150, of the Acts of 1935, as such act pertains to the making of emergency appropriations.

2. The Board of Public Health and Hospitals in the city of Indianapolis under the provisions of Chapter 323 of the Acts of 1947, may not transfer by resolution of said board items of the budget adopted for such Board without following the provisions of Chapter 275, Acts of 1947, as that chapter pertains to the making of emergency appropriations.

OFFICIAL OPINION NO. 35

April 9, 1948.

Trustees of Indiana University,
Bloomington, Indiana,
Att: Mr. J. A. Franklin, Treasurer,

Gentlemen:

Reference is made to your letter of March 22, 1948, as follows:

"In connection with the negotiation of the new contract for the training of veteran students under Public Laws 16 and 346 as amended, the Veterans' Administration has raised the following question:

"'Can Indiana University charge to or collect on the account of a veteran student, who is a resident of the state, the fees, including tuition fees, established by the institution, under the laws of the state or powers delegated by such laws, for students who are non-residents of the state?'

"The question raised by the Veterans' Administration has two aspects to it, the first is whether there is any limitation on the power of the Trustees of Indiana University to prescribe the price of tuition in such University as provided for in Section 28-5302 Burns' Indiana Statutes 1933 and secondly, whether there is any limitation on the power of The Trustees of Indiana University to contract for educational and professional services which contract might provide for payment to Indiana University of an amount meas-
ured by (a) customary charges, (b) non-resident tuition in lieu of customary charges, or (c) tuition based on estimated cost.

"It will be greatly appreciated if I may have your written opinion concerning the question hereinabove presented at the earliest possible date in order that the new contract with the Veterans' Administration can be speedily concluded.

"For your information and study I am enclosing a copy of the Training Facilities Manual M-75 dated April 15, 1947 which pertains to the contract question raised in this letter. I will appreciate it if you will return this Manual to me along with your opinion."

The questions you present involve several problems. In order to thoroughly answer the questions raised, it is necessary to examine the history of Indiana University and its board of trustees to determine the legal status of each.

The Indiana Constitution of 1816, Article 9, Section 2 provides:

"It shall be the duty of the general assembly, as soon as circumstances will permit, to provide by law for a general system of education, ascending in regular grades from township schools to a state university wherein tuition shall be gratis and equally open to all."

In 1820, the General Assembly of Indiana organized and established the State Seminary at Bloomington. Acts of 1820, Chapter 68, page 82. Section (1) of the Act provided for a board of trustees of a State seminary and in part is as follows:

"* * * That (named individuals) shall be, and they are hereby appointed, trustees of the state seminary, for the state of Indiana and shall be known by the name and style of the trustees of the state seminary of the state of Indiana, and they, and their successors in office, shall have perpetual succession and of the name and style aforesaid shall be able and capable in law to sue, and be sued, plead and be impleaded,"
answer and to be answered, unto as a body corporate and politic in any court of justice * * *.”

Sections 2, 3, 4, 5, 6 and 7, which were the intervening sections of the Act dealt with the establishment of a site and erection of buildings for the school.

In 1828, the State Seminary became known as Indiana College. Acts 1828, Chapter 82, page 115. The 1828 Act was the original act establishing the school, defining its purposes and creating a board of trustees as a body corporate and politic to govern and regulate the school. Section 1 of the Acts of 1828 provided as follows:

"* * * That there shall be, and hereby is created and established, a college adjacent to the town of Bloomington, in the county of Monroe, for the education of youth in the American, learned, and foreign languages, the useful arts, sciences and literature to be known by the name and style of the Indiana College and to be governed and regulated as hereinafter directed."

Section 2 of the 1828 Act provided:

"There shall be a board of trustees appointed consisting of fifteen persons, residents of this State, who shall be, and hereby are constituted a body corporate and politic, by the name of 'The trustees of the Indiana College,' and in their said corporate name and capacity may sue and be sued, plead and be impleaded in any court of record, and by that name shall have perpetual succession." (Our emphasis.)

Section 3 of the 1828 Act provided:

"The said trustees * * * (inter alia) shall have full power to do and transact all and every business, touching or concerning the premises, or which shall be incidentally necessary thereto, as fully and effectually as a natural person, body politic or corporate may or can do, in the management of their own concerns, and to hold, enjoy, exercise and use the rights, powers and privileges incident to body politic or corporate in law and in equity."
The other pertinent provision of the Act of 1828 to the question now under discussion is: Section 16 "That the constitution of the said college herein and hereby declared and established shall be and remain the constitution of said college, and the same shall not be changed, altered or amended by any law or ordinance of the said trustees, nor in any other manner, than by the legislature of this State." (Our emphasis.)

