seems to me that such a result does not follow from the language of the several Acts bearing upon teachers' contracts. Beginning with the 1899 Act, already referred to, it is provided that “no action shall be brought upon any contract not made in conformity to the provisions of this Act.” Yet, in *Hall v. Delphi-Deer Creek Tp. School Corporation*, 98 Ind. App. 409 at page 415, after the enactment of the 1921 Act, the court indicated clearly that a literal following of the uniform blank form is not required. Note the language of the court:

“Under these statutes such contract for employment of school teachers must be in writing and signed by the parties to be charged thereby; to do this, however, it is not necessary that the signature of the parties shall all be upon one paper. This contract may consist of different papers executed by the parties, and will constitute a contract in writing within the statute. The written order of the board of trustees of appellee has specified the name of the teacher, the amount of salary to be paid, and the year for which she was employed; this and the other writing which appellee ordered the superintendent to prepare and cause to be signed by appellant constitute a contract in writing, signed by the parties as contemplated by the statutes above referred to. These two papers taken together embodied the terms of the statute for the making of such a contract; that is, they contained the date of the beginning of the school term, the number of months in the school term, the total amount of salary to be paid during the school year, the number of payments that shall be made
during such school year. The fact that the terms of this contract were in two different instruments, each signed by one of the parties, makes it a contract in conformity with the statute, for which appellee would be liable in damages for its breach."

Moreover, in *Brumfield, Tr., vs. State, ex rel. Wallace*, 206 Ind. 647, the court sustained a contract even though one of the terms required by the statutes had been omitted where it appeared that the parties had acted thereon the same as if such term had been included.

It seems to me that the statutes have made it very plain that teachers' contracts must be in writing and must contain certain provisions therein set out; also that the state superintendent is required to prepare a "carefully worded" uniform form to be used by the several school corporations, but I doubt whether that authority goes further than to authorize him to put into the contract in proper form the statutory requirements, and where that is substantially followed, I do not think the addition of other matters would wholly invalidate the contract. The most that it could do would be to invalidate it as to the additional matters, but insofar as such a contract contains the requirements which the statute provides must be in the contract, I think it would be sufficient to constitute an employment within the meaning of the statute for the distribution of state funds.

Those who urge that the superintendent may withhold distribution of state funds as a penalty for failing to use the uniform blank in the employment of teachers rely upon the language of the 1933 amendment to the Tenure Law to the effect that the teachers' contracts "shall be uniform and of the form and wording as prescribed by the state superintendent of public instruction." But that Act does not suggest that any such penalty as is indicated by your question should follow the failure to use the form, a penalty which would fall, not upon the guilty official, but upon the innocent taxpayer and school child.

It should be noted that the distribution Act under consideration does provide a penalty under certain circumstances. Section 28-1007 of Burns' Indiana Statutes Annotated (1933) provides as follows:
"On failure of the employing official or officials of any school corporation in the state to file with the state superintendent, by the date specified, the reports required by this Act, such corporation shall be subject to diminution of one hundred dollars ($100) in the next apportionment of the above prescribed revenue by the state superintendent. The sum thus withheld may be collected from such employing school official or officials, in a suit before a justice of the peace, prosecuted in the name of the state, by any person living in such school corporation who has children attending the schools of such school corporation. Such suit shall be commenced within two (2) years from the time when such report was due, and not afterward; Provided, That such school official or officials may discharge himself or themselves from liability to such suit by a certificate of the postmaster that such report was mailed in due time, together with an affidavit of the employing official or officials of that fact."

This is significant of the fact that the Legislature in expressly providing for the above penalty upon the above ground intended that no other diminution of the distribution was to be made. Of course, a school corporation would not be entitled to a distribution upon the basis of a certain number of teachers employed if there were not that many employed, but in arriving at that question, I doubt whether the superintendent would be authorized to take a technical view of the question which might result in penalizing innocent taxpayers and innocent school children and in the very unequal distribution of the fund.

In view of the use of general terms such as "employed" and "employed under contract" in the distribution Act now under consideration, and in the absence of an express provision therein that the employment must be evidenced by a contract written upon the uniform form and without any deviation therefrom, I think the superintendent would be unauthorized to withhold distribution for the sole reason that the uniform form has not been used.

Your second question is answered in the negative.