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?"
“2. Is the amount of any fund transferred to the general fund as provided in Section 48-6917 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?”

Section 48-1506 of Burns’ 1933 (Acts of 1933, Chapter 60, Section 1), provides in part as follows:

“* * * At any time during the year for which such budget shall have been adopted, the common council, by ordinance, or the mayor, by an executive order, may decrease the appropriation made for the use of any department or any item thereof; Provided, always, That any action under the provisions of this act shall not in anywise be undertaken or done if the effect thereof shall increase, or tend to increase, the aggregate levy for taxes as theretofore made.”

Also, Section 48-1506a of Burns’ 1933 (1945 Pocket Supplement), (Acts of 1945, Chapter 128, Section 1), provides in part as follows:

“When any item of appropriation made under the provisions of section 84 (§ 48-1506) of this act shall remain unexpended in any fund at the end of the calendar year, the amount thereof shall immediately revert to the fund against which it was appropriated, and no warrant shall be drawn on such appropriation after the end of such year, Provided, however, that the provisions of this act shall not apply to any balance of funds appropriated for the use of any board of aviation commissioners of any city remaining unexpended at the end of a calendar year. * * *”

When the foregoing two statutes are read together it appears that when the common council, by ordinance, or the mayor, by executive order, decreases the appropriation made for the use of any department or any item thereof, the amount remaining unexpended for that department or item would revert to the fund against which it was appropriated.

Also, Section 48-6917 of Burns’ 1933 (Acts of 1933, Chapter 129, Section 1), provides as follows:
"Where there is a public fund or funds in the custody of any department of any city, and where any such fund, or any part thereof, is not being used for the purpose for which it was created, and where there is actual need for all or any part of the money in such fund for use in some other fund in order that such city may carry on its necessary governmental functions, the common council of such city may transfer such fund or funds or any part thereof to the general fund of such city to be used for the usual purposes thereof, as by ordinance provided. Such transfer shall be authorized only after the common council shall have given ten (10) days' notice by posting written or printed notices thereof in at least three (3) public places in such city stating the time and place when and where such common council will meet to consider the proposed transfer."

This statute in express terms authorizes the common council of a city to transfer a fund or funds which are not being used for the purpose for which they were created to the general fund of the city for use in carrying out necessary governmental functions.

Section 48-5607 of Burns' 1933 (1945 Pocket Supp.) (Acts of 1935, Chapter 99, Section 1), provides in part as follows:

"* * * The common council of any such city may, at any time, appropriate and transfer to the park fund any sum or sums out of the general fund of such city, and any such common council may, at any time, borrow money and may issue the bonds of the city therefor in the manner now or hereafter to be provided by law for the issue of bonds for the general purposes of such city, and may turn the proceeds therefrom into the park fund of such city. * * *"

This statute specifically authorizes the common council to transfer to the park fund any sums of money out of the general fund of the city.

Based upon the foregoing statutes when they are all construed together, it is apparent that when specific appropriations are unexpended, or they are decreased so that there is
remaining an unexpended balance in a particular fund or in the general fund of the city, such unexpended balance will revert to the fund against which the appropriation was made. If there is a reversion to the general fund of the city, then under Section 48-5607 of Burns' 1933, above set forth, the common council may transfer such unexpended amounts out of the general fund into the park fund.

If the unexpended balance of the specific appropriation reverts to a particular fund, then under Section 48-6917 of Burns' 1933, the common council may transfer it into the general fund and then transfer it from the general fund into the park fund.

In answering your first question it is, therefore, my opinion that the amount of any decrease made in any appropriation, as provided in Section 48-1506 of Burns' 1933, which appropriation was made out of the general fund of the city, would be available for appropriation and transfer to the park fund as provided in Section 48-5607 of Burns' 1933 (1945 Pocket Supp.).

In answering your second question it is also my opinion that the amount of any decrease made in any appropriation as provided in Section 48-1506 of Burns' 1933, which appropriation was made out of a particular fund, and not the general fund of the city, would be available for transfer to the general fund as provided by Section 48-6917 of Burns' 1933, and from there would be available for appropriation and transfer to the park fund, as provided in Section 48-5607 of Burns' 1933 (1945 Pocket Supp.).

OFFICIAL OPINION NO. 77

August 2, 1946.

Hon. Clarence E. Ruston,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter concerning cumulative building funds, in which you ask my official opinion on the following questions: