towship trustees are only required to establish township high schools under certain conditions therein set out.

Section 28-2410, Burns' 1933, same being Section 1, Chapter 192, Acts 1899, as amended, provides in part:

"The school trustees shall take charge of the educational affairs of their respective townships, towns and cities. They shall employ teachers, establish and locate conveniently a sufficient number of schools for the education of children therein, and build, or otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient management of said schools. ** Provided further, that any trustee, instead of building a separate graded high school for his township, shall transfer the pupils of his township competent to enter a graded high school to another school corporation: **"

From a consideration of the above authorities I am of the opinion the boy referred to in your question, under the facts stated in your question, could be compelled to attend a city high school located within the township where said boy resides.

PUBLIC SERVICE COMMISSION: Fee on increase in common stock.

December 9, 1944.

Opinion No. 102

Hon. Hugh W. Abbet, Chairman,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your inquiry of November 22nd in regard to merger of the Indiana & Michigan Electric Company and the Indiana General Service Company, which for convenience is referred to hereinafter as the Indiana General. The capital structure of Indiana General is as follows:
Authorized
30,000 shares common stock;
50,000 shares 6% preferred stock.

Issued
30,000 shares common stock;
24,347 shares preferred stock to American Gas & Electric Co.;
15,364 shares preferred stock to private investors.

In order to consummate the merger it is proposed that Indiana General file Articles of Acceptance under the 1929 General Corporation Act, which articles will show their capital structure as 55,000 shares of common stock. The retirement of the preferred is to be achieved as follows: by redemption of all preferred stock in hands of private investors; by exchange with American Gas & Electric Co. of common stock for preferred stock, which leaves a balance of 653 shares of common stock held by the Indiana General which will be sold to the American Gas & Electric Company. Then to consummate the merger American Gas will exchange its common stock in Indiana General totaling 55,000 shares for an equal number of shares in Indiana & Michigan Electric Company. Your inquiry is as follows:

"Will you please inform me as to whether the fee provided for in Sec. 54-511, Burns', etc. 1933, should be charged upon the issuance of said 25,000 shares of common stock by Ind.-Gen., or upon any part thereof i.e., the 653 shares, in addition to the 55,000 shares of common stock of Ind.-Mich."

The Indiana General has urged upon the Commission that no fee should be charged for the issuance of new common stock totaling 25,000 shares for the following reasons:

"1. The issuance of the shares is not intended as an independent financing operation but solely as an incident in the merger of Ind.-Gen. into Ind.-Mich.

"2. In substance it is the same as if American Gas & Electric Co. exchanged its 24,347 shares of preferred stock and 30,000 shares of common stock in Ind.-Gen. for 54,347 shares of Ind.-Mich. common stock
and purchased 653 shares of common stock of Ind.-Mich., giving it a total of 55,000 shares of common stock of Ind.-Mich.

“3. Except for the 653 shares of Ind-Gen. purchased, there will be at no time prior to the merger, more than 24,347 shares outstanding as representative of the 24,347 of Ind. Gen. preferred stock owned by American Gas & Electric Co.

“4. The facts present a case within the reasoning in the opinion of the Attorney General dated Aug. 4, 1944, which was an opinion upon the question of charging the same statutory fee and was written in response to a request by Mr. Geo. N. Beamer, then Chairman of this Commission.”

Section 96 of Chapter 76 of the Acts of 1933 as amended by Section 1 of Chapter 71 of the Acts of 1925 (54-511 Burns' R. S. 1933), reads as follows:

“The commission shall charge every public utility and every municipality receiving permission from it to issue any stock, bonds, notes or other securities an amount equal to twenty-five cents (25¢) for each hundred dollars of such stock, bonds, notes or other securities, and the same shall be paid into the state treasury before any such stock, bonds, notes or other securities shall be issued. All money accruing from such charges, so made by the commission, is hereby appropriated to the commission for its use in defraying its expenses until and including the thirtieth of September, 1925, and thereafter shall be paid into the general fund of the state: Provided, That as to common stock of no par value, the fee shall be two and one-half cents (2½¢) per share.”

In an official opinion of August 14, 1944 from this office to the Hon. George N. Beamer, Chairman of the Public Service Commission, the fees above provided were construed as a fee to reimburse the Public Service Commission for time spent and expenses involved in the investigation and approval of the new issues of stock or of securities, rather than a license or privilege fee. In that opinion it was said that in
a situation where the Securities and Exchange Commission regulations required a retirement of preferred stock prior to the issuance of new preferred stock, notes issued by the utility for the purpose of retiring the old stock, which notes were to be immediately replaced by new preferred stock, would entail only one fee because the issuance of the notes was merely an incident of the refunding operation required by a federal regulation, and in that case where the new preferred stock was essentially a refunding proposition for old preferred stock, a fee was required.

Under the proposed alteration of capital structure by the Indiana General the utility will issue 25,000 shares of new common stock. The issuance of the new stock falls within the language of the section above quoted and I am unable to see any justification either for the extension of the opinion of August 14th or for the alteration of the statutory language so as to exempt the proposed transaction from the fee requirements.

The question is not solved by saying that the financial operation is an incident to the merger of Indiana General and Indiana & Michigan Electric Co. The accomplishment of that merger requires the issuance of new stock and that issuance must be approved by the Commission. It may be assumed that there will be no more shares of the Indiana General outstanding at any time than are originally authorized by the articles of Indiana General. It is inescapable, however, that permission is requested and an investigation required and the commission must assume the responsibility of granting authority to issue new common stock which was never authorized by the original articles of Indiana General. Under those circumstances it seems to me the fee must be charged. This is a different type of situation than the one presented in the opinion of August 14th. That opinion pertained to a duplication of fees.

I am of the opinion, therefore, that the Indiana General has incurred the statutory fee upon the 25,000 shares of common stock authorized by its Articles of Acceptance.

This opinion is limited to the exact situation presented and to the statute above quoted.