Mr. Frederick F. Eichhorn,
Chairman, Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Mr. Eichhorn:

This is in answer to your request for an opinion as to the legality of a tariff of a motor bus common carrier, which would provide for a lesser fare on busses for school children than for other passengers.

Your letter states that a tariff schedule providing for a 21/2c fare for school children, or a 40-ride ticket for a dollar, has been in existence for a number of years in the City of Anderson, and that the fare for all other persons is five cents. It is now proposed to eliminate this lower fare for school children upon the ground that it is discriminatory and, therefore, illegal. Your question is whether or not it is permissible for a common carrier to provide in its tariff for a lower fare for children going to and returning from school, than is regularly charged to its other patrons.

It must be recognized that a discrimination in rates and charges by utilities and motor carriers and railroads, between different classes of property or persons, or localities, or kinds of service, is not in itself unlawful. The thing prohibited as unlawful is a tariff that is unjustly discriminatory. Courts and commissions have recognized that a discrimination with a reasonable basis is not unjust or illegal.

Thus, with respect to railroad charges, in the Texas & Pacific R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 219, the Supreme Court of the United States said, with reference to the Federal Transportation Law:

“The terms of the statute, that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not to be enforced; but that all circumstances
and conditions which reasonable men would regard as affecting the welfare of the carrying companies and of the producers, shippers and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act.

"* * * To answer such questions in any case coming before the Commission requires an investigation into the facts, and we think that whatever would be regarded by common carriers, apart from the operation of the statute, as matters which warranted differences in charges, ought to be considered in forming a judgment whether such differences were or were not 'unjust' * * *.”

Likewise, in the case of Interstate Commerce Commission v. the Baltimore & Ohio R. Co., 145 U. S. 263, 283, the Court observed:

"In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike under the same conditions and circumstances and that any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge."

As illustrating the multiplicity and variety of the circumstances and conditions which enter into a reasonable classification, we quote as follows from the decision of the Supreme Court of Mississippi in Kolb Cleaning Co. v. Miss. P. & L. Co., 166 Miss. 136, 145 So. 910.

"These classifications rest upon several considerations, and these considerations are not to be disregarded in order to attain to an impractical or purely theoretical or scientific uniformity, whether in amount of consumption, or upon any other one single feature, disassociated from other substantially tangible and reasonably pertinent differences. As is said in American etc. Co. v. Lock Haven, 288 Pa. 420, 135 A. 726, 727, 50 A.L.R. 121: 'A city has a wide range of discretion in classifying the service, but the classification must be a reasonable one, based on consideration as
to quantity, time of use, or manner of service, or other matters which present a substantial difference as ground for distinction'."

The statutes of Indiana provide for a classification of customers asking for different kinds of service from utilities and transportation companies, and a particular charge for each class. The Indiana law with respect to motor vehicles provides that common carriers shall establish "reasonable rates, fares, charges and classifications, and just and reasonable regulations and practices relating thereto * * *." (Section 15, Chapter 90, of the Acts of 1941.) Electric power utilities have one rate for domestic users and a lower rate per unit for industrial users because the conditions of service are not the same and such a classification of customers has been upheld by the court.

Transportation companies are permitted to carry small children free and to charge half fare for older children. Commutation tickets and round trip tickets at a lower rate than regular one-way fares have been held not to be unjustly discriminatory. Special low round trip rates to conventions have been approved. Our Supreme Court has upheld an excess charge for fare paid on the train over a ticket fare on railroads. Sage v. Evansville and T. H. R. R. Co., 134 Ind. 100, 106 (1892).

In Interstate Commerce Com'n v. B. & O. R. R., 245 U. S. 263, 279, 280, the question was whether a schedule providing for a party rate ticket was an unjust discrimination. The Interstate Commission had held that it was unjust. In reversing the ruling of the Commission and deciding that the rate was valid, the Court said:

"The testimony indicates that for many years before the passage of the act it was customary for railroads to issue tickets at reduced rates to passengers making frequent trips, trips for long distances, and trips in parties of ten or more, lower than the regular single fare charged between the same points; and such lower rates were universally made at the date of the passage of the act. As stated in the answer, to meet the needs of the commercial traveller the thousand-mile ticket was issued; to meet the needs of the suburban resi-
dent or frequent traveller, several forms of tickets were issued. For example, monthly or quarterly tickets, good for any number of trips within the specified time; and ten, twenty-five or fifty-trip tickets, good for a specified number of trips by one person, or for one trip by a specified number of persons; to accommodate parties of ten or more, a single ticket, one way or round trip for the whole party, was made up by the agent on a skeleton form furnished for that purpose; to accommodate excursionists travelling in parties too large to use a single ticket, special individual tickets were issued to each person. Tickets good for a specified number of trips were also issued between cities where travel was frequent. In short, it was an established principle of the business, that whenever the amount of travel more than made up to the carrier for the reduction of the charge per capita, then such reduction was reasonable and just in the interests both of the carrier and of the public. Although the fact that railroads had long been in the habit of issuing these tickets would be by no means conclusive evidence that they were legal, since the main purpose of the act was to put an end to certain abuses which had crept into the management of railroads, yet Congress may be presumed to have had those practices in view, and not to have designed to interfere with them, except so far as they were unreasonable in themselves or unjust to others. These tickets then being within the commutation principle of allowing reduced rates in consideration of increased mileage, the real question is, whether this operates as an undue or unreasonable preference or advantage to this particular description of traffic, or an unjust discrimination against others."

