tained in Sec. 2 of said statute, as well as the other provisions of said section of said statute, when considered in connection with such Sec. 1 of said original Act (Burns' [1948 Repl.], Section 28-4332), as well as its subsequent amendments, a combination of professional training and of years of teaching experience, are to be considered as the proper elements to be given credence in the formulation of such schedule.

* * *

From the foregoing, it is apparent the salary schedule for a teacher of like years of experience and years of training, in an amount not less than the Minimum Salary Law, must be paid said teacher for nine months of service under said contract and that a proportionate additional amount of salary for the last three months, based upon the salary fixed in said schedule, must be paid the teacher who is on a twelve month’s contract.

OFFICIAL OPINION NO. 42

August 10, 1964

Hon. Charles E. Bosma
State Representative
1950 Albany Street
Beech Grove, Indiana

Dear Representative Bosma:

Your letter of July 22, 1964, has been received requesting an Official Opinion on the following questions:

1. In a city of the fourth class such as Beech Grove can the mayor veto the selection made by a majority of the city council?

2. When a member of a school board has resigned and an appointment is made to the school board, is this appointment for the unexpired term or for a full term?

The City of Beech Grove, Indiana, is a city of the fourth class having a population of less than 58,000. As such, the
1963, Ch. 251, Sec. 1, as found in Burns' (1964 Supp.), Section 28-4333, provides: "Should the school term, contract or appointment in any school corporation be more or less than nine [9] months the basic salary as above set out shall be proportionately increased or decreased as the case might be * * *" Therefore, the Minimum Salary Law would require such a contract for twelve months to be proportionately increased above the minimum salary for nine months for a teacher with the years of experience and years of training possessed by the person in question.

A like result was reached in an Official Opinion of this office, being 1949 O. A. G., page 387, No. 101, where it was held an attendance officer, being subject to the Minimum Teachers' Salary Act, and having a twelve month's contract must be paid a proportionate increase for the additional months.

In 1963 O. A. G., page 303, No. 56 at page 305, it was held:

"Although all statutes applicable to particular school corporations do not specifically refer to salary schedules, all boards of school trustees, or similarly named boards which are empowered to contract with teachers are bound by the above teachers' contract provision and by the so-called Minimum Salary Law, being the Acts of 1945, Ch. 231, as amended, as found in Burns' (1963 Supp.), Sections 28-4332 and 28-4333, and are required to adopt salary schedules. Contracts with individual teachers are based on such salary schedules."

Likewise, in 1959 O. A. G., page 168, No. 35, in considering the establishment of salary schedules in the public systems, on page 171 of the opinion, it is stated:

"If the foregoing is true, the statute seems to require, if the statutory minimum salary schedule is not followed, a salary schedule for teachers not less remunerative, 'which shall then be effective as a minimum schedule for all teachers within that system during the year or years for which it is adopted.' From the definition of the term 'professional training' con-
appointment of its board of school trustees of said city school corporation is controlled by Acts of 1905, Ch. 141, Sec. 1, as amended, as found in Burns' (1964 Supp.), Section 28-1201, which, in part, reads as follows:

"The common council of each city and the board of trustees of each incorporated town of this state shall at a regular meeting of such common council or board of trustees, after the incorporation of such city or town elect three [3] school trustees one of whom may be a woman, who shall hold their offices one [1], two [2] and three [3] years, respectively, from and after the first day of the next succeeding August, and not more than two of whom shall be adherents of the same political party. The term of each of said trustees shall be determined by lot at the time of such election by such common council or board of trustees, and annually thereafter the common councils of each city and the board of trustees of each incorporated town, at their regular meetings in the month of June, shall elect one [1] school trustee, who shall hold his office for three [3] years from the first day of the next succeeding August * * *"

It is to be noted the above statute makes no reference to or requirement that such appointment be submitted to or approved by the mayor of such city. Likewise, an examination of the cases which have construed said statute on other questions, but which necessarily referred to the appointment of the school board member by the common council, make no reference to any such required action by the mayor of the city. These cases include the cases of State ex rel. Warren et al. v. Ogan et al. (1902), 159 Ind. 119, 63 N. E. 227; Koerner v. State ex rel. Judy (1897), 148 Ind. 158, 47 N. E. 323; The School Town of Milford v. Powner (1890), 126 Ind. 528, 26 N. E. 484; Blakemore v. Dolan et al. (1875), 50 Ind. 194; Sackett v. The State ex rel. Foreman (1881), 74 Ind. 486.

