PUBLIC SERVICE COMMISSION—Whether an Indiana public utility may purchase stock in a non-resident public utility corporation.

Corporations—Whether an Indiana public utility may acquire the stock of a non-resident public utility corporation.

November 4, 1942.
OFFICIAL No. 81-10.

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

Dear Sir:

This is in reply to your request of October 23, 1942, submitting the following question: May a public utility under the jurisdiction of the Public Service Commission of Indiana purchase the stock of another public utility located in the State of Ohio?

As your letter also suggests, this question is not a new one. On July 10, 1917 (Opinions of the Attorney-General, 1917-1930, page 413), the Public Utility Acts of 1913 the Commission had very broad powers over public service corporations, and that, while the statute is silent on the authority of the Commission to authorize a public utility corporation to acquire the stock of another public utility located outside of the state and engaged in the same or similar business, that such authority was properly implied from the express powers of the Commission.

The opinion said that the grant of such authority by the Commission would not prevent control over the Indiana corporation, and would require the books, papers and accounts to be kept in Indiana subject to the examination of the Commission, and that a majority of the Directors would be required to reside within the State of Indiana.

The opinion concludes by observing that whether it is wise for the Commission to exercise its authority is a question to be determined by the Commission.

The Indiana utility referred to in that opinion, owned a plant in the state of Michigan and was acquiring another plant in that state. The opinion, however, does not indicate the nature of the business of the utility.
The same question came before this office again on April 19, 1926; (Opinions of the Attorney General, 1925-1927, page 506). The utility in that case owned a gas plant which supplied gas to the cities of Winchester, Union City and Portland, Indiana. The gas plant operated at only a part of its capacity and had connection with the town of Greenfield and other communities in the State of Ohio, nearby the Indiana-Ohio State Line and the city of Winchester.

It was contemplated in that case that a public utility company would be organized in Ohio and that the Indiana company would acquire all of the capital stock and bonds, and that the Indiana company and the Ohio company would be operated as a consolidated public utility subject to Indiana laws. The question there was whether the Indiana organization could purchase the bonds and stock of the Ohio utility. The Attorney General's opinion holds that there was no statutory inhibition and that the question was one of consent by the Public Service Commission.

The first question to be determined is whether the public utility corporation you inquire about has authority by virtue of the law under which it is incorporated to acquire the stock it is proposing to buy of the other public utility organized under the laws of another state. If its charter does not grant such power, any action by the Public Service Commission would not give it such power.

Assuming that the power to make such a purchase exists, the question before your Commission is whether it would be inimical to the welfare of the State of Indiana to permit the proposed purchase. It might be as in the case of the gas plant where a purchase was held legal by the Attorney General in 1926, it would be an advantage to the State of Indiana to permit such a purchase, which really amounted to a method of arriving at a consolidation. However, it is possible to conceive of a situation where it would not be wise to permit a public utility to purchase the stock or acquire the property of a corporation under another jurisdiction. That is, viewed from the standpoint of your Commission and taking all relevant facts into account, the problem is whether the purchase would be inimical to those interests of the state that your Commission is bound to protect. If the proposed purchase would not be contrary to such interests, you may not deny authority to make the purchase.