The Court then reviewed a number of decisions and said:

"In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike under the same conditions and circumstances, and that any fact which produces an inequality of condition and a change of circumstances justified an inequality of charge." (245 U. S. 263, 283-284.)
Assuming, therefore, that a reasonable classification of patrons using the service of a railway or bus line is not unlawful, this brings us to the question whether or not there is a sound basis for putting school children in a different class and permitting them to ride at a lower rate than is accorded other patrons. There is nothing in the motor carrier act of Indiana itself, or in any other statute, that directly authorizes a lower or different rate for service to children because they are attending school. Many states have adopted the policy—especially in transportation matters—of allowing, or requiring, a lower rate to school children on street cars or busses, and the courts and Public Service Commissions have quite uniformly upheld such a special rate whether authorized by statute or not.

In the state of Illinois, in Re Springfield Consol. R. Co., reported in P.U.R. 1920E—474, the Illinois Commission refused to permit an increase in the fare of children attending school. The Commission said:

"The public interest requires that no obstacle, however slight, should be placed in the way of the education of the children of the poor."

The Commission there ruled that it would facilitate the purchase of tickets by requiring that four school tickets be sold for 25c, rather than 8 tickets for 50c.

In another case in Illinois, decided in 1928, the Commission denied a request for an increase in street railway fares for children. The Commission said that the increase would probably decrease the riding by children without any resulting increase in revenue to the company. (Re Illinois Power & Light Corp., 7 Ill. C.C.R. 688.)

The state of Wisconsin in Madison R. Co. (1918), 22 Wis. R.C.R. 149, because of the then existing World War conditions, permitted an increase in general fares but refused to allow an increase in the cost of tickets to High School children. The Commission said that the transportation of school children could hardly be determined on the cost of service and observed that many street railways carried High School students at a lower rate and that it approved this policy, with the limitation that the rate should be operative only when necessary to enable a student to ride to and from school. The Commission
also said that the company should have some means of insuring that the tickets would be used only by parties entitled to use them and only for the purpose for which they were issued, and that this would doubtless require the cooperation of the school authorities.

The state of Maine in the case of Re Lewiston A. & W. Street R. Co., P.U.R. 1918E—681, refused to permit the railway company to withdraw the reduced fare rate applicable to school children's tickets saying:

"It is a matter of state-wide policy that the utility should grant school tickets. The practice was inaugurated by the railroads, was tacitly assented to by the traveling public, and has influenced countless families in residential and other plans."

The children's school tickets in that case were one-half the usual rate to other patrons.

In Arizona in Re Phoenix Street Car Co., P.U.R. 1920A—671, the Commission approved an order allowing railway executives to issue a rate schedule granting a one-half fare to school children.

The state of Georgia in Re Georgia Power Co., P.U.R. 1928A—830, approved a schedule granting a 5c fare to school children and 10c cash fare to other patrons, with four tokens for 30c.

The Louisiana Commission in an order following a general rate proceeding, refused to consider an increase in the existing fare for school children. (Re Shreveport R. Co., P.U.R. 1929A—88.)

In the state of Massachusetts one-half of the usual fare has been authorized to school children. Bedford Textile Council v. Union Street R. Co., P.U.R. 1927D—619. There are other like decisions from other states that might be cited.

Attention is called to the opinion of the Supreme Court of New Jersey, in the case of Public Service Ry. Co. v. Board of Public Utility Commissioners, 80 Atl. 27 (1911). The question involved there was whether or not a 3c fare for school children maintained by a street car company for many years, was abrogated by the enactment of the Public Utility Law which prohibited undue or unreasonable discriminatory rates. The court said that the Public Utility Act was in reality a re-
statement of the common law against unjust and undue discrimination, and, that the only actual change made by the utility statute was that it conferred upon the State Commission the power to determine whether a rate was undue or unreasonably preferential. The court observed also that the street railway company by its low fares, had practically converted itself into an auxiliary of the state in assisting in the spread and maintenance of education, by facilitating the transportation of school children at special low rates. The court then declared:

"This was not an undue or an unreasonable preference ipso facto. It was in line with the spirit of our Constitution and with the laws and immutable traditions of our state, making for the perpetuation of an enlightened citizenship based upon the education afforded by our schools."

The Court further said:

"It is difficult to perceive why the special rate accorded to school children under this regulation of the company should be abrogated by this act, while the well-known regulation of railway companies of carrying small children free of charge remains unquestioned. * * *

The Supreme Court of New Jersey in this case denied a certiorari by the railroad company to determine the legality of the order of the public utility commission which had restored the reduced rate of fare to school children.