In 1838, Indiana College became known as Indiana University. Acts 1838, Local Laws, Chapter 102. Section 1 of the 1838 Act declared the policy of the University and the courses of study to be established, and is as follows:

"That there shall be and hereby is created and established a university adjacent to the town of Bloomington in the county of Monroe, for the education of youth in the American, learned and foreign languages, the useful arts, sciences (including law and medicine), and literature to be known by the name and style of the 'Indiana University' and to be governed and regulated as hereinafter directed."

Section 2 of the 1838 Act, again created and defined the power of the governing body of trustees, and is as follows:

"There shall be a board of trustees appointed, consisting of twenty-one persons, residents of this State who shall be, and hereby are constituted, a body politic by the name 'The trustees of the Indiana University,' and, in their corporate name and capacity, may sue and be sued, plead and be impleaded, in any court of record and by that name shall have perpetual succession."

In Section 16 of the 1838 Acts, there was again the reservation to the state legislature, in the charter, the power to alter the constitution of the school. That section is:

"That the constitution of said university herein and hereby declared and established shall be subject to be changed, altered or amended by the legislature of this State. ** ** **"
There is no mention in either of the charters granted to the state school of the power of the board of trustees to fix a tuition charge to be levied on those who attend the school. The charters, however, very plainly bespeak the powers which are granted to the trustees, and those powers are all inclusive as to the internal management of the school. It is pertinent to note at this point that the constitution of 1816, hereinbefore referred to, stipulated that the state university was to be free of tuition charges, and in view of this provision the trustees were limited in their powers. Evidence that the legislature so regarded this limitation of power is expressed in a joint resolution passed by the General Assembly, and approved January 27, 1842:

"Whereas, it is made the duty of the general assembly of the state of Indiana, by the second session of the 9th Article of the Constitution of the aforesaid state, so as soon as circumstances will permit, to provide by law for a general system of education, ascending in a regular gradation from township schools to a state university, wherein tuition shall be gratis and open to all: Therefore

"Be it resolved by the general assembly of the state of Indiana, that the trustees of the Indiana university be and are hereby required, at the next regular meeting of said board, to examine into the resources of said university and make full and complete report of the same to the next legislature, together with the amount of salaries paid to professors, and all other expenses of said institution; and also, whether in their opinion the resources of said university are sufficient to enable the legislature to pass a law making tuition gratis, in compliance with the constitution of the state above referred to."

The provision relating to education and the school system of the State in the present Constitution, materially differs from that of the 1816 Constitution. See Article 8, Section 1 of the Indiana Constitution, which is as follows:

"Knowledge and Learning, generally diffused throughout a community, being essential to the preservation of a free government it shall be the duty of
the general assembly to encourage by all suitable means, moral, intellectual, scientific and agricultural improvements, and to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge and equally open to all.”

*In view of this constitutional provision, and the prior constitutional requirement of 1816, and the legislation herein-before referred to, the General Assembly in 1852 enacted an act providing for the government of the state university, the management of its funds and for the disposition of the lands thereof. 1 R. S., 1852, page 504, the same being Section 28-5301 of Burns’ Indiana Statutes. Section 1 of that act provided:

“Be it enacted by the general assembly of the state of Indiana, the institution established by an act entitled, ‘An Act to establish a college in the state of Indiana,’ approved January 28, 1828, is hereby recognized as the university of this state.”

Section 2 of the Acts of 1852, the same being Section 28-5302 of Burns’ Indiana Statutes (1933) (except for an amendment of 1855, which is included in the Burns’ Statutes) provided in part as follows:

“The board of trustees of the state university * * * shall be a body politic * * * to prescribe the course of study and discipline and price of tuition in such university; and to make all by-laws necessary to carry into effect the powers hereby conferred.” (Our emphasis.)

Section 10 of the 1852 Acts, the same being Section 28-5316 of Burns’ (except the Burns’ citation includes later amendments) provided:

“The trustees shall provide for the tuition free of charge, of two students from each county of this State, to be selected by the board of county commissioners.”

The foregoing Act of 1852 evidences an intent of the legislature to empower the board of trustees to fix and charge
tuition to students enrolled in Indiana University. This is clearly borne out by a rule of statutory construction that statutes relative to the same subject matter, passed in the same session of the legislature and taking effect at the same time must be construed together as one body of law, if it be possible to reconcile them on any basis whereby both may be given effect.

City of New Albany v. Lemon (1926), 198 Ind. 127, 149 N. E. 350; 152 N. E. 723;
Princeton Coal, etc. Co. v. Lawrence (1911), 176 Ind. 469.

And Sections 2 and 10 of the Acts of 1852 can have no meaning, and there must be irreconcilable conflict between the sections unless Section 2 gives the board of trustees of Indiana University the power to charge tuition. The provisions of Section 10 would be meaningless concerning the exemption from tuition of two students from each county in this State unless other residents of the State could be charged a tuition.

It is true, as a matter of statutory construction that it has been held that in construing statutes in relation to education and schools, it is proper to consider all prior constitutional and statutory enactments relating thereto (Advisory Board of Washington Township v. State, ex rel. Whaley (1904), 165 Ind. 295), and the prior history of legislation relating to the State university expressed an intent that it should be free of tuition charges. However, that legislation was enacted under the Constitution of 1816 which specifically made the provision that the State university should be free of tuition charges. The present Constitution does not specifically mention a State university, but instead designates "common schools" as being free from tuition charges. The question then devolves to this: is Indiana University a part of the common school system of this State? The legislature in 1907 classified the schools of this State as follows:

"* * * The public schools of the State shall be and are defined and distinguished as (a) elementary, and (b) high schools. The elementary schools shall include the first (8) years of school work and the course of study for such years (that) which is now prescribed
or may hereafter be prescribed by law. The commissioned high schools shall include not less than four years following the eight years in the elementary schools. * * *"

Section 28-3413 Burns' Indiana Statutes Annotated 1933.

The Supreme Court of this State has defined the term "public schools" to be synonymous with the term "common schools." See State of Indiana v. O'Dell (1917), 187 Ind. 84 at page 87 and also see Greathouse v. Board of School Commissioners of City of Indianapolis (1926), 198 Ind. 95. The courts of other states have stated that common schools are distinguished from academies and colleges. See People v. Brooklyn Board of Education (1851), 13 Barb. 400, 410 (N. Y.); In re Townsend (1909), 88 N. E. 41, 43, 195 N. Y. 214; Turner v. City of Hattiesburg (1910), 53 So. 681, 683, 98 Miss. 337; and Regents of University v. Board of Education (1908), 95 P. 429, 432, 20 Okla. 809.

In view of the foregoing, I am of the opinion that Indiana University is not a common school within the meaning of Article 8, Section 1 of the Constitution.

It is now material to determine whether there is any prohibition to the board of trustees of Indiana University from charging a tuition, regardless of the fact that it is not a common school within the meaning of Article 8, Section 1 of the Constitution. The charters which have been granted to Indiana University by the General Assembly both in 1828 and in 1838 reserved to the legislature the right to change the constitution of the school and alter its legal form. See Sections of 1828 and 1838, Acts quoted supra. The joint resolution of 1842; the Acts of 1842, page 174, hereinbefore referred to, negatively recognized the fact that the legislature might find it necessary to empower the board of trustees to establish a tuition for the school. The trustees were given the power to prescribe a tuition for students enrolled in the University by the Acts of 1852. The General Assembly having reserved to themselves the right to alter or change the constitution of the University had the power in 1852 to grant to the trustees the right to fix a tuition.

I am not overlooking the fact that in 1867 the General Assembly in an appropriation for the University stated:
"Whereas, the endowment fund of the State University, located at Bloomington, Monroe County, is no longer sufficient to meet the growing wants of education and make said University efficient and useful; and whereas it should be the pride of every citizen of Indiana to place the State University in the highest condition of usefulness and make it the crowning glory of our present great common school system, where education shall be free; * * *"

which indicated that the General Assembly at that time regarded the state university within the provision of Article 8, Section 1 of the Constitution. Nor am I overlooking that in 1902 the Supreme Court of Indiana, in the case of Fisher, et al., Trustees, v. Brower, et al. (1902), 159 Ind. 139 at page 144 stated:

"We therefore conclude from the foregoing review of the subject that the Indiana University is an integral part of our free school system; that it was the special creation of the Constitution; * * *"

although the proposition of the status of the University was not the exact point in issue.

