Article 10, Section 3 of the Constitution of Indiana provides as follows:

"No money shall be drawn from the Treasury, but in pursuance of appropriations made by law."

Where an office is created by statute, public officers may exercise only such powers as are expressly authorized by statute.

Blue v. Beach (1900), 155 Ind. 121, 131;
Department of Insurance v. Church Members Relief Association (1940), 217 Ind. 58, 60.

The above rule is equally applicable to offices created by the Constitution of Indiana.

Sherrick v. State (1906), 167 Ind. 345, 357;
State ex rel. v. Home Brewing Company (1914), 182 Ind. 75, 91, 92.

An inquiry by this office reveals Dr. Malan entered into the administration of this program under contracts with the United States Veterans’ Administration pursuant to a contract by him in his individual capacity.

Under the foregoing authorities I am of the opinion no appropriation has been made for the use of the State General Fund for the carrying out of this program and such administration of such Fund has not been authorized by a statute passed by the Indiana Legislature. Therefore, such revolving fund is not authorized.

OFFICIAL OPINION NO. 75

July 30, 1946.

Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Gentlemen:

Your letter of June 19, 1946, received, in which you request an opinion as to the jurisdiction of the Public Service Com-
mission of Indiana over rates, tariffs and regulation of warehouses within the State of Indiana.

The Public Service Commission of Indiana was created by Chapter 76 of the Acts of 1913. Under said Act, the Commission was given jurisdiction to approve rates, tariffs and regulate in general public utilities.

A public utility was defined by Section 1 of said Act (Sec. 54-105 Burns 1933 R. S.) as follows:

“The term ‘public utility’ as used in this act shall mean and embrace every corporation, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, manage or control any street railway or interurban railway or any plant or equipment within the state for the conveyance of telegraph or telephone messages, or for the production, transmission, delivery or furnishing of heat, light, water or power, or for the furnishing of elevator or warehouse service either directly or indirectly to or for the public, but said term shall not include a municipality that may now or hereafter acquire, own or operate any of the foregoing facilities.”

Said section further defines the term “utility” as follows:

“The term ‘utility’ as used in this act shall mean every street railway or interurban railway, and every plant or equipment within the state used for the conveyance of telegraph and telephone messages, or for the production, transmission, delivery or furnishing of heat, light, water or power, or for the furnishing of elevator or warehouse service, either directly or indirectly to the public.”

It thus seems clear that the Public Service Commission created by the Acts of 1913 had jurisdiction over warehouses.

The Public Service Commission of Indiana created under Chapter 76 of the Acts of 1913 was abolished by Chapter 93 of the Acts of 1933, page 662. Under said Act, the Public Service Commission was recreated and all the rights, powers and duties conferred by law by the Acts of 1913 were trans-
ferred and conferred upon the Public Service Commission created by said Act.

Further inspection discloses that under Chapter 4, Acts of 1933, page 7, the Governor was authorized and empowered in his discretion and judgment to assign or reassign or transfer any administrative power, duty or function, of whatsoever name, nature, kind or character now prevailing, under any Act, to any one or more of eight departments created in section 2 of said Act. Among said departments was created the Department of Commerce and Industry and by proclamation, the Governor did on April 15, 1933, transfer the duties and functions of the Public Service Commission to the Department of Commerce and Industry.

The Public Service Commission created under the provisions of Chapter 93 of the Acts of 1933, was abolished by the Acts of 1941, Chapter 101, page 255 (54-109 Burns' 1933 R. S.); also the order of the Governor transferring to the Department of Commerce and Industry was repealed. (Acts 1941, ch. 101, p. 255, Sec. 54-120 B. R. S. 1933 pk. pt.). By the Acts of 1941, Chapter 101, Section 2, page 255, the Public Service Commission of Indiana was created. (This section was amended in 1945 to change the method of appointment, Acts 1945, ch. 46, p. 92, B. R. S. 1933, Sec. 54-102.) The Public Service Commission created by the Act is still in existence.

All rights, powers and duties conferred upon the Public Service Commission created by the Acts of 1913 or any Act amendatory or supplemental thereto were continued and transferred to the Public Service Commission created by the 1941 Act. Section 12 of that Act provides in part as follows:

"All of the rights, powers and duties conferred by any law upon the public service commission of Indiana which was created by chapter 76 of the Acts of the General Assembly for the year 1913, and amendments thereof not in conflict herewith, and all of the rights, powers and duties conferred by any law upon the public service commission which was created by chapter 93 of the Acts of 1933 of the General Assembly are continued in full force and effect and are hereby transferred to and conferred upon the public service commission of Indiana hereby created. * * *"
Thus, the Public Service Commission as it now exists has all the power, rights and jurisdiction which the Public Service Commission created by the Act of 1913 had. The Public Service Commission created in 1913 had jurisdiction over warehouses. It is, therefore, my opinion that the present Public Service Commission has jurisdiction over warehouses within the State of Indiana and their rates and tariffs.

The view was also taken by the United States Supreme Court in the case of Davies Warehouse Company, Petitioner, v. Chester Bowles, Price Administrator (1943), 321 U. S. 144. In that case the question was presented to the Supreme Court whether the O. P. A. had jurisdiction to regulate warehouses when the same was declared a public utility by state statute and was being regulated by the state. The court in its holding that the O. P. A. did not have jurisdiction stated that there were twenty-one states regulating warehouses in some respect, that three states include warehouses in their statutory definition of "public utility", and naming the states included the State of Indiana under both categories citing 54-105 et seq. Burns' 1933 R. S.

It is therefore my opinion that the Public Service Commission has jurisdiction over rates, tariffs and enforcement of same, of warehouses within the State of Indiana.

OFFICIAL OPINION NO. 76
July 31, 1946.

Hon. C. E. Ruston, State Examiner,
State Board of Accounts,
304 State House,
Indianapolis 4, Indiana.

Dear Mr. Ruston:

I have your letter of recent date in which you request an official opinion upon the following questions:

"1. Is the amount of any decrease made in any appropriation as provided in Section 48-1506 Burns' Ind. Statutes, 1933, available for appropriation and transfer to the park fund as provided in Section 48-5607 Burns' Ind. Statutes, 1933, Supplement of 1945?"