Acts of 1905, Ch. 129, Sec. 52, as found in Burns' (1963 Repl.), Section 48-1406, provides:

"The common council of every city shall have power to pass all ordinances, orders, resolutions and motions
for the government of such city, for the control of its property and finances and for the appropriation of money. No appropriation shall be made for the payment of money otherwise than by ordinance, specifying by items the amount thereof and the department for which the appropriation is made. The council may prescribe by ordinance its own rules. No ordinance, order or resolution of the council shall become a law, or operative until it has been signed by the presiding officer thereof, and approved in writing by the mayor, or passed over his veto, as hereinafter provided, and, whenever necessary, promulgated according to law. No ordinance shall be passed on the same day, or at the same meeting, that it is introduced, except by unanimous consent, and then only in case there are present and voting at least two-thirds of all the members-elect of the council. Every ordinance imposing a penalty or forfeiture for the violation thereof shall, before the same shall take effect, be published, once each week for two [2] consecutive weeks, in a newspaper of general circulation printed in such city: Provided, That in case of insurrection, riot, pestilence, conflagration or in other case of urgent necessity requiring the immediate operation of any such ordinance, it shall take effect as soon as proclamation is made thereof by the mayor, and copies are posted in three [3] public places in each of the wards of the city: Provided, further, That whenever any city shall publish any of its ordinances in book or pamphlet form, such publication shall be of itself sufficient, and such ordinance or ordinances shall be in force in two [2] weeks from the date of publication of such book or pamphlet. Any such publication of the ordinances of a city in book or pamphlet form, if the same shall purport to be printed under the authority of the common council of such city, shall be presumptive evidence, in all courts and places, of the ordinances therein contained and of the date of their passage, and that the same are properly signed, attested, recorded and approved. Every ordinance, order or resolution of the common council shall, immediately upon its passage,
enrollment, attestation and signature by the clerk and presiding officer, be presented by the city clerk to the mayor, and a record of the time of such presentation made by the clerk. If the mayor approves such ordinance, order or resolution, he shall enter his approval thereon and sign the same, and the ordinance, order or resolution shall become a law. If he do not approve the ordinance, order or resolution, he shall return it to the clerk, with his objections in writing, within ten [10] days after receiving it, and the clerk shall present the same to the common council at its next meeting. If the mayor fails to discharge his duty by approving or disapproving such ordinance, order or resolution within the time named, such failure shall be deemed a disapproval; and in all cases of disapproval by the mayor, such ordinance, order or resolution shall not become a law unless, at its next regular or special meeting after the time named for the mayor's action, the council shall again pass the same by a two-thirds vote of all the members-elect. All ordinances shall, within a reasonable time after their approval by the mayor or their passage over his veto, be recorded in a book kept for that purpose by the city clerk. Such record shall include the signature of the presiding officer, the attestation of the clerk and the mayor's written approval or disapproval, and, in the latter case, a memorandum of the passage of the ordinance over the veto, with the date of such acts. Such record, or a certified copy thereof, shall be presumptive evidence of the passage and going into effect of such ordinance."

In the case of Fry v. Seely et al. (1914), 55 Ind. App. 670, 104 N. E. 774, at pages 673 and 674 of the opinion the court held that the foregoing quoted statute requiring the approval of the mayor, or the passing of the ordinance over his veto, only refers to "ordinances, orders, resolutions, and motions for the government of the city, for the control of its property and finances and for the appropriation of money." It determined that such approval was not necessary when a city of the fifth class undertakes any street, sewer or other public improvement, where the common council acts and occupies a
position and discharges the duties and functions of a board of public works.

Likewise, in the case of State ex rel. Walker v. Wagner (1907), 170 Ind. 144, 82 N. E. 466, at pages 147 and 148 of the opinion the court held that the requirement of the approval of the mayor was not necessary under the foregoing statute where the common council filled a vacancy in the common council. The court said that in such cases of appointments the common council did not act in its normal capacity of exercising a legislative function. That in exercising any appointing power, it exercised an executive function of government and was not subject to the power of the mayor to veto its actions in making such appointments under the above referred to statute.

From the foregoing and in answer to your first question, I am of the opinion that the appointment of a person as a member of the board of school trustees of the School City of Beech Grove, Indiana, by a majority of the common council of said city while in regular session, was valid and sufficient to constitute an appointment to said school board without any action by the mayor of the city and was not subject to his veto.

