No material change is made in said statute by the amendment affecting the question at issue.

It is to be noted that under the last above quotation taken from Section 1 of Chapter 224 of the Acts of 1949, it is required that any appointment in a school corporation for more than eight (8) months must be proportionately increased. This would apply to the minimum salary of such attendance officer on a twelve (12) months basis as that provision is mandatory.

In answer to your second question, I am therefore of the opinion if a school city employs attendance officers having a term of twelve (12) months, and fix such attendance officers' salaries, that the county must pay said attendance officers from county funds the full amount of such contract which can not be less than the minimum teachers' salary for eight (8) months as proportionately increased for the twelve (12) months' period of employment. This would only apply to those attendance officers required by statute to be employed by the City by reason of the average daily attendance in the school.

TLW:man

OFFICIAL OPINION NO. 103

October 24, 1949.

Public Service Commission of Indiana
Indianapolis, Indiana

ATTENTION: Mr. Lester R. Lasley
Director, Tariff Bureau

Dear Sir:

I acknowledge your request of July 26, 1949, for an opinion. Your request is in the following language:

"Under the 1935 Motor Vehicle Act, the Public Service Commission of Indiana is authorized to promulgate rules and regulations applicable to common and contract motor carriers operating over the highways of the State of Indiana."
“On September 13, 1945, under Commission's Docket No. 15748, there was prescribed certain rules and regulations governing the filing of tariffs, contracts, and schedules of Minimum rates.

“Under Rule 1, Appendix B., Paragraph (c) captioned Schedules Must Contain All Relevant Provisions, it is set out definitely that ‘schedules shall contain all of the minimum rates and charges, and also the rules and other provisions applicable to services covered thereby, and indicate a definite method by which mileages may be determined; and reference shall not therein be made to other publications for any provisions affecting the rates or charges (or method of applying them) nor for descriptive purposes.’

“There has been filed with the Commission a tariff designated as Motor Carriers, Explosives, and Dangerous Articles Tariff No. 6. This tariff contains rules and regulations prescribed by the Interstate Commerce Commission which rules and regulations are applicable to contract carriers.

“We have taken this matter up with the publishing agent of the above mentioned tariff and have requested him in so far as reference is made to contract carriers operating in Indiana Intrastate traffic, the rules and regulations as named in the said tariff will not apply. He in turn has forwarded to us a copy of the Interstate Commerce Commission's Order No. 3666 and it is noted in this order that the Interstate Commerce Commission has taken full jurisdiction over intrastate operators as to the transportation of dangerous articles.

“We are requesting that you kindly review the attached order from the Interstate Commerce Commission and inform us that if in your opinion the Interstate Commerce Commission has jurisdiction over the Public Service Commission of Indiana in prescribing rules and regulations for either common or contract carriers operating in intrastate commerce in Indiana.”
In the last paragraph of your letter, you asked whether the Interstate Commerce Commission has jurisdiction over the Public Service Commission of Indiana. In this particular instance, the Order of the Interstate Commerce Commission purports to exercise jurisdiction over certain contract carriers. I, therefore, interpret your questions to mean, does the Interstate Commerce Commission have authority over these contract carriers so as to exclude their regulations by the Public Service Commission of Indiana.

It is clear from the Order that the Interstate Commerce Commission has attempted, for various reasons, to regulate what would normally be considered Intra-state transportation of explosives. The chief basis for that assumption of jurisdiction, seems to be expressed in the following paragraph of that Order:

"It further appearing, That the prosecution of the war has necessitated an extraordinary increase in the production of explosives and other dangerous articles with a resulting proportionate increase in the transportation thereof by private carriers as well as others in interstate or foreign commerce and in intrastate commerce, which intrastate transportation by motor vehicle now is subjected to varying State regulations, in that some States have adopted the regulations prescribed by the Commission and others have established separate regulations, while some have failed to provide any regulations; and that the two classes of transportation moving over the same highways are so related and commingled as to require uniformity of regulation of such intrastate transportation in order effectively to promote the safety of interstate transportation, of those who are employed in its movement, and of the public generally; and * * *".

The powers of the Federal Government are limited to those enumerated in the Federal Constitution. The Federal Government has based this attempt to exercise power on the finding that intrastate and interstate commerce are so commingled that requirements of part is necessary to effective regulation of Interstate Commerce Commission.
The Federal Government has often been held to have the power to regulate Intrastate Commerce to the extent necessary to effectuate its regulation of Interstate Commerce. An example of this is found in a case of United States v. New York Central Railroad (1926), 272 U. S. 457 in which it was said at page 464:

"* * * Where, as here, interstate and intrastate transactions are interwoven, the regulation of the latter is so incidental to and inseparable from the regulation of the former as properly to be deemed included in the authority over interstate commerce conferred by statute. This was the view of the state court. (Cases cited). An interpretation of the statute which would in practice require the segregation of all shipments in interstate commerce would make compliance with the commission's orders impossible and defeat the purpose of the Act."

Whether the commingling as found by the Interstate Commerce Commission actually exists or not, is question of fact. If it does exist, the Interstate Commerce Commission has jurisdiction over that part of Intrastate Commerce over which it purports to exercise that jurisdiction. The above quoted provision from the Interstate Commerce Commission's Order seems in part to base the authority of the Commission the War Power. Though it can not be questioned that Congress has authority in many diverse fields to enact regulations under the War Power, the only authority given to the Interstate Commerce Commission has been on the basis of the right to control Interstate Commerce. 18 U. S. C. 381, 383 upon which the Order of the ICC is based, purports to regulate Interstate Commerce only.

In the absence of a Congressional exercise of its war powers, the war would confer directly no additional jurisdiction on the Interstate Commerce Commission. Though, of course, fact situations created by the war might well call into play the jurisdiction of the ICC in re interstate commerce.

In this regard, it is well to note that by proclamation of the President, hostilities were declared ended at 12:00 o'clock
noon on December 31, 1946, but neither the emergency nor the war is over.

On the basis of these observations it is apparent that the Interstate Commerce Commission has attempted to regulate intrastate commerce of explosives. This attempt is not patently unauthorized. The Authority to exercise this jurisdiction depends on a question of fact, that is whether the commingling recited in the interstate commerce order does in fact exist.

Interstate Commerce Commission, of course, has no authority to determine what rules and regulations the Public Service Commission of Indiana may adopt or the validity of rules and regulations adopted by the Public Service Commission, but they can exercise jurisdiction over certain areas of commerce to the exclusion of the Public Service Commission of Indiana and in that way make the rules of the Public Service Commission of Indiana unappplicable to carriers, thus regulated by the Interstate Commerce Commission. This is what the Interstate Commerce Commission has attempted to do in the situation outlined in your request.

CHJ:aa

OFFICIAL OPINION NO. 104
October 24, 1949.

Honorable Deane E. Walker
State Superintendent of Public Instruction
State House, Room 227
Indianapolis, Indiana

Dear Sir:

Your letter of September 29, 1949, has been received in which you request an official opinion upon the following question:

"Under the provisions of Chapter 268 of the Acts of 1949, is it necessary that where the consolidation involves a township school corporation for anyone other than the township trustee to join in the resolution to be adopted?"