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 unapplicable 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?"
Section 2, Chapter 268 of the Acts of 1949 provides in part as follows:

"* * * Whenever the school trustees of any two or more school corporations desire to consolidate the elementary schools or high schools, or both, of their respective school corporations, or to furnish consolidated school facilities for the children of school age of such corporations they may meet together and adopt a joint resolution declaring their intention to consolidate their respective school corporations. Said resolution shall set out the following information concerning the proposed consolidation:

"* * *

"* * * Said trustees shall, after adopting such joint resolution, give notice by publication, once each week for two consecutive weeks in a newspaper of general circulation, if any, in each of said school corporations, and if any such school corporation no newspaper is published, then publication shall be made in the nearest newspaper published in the county wherein such school corporation is located. The school trustees of such corporation, or boards, shall meet one week following the date of the appearance of the last publication of notice of intention to consolidate, and if no protest has been filed, as hereinafter provided, they shall then and there declare by joint resolution such consolidation of such school corporations to be accomplished, to take effect the first day of August next following: Provided, however, That on or before the sixth day following the last publication of such notice of intention to consolidate, fifty legal voters residing in any of such school corporations may petition the school trustees of their respective school corporation for an election to determine whether or not the majority of the voters of such school corporations are in favor of such consolidation."

It is to be noted the above statute under Section 3 thereof makes an alternative provision whereby the residents of a school corporation involved may by resolution demand an election to force any such school consolidation. In other
words under Section 2, the act may be voluntary by the town-
ship trustees and under Section 3 may become mandatory
on the township trustees to effect such a consolidation.

It is also to be noted that under the remaining pro-
visions of said statute when a consolidation becomes effective
the identities of the school corporations joining therein cease
to exist and all property rights and privileges as well as any
indebtedness shall be deemed to have accrued to and be
assumed by the new consolidated school corporation. (Section
7 of said Act.)

The foregoing statute makes no reference to any required
act by the Advisory Board of the township. The school trus-
tee of a township school corporation is the township trustee
for under Section 28-2410, Burns' 1933, same being Section
1, Chapter 224 of the Acts of 1901, it is generally provided
that the school trustees shall take over the educational affairs
of their respective townships, towns and cities, employ teach-
ers and erect and maintain school buildings. This has been
consistently interpreted to mean the township trustee when
applied to township school corporations.

Baldwin et al. v. Roussey et al. (1922), 192
Ind. 300;
Parker et al. v. Humfleet et al. (1926), 63 Ind.
App. 281.

It is therefore my opinion the consolidation by the act
of school trustees authorized by Section 2 of Chapter 268
of the Acts of 1949 refers to the action of the township
trustees and not to any action taken by the township Ad-
visory Board. Such a construction is consistent with the
interpretation by the Supreme Court. In the case of Advisory
Board etc. v. State ex rel. Smith (1908), 170 Ind. 439, 444
to 447, where the Supreme Court was called upon to deter-
mine whether or not under the statute (Sections 1 and 3
of the Acts of 1901) the township trustees were authorized
on petition of a majority of the patrons residing in a pro-
posed joint school district to establish a joint school for the
several school corporations involved. The Advisory Board
refused to appropriate money for such purposes claiming the
Advisory Board statute curtailed the operations of the joint
school statute so as to require their approval. The Supreme
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Court held in substance that a different procedure as to joint schools was prescribed by the statute and that in such a case as there presented the only action the Advisory Board could take was to make the appropriation, holding that under such circumstances an appropriation was mandatory.

When we consider the above holding in connection with the provisions of the Act now in question, it is clear that only the township trustees of the respective townships are required to act by resolution in order to effect such consolidation. When that is done, under the express provisions of said act, on the first of August next succeeding such action by the township trustees such consolidation becomes effected and under the law all of the property and assets of each school corporation is vested in the new consolidated school corporation which assumes all outstanding indebtedness. This does not require any action by the Advisory Board of a township to effect such consolidation.

I am therefore of the opinion it is not necessary for anyone other than the township trustees to join in a resolution for a consolidation of township schools under Section 2, Chapter 268 of the Acts of 1949.

OFFICIAL OPINION NO. 105

October 24, 1949.

Mr. Robert M. Reel
Executive Secretary
Indiana Real Estate Commission
1828 North Meridian Street
Indianapolis, Indiana

Dear Sir:

I have your request of October 5th for an official opinion with respect to the Indiana Real Estate Law being Chapter 44, Acts of 1949. Your request includes five questions, which are as follows:

"1.) When a building corporation purchases land, sub-divides it and builds houses, these houses to be sold only by officers of the corporation, in this event