I am informed that there is on file with your Commission, schedules of rates applying to some cities in the Calumet District, and to the City of Fort Wayne and to the City of Indianapolis, which provide a preferential rate for school children. The school tickets sold at a lower special rate, are limited in their use to certain days, between certain hours, and there is a time limit within which the tickets may be used.

The school laws of Indiana make provision for the free transportation of children on official school busses to and from a school in rural areas to consolidated schools and also under other special conditions. However, no similar free transpor-
The sale of special school tickets to children is much like the sale of party tickets or commutation tickets to people who reside along the line of a railway and make regular use of its service to reach their places of business. The Interstate Commerce Commission in the proceeding before it entitled “Commutation fares to and from Washington, D. C.,” reported 33 I.C.C. 428, (1915) said that in fixing reasonable fares for commutation tickets there were elements involved other than the cost; that fares tending to put the use of railroads beyond the reach of the average commuter of a particular region, or which might tend to compel, on a large scale changes of residence, or which tend to disrupt the community life of those dependent upon this service, must be reviewed in the light of a carrier’s obligation as a common carrier designed for community service.

In the case of State v. Northern Pac. Railway Co., 96 N. W. 81, the Railway Company undertook to abandon a station that had been in existence for a number of years. The removal would be a hardship on the patrons of the railroad who had depended upon the convenience of the station. The Court on this point said:

“Here the defendant led the public to act upon their faith in the continuance of the station and to some extent it would seem as if, when defendant by its own action, has determined that a station needed for the convenience of the public should be located, and is maintained for a considerable time, it ought not, after long continuance in use, to deprive those benefited thereby of the same or supply its place by such diminishing facilities as fail to comply with the statutory requirement in that respect.”

There is something to be said in favor of the policy adopted by many states of requiring the transportation agencies of the state to extend to school children a special low fare and thus aid in the diffusion of knowledge. This would be consistent with Section 1 of Article 8 of our State Constitution. However, the Indiana Legislature has not enacted any statute
which can be said to approve a policy of low rates to school children.

There is something to be said also in favor of the argument that where a low fare on some special service has been in existence for a long time and the patrons of the railroad have adjusted their living conditions to the situation created by the railroad so that a discontinuance of the special fare or service would be a hardship—in that case the increase in fare or elimination of the special service may be inconsistent with the common carrier obligation of the railroad. This argument has an especial appeal at this time because of the possible restrictions that may be put upon the family automobile sometimes used in the carrying of the children to school.

However, my opinion that a special low fare to school children is not unjustly discriminatory, is based on the fact that school children in cities may be properly classed as a special group of patrons, different from other patrons and so entitled to special low rates on a street car or bus that carries them to and from their school. The granting of low fares to them insures a volume of traffic at regular intervals that can be depended on and provided for by the carrier. It is in effect the wholesale principle of selling tickets at a reduced rate. The special low rate to school children tends to encourage the location of residents along the line of the railway or routes of the bus, and adds to the number of possible patrons. The tickets sold in books are paid for in advance of their use. The fact that so many city bus lines and street car companies have provided in their schedule of rates for a special lower rate for school children, indicates that the practice is not regarded by the carrying companies as a revenue losing service.

The Indiana Commission is on record as sanctioning a school children rate. In Re Louisville etc. Co., reported in P.U.R. 1920F, in an order prepared by Commissioner Lewis, the Commission had under consideration a school ticket rate problem in the southern part of the state. The commission said:

"The rate schedule on file with the Commission showed that school commutation tickets for 48 rides between towns depended on the distance, and amounted to less than 1c per mile."
The Commission further said:

"Commutation rates are, at least, preferential rates and are justified, if at all, because of consideration of public policy, and because it encourages a volume of traffic moving at regular intervals."

The order of the Commission in that proceeding authorized school students commutation tickets in books of 40 for one way rides at a price much less than the basic passenger rate per mile.

In this opinion I am not passing upon the question of the reasonableness of the rate heretofore charged in the City of Anderson, or in any other city for school children tickets.

My opinion is simply that a preferential low rate to children going to and returning from school is not illegal in Indiana.

INDIANA GIRLS' SCHOOL: Release—Authority of board of trustees of institution to release and finally discharge girls committed to the institution before they reach the age of 20 years.

September 10, 1942.

Mrs. Adeline C. Lehman, Superintendent,

Indiana Girls' School,
Indianapolis, Indiana.

Dear Mrs. Lehman:

I have your request for an official opinion upon the question of whether or not the Board of Trustees of the Indiana Girls' School may absolutely release and finally discharge girls committed to the School pursuant to Section 13-707, Burns' Indiana Statute Annotated 1933, before they reach the age of twenty years.

The statute referred to provides the form of commitment and requires that "such girls shall be committed to the custody of the board of trustees of the Indiana Girls' School, to be confined by it at that institution, or at such other place as may be designated by said board of trustees where they can be