But the extent and implication of the foregoing resolution and case is limited, and in fact, overridden by the classification of public schools, which was announced by the General Assembly in 1907, as above quoted. The General Assembly exercised their power under Article 8, Section 1 of the Indiana Constitution to classify the schools of the State, and did not include therein Indiana University. It is a well settled rule of statutory construction that acts of the legislature should be given validity whenever possible without repugnance to the Constitution; and, the Acts of 1852, giving the power to the board of trustees to prescribe a tuition is valid only if Indiana University is not within the purview of Article 8, Section 1. See: Morgan v. State (1912), 179 Ind. 300, 101. N. E. 6. Again the distinction between the constitutional provision of 1816 and that of the present Constitution is pointed out. It is clear, in view of the foregoing history, that the board of trustees of Indiana University have the power to prescribe a tuition for students enrolled therein.
Section 28-5302, Burns’ Indiana Statutes (1945 Pocket Supp.) provides:

“Trustees — Body politic — Powers, — The board of trustees of the state university shall be eight (8) in number, of whom not more than two (2) shall reside in the same county; and they and their successors shall be a body politic, with the style of ‘The Trustees of Indiana University’; in that name to sue and be sued; to elect one (1) of their number president; to elect a treasurer, secretary, and such other officers as they may deem necessary, to prescribe the duties and fix the compensation of such officers; to possess all the real and personal property of such university for its benefit; to take and hold, in their corporate name any real or personal property for the benefit of such institution; to expend the income of the university for its benefit; to declare vacant the seat of any trustee who shall absent himself from two (2) successive meetings of the board, or be guilty of any gross immorality or breach of the by-laws of the institution; to elect a president, such professors and other officers for such university as shall be necessary, and prescribe their duties and salaries; to prescribe the course of study and discipline and price of tuition in such university; and to make all by-laws necessary to carry into effect the powers hereby conferred.”

This provision is clear in creating the board of trustees as a body politic with power to sue and be sued, which commonly confers all powers of a public corporation. From this, the board of trustees unquestionably has the power to contract with the Veterans’ Administration for the payment for its services rendered to those eligible to receive the benefits of Public Laws 16 and 346, as amended.

The only limitations on the power of the board of trustees of Indiana University to charge a tuition is found in Section 1, Chapter 117, Acts of 1941 (Sec. 28-5732, Burns’ 1945 Supp.) pertaining to the children of disabled veterans of World War I, and of Section 1, Chapter 254, Acts of 1943 (Sec. 59-1007 (a), Burns’ 1943 Repl.) pertaining to the children of disabled veterans of World War II.
In conclusion, with the last above noted exceptions, the board of trustees of Indiana University is empowered to fix a tuition for students enrolled in the school, either residents or non-residents. The board of trustees, as a body politic and corporate, is empowered under the laws of this State to contract and to do all acts necessary and proper for the operation of such university, subject only to their obligation to protect the financial integrity of the institution.

It is my opinion that the Board of trustees of Indiana University may contract with the Veterans' Administration, and as a basis for contracting for tuition, the trustees may contract for the payment of non-resident tuition, to be charged the Veterans' Administration for all veterans enrolled in the school who are under Public Laws 16 and 346, as amended, in lieu of but not in addition to customary tuition, and such contract will not conflict with existing laws or legal requirements of the State of Indiana.

OFFICIAL OPINION NO. 36
April 14, 1948.

Hon. John D. Pearson,
Insurance Commissioner,
240 State House,
Indianapolis, Indiana.

Dear Sir:

You have asked my opinion concerning the applicability of Chapter 50 of the Acts of the General Assembly for 1947 to the State Automobile Insurance Association.

Chapter 50 is an amendment of the basic insurance code, which, by inserting a new section, is to be known as Section 75 1/2. Its purpose is to permit domestic insurers to write both casualty and fire insurance instead of limiting a company to one of the two classes. The sole question is whether the State Automobile Insurance Association is within the terms of Chapter 50.

In speaking of the Indiana insurance law hereinafter, I am speaking of the Indiana Insurance Code, which is Chapter 162 of the Acts of 1935 with subsequent amendments. In