The School City of Beech Grove, Indiana, is reorganized under the reorganization statute, same being Acts 1959, Ch. 202, as found in Burns' (1964 Supp.), Section 28-6101 et seq. A check of the records for the State Commission for the Reorganization of School Commissions shows that on October 2, 1961, a Comprehensive Plan for the reorganization of the schools of Marion County, Indiana was filed with said state commission. The state commission held public hearing thereon on November 16, 1961 and approved said Comprehensive Plan on January 9, 1962. Under the provisions of said reorganization statute, said Comprehensive Plan as to the “School City of Beech Grove” went into effect by stipulation, effective July 1, 1962. The plan as applicable to the School City of Beech Grove reads as follows:

“10. SCHOOL CITY OF BEECH GROVE

“The situation described below is that which will prevail in the school corporation of the School City
of Beech Grove as legal procedures now under way to change the status of the City of Beech Grove from a fifth to fourth class city are completed. No change in territorial boundaries or in the Board of School Trustees or in the time and manner of selection and the time such appointed board members take office is contemplated. If this proposed plan is approved by the state commission, the new corporation shall automatically come into being by stipulation (without petition or election) as provided in Section 7 of Chapter 202 of the Acts of 1959, as amended.

“There shall be created a community school corporation to be known as the 'School City of Beech Grove' and it shall be organized within the civil boundaries of the Civil City of Beech Grove as legally constituted as of September 30, 1961 or within school city boundaries as thereafter modified in accordance with Chapter 186, Acts of 1961.

“The control and management of the School City of Beech Grove shall be vested in a non-partisan Board of School Trustees composed of five (5) members who shall be appointed for four (4) year terms, on a staggered term basis, by the Common Council of the City of Beech Grove.

“The persons serving as the Board of School Trustees at the time the newly organized community school corporation comes into being (or persons previously appointed to take office on such board at such time) shall continue the control and management of the School City of Beech Grove until their successors are duly appointed and qualified under procedures which conform to, and are not in conflict with, the provisions of Section 9, Chapter 202 of the Acts of 1959, as amended.

“The officers of the board shall be a president, a vice-president, a secretary and a treasurer.

“The rights, duties, powers and liabilities of the board shall be those vested in a Board of School Trustees of fourth class cities. Each board member shall
be a resident of the School City of Beech Grove, or its predecessor.

"The assets and liabilities of the present school corporation shall be assumed in full, by the new School City of Beech Grove."

The above provisions of the statute went into effect by stipulation pursuant to the provisions of said reorganization statute as it existed in January, 1962. On this question, Section 7 of said original statute, as amended by Acts 1961, Ch. 302, as then found in Burns’ (1961 Supp.), Section 28-6116a, Clause (2a) provided:

"(2a) In instances where the proposed school corporation reorganization plan approved by the State Commission involves no change in territorial boundaries or in the board of school trustees or other governing body of a school corporation, other than a change, if any, in the time of election of board members, or the time such board members take office, such approved plan shall automatically come into being on either July 1 or January 1 following the date of such approval, whichever is earlier. In such event, no interim board member shall be appointed, the board members in office on such date shall continue to constitute the governing body of the school corporation until their successors are qualified, and the terms of their respective offices and their board memberships shall remain unchanged except to the extent the plan provides otherwise."

From the foregoing it is clear the reorganization of said city school corporation had the effect only of changing the terms of office of school board members appointed from a term of three [3] years to a term of four [4] years for those school board members appointed on and after July 1, 1962, which was the effective date of such reorganization.

In answer to your second question it is submitted Acts of 1961, Ch. 307, Sec. 1, as found in Burns’ (1964 Supp.), Section 28-2484, provides, in part, as follows:
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"** Provisions of any other law to the contrary, notwithstanding, vacancies in membership of any school board shall be filled by the remaining membership and the selection shall be made subject to the same qualifications and limitations, other than ex officio, that governed the election of the member whose office is vacated. Appointments to fill vacancies shall be for the remainder of the unexpired term."

In consideration of the provisions of the last referred to statute, I am of the opinion when a member of a school board has resigned and an appointment is to be made to the school board, this appointment is for the unexpired term of the person who resigned.

In addition to the foregoing and in answer to your second question, Section 7, Clause (3) of said reorganization statute, supra, as it then existed in 1961, being Burns' (1961 Supp.), Section 28-6116a, Clause (3), provided, in part, as follows:

"If at any time after the first board member election there shall occur a vacancy on the board of school trustees for any reason including but not limited to the failure of the sufficient number of petitions for candidates being filed, and whether the vacating member was elected or appointed, the remaining members of the board of school trustees, whether or not a majority of the board, shall by a majority vote fill such vacancy by appointing a person or persons from within the boundaries of the community school corporation to serve for the term or balance of terms respectively * * *"

It is therefore clear the provision of the reorganization statute at the time this school city was reorganized was entirely consistent with the provisions of Burns' 28-2824, supra, concerning filling of vacancies, and therefore does not modify this opinion as to filling of vacancies.