I think the terms "Department"—"Employee Beneficiaries" and "Engineers" as used in the Trust Agreement should be given the same meaning as the similar terms used in the Act authorizing the Trust Agreement. It is apparent, therefore, that the Department of State Police must first agree upon the desired amendment and the consent of the engineers and of the majority of the employee beneficiaries, as stated, should also be obtained. The amendment may be made by specifically amending each section of the existing Trust Agreement and of the Supplemental Agreement which will be affected by the change. However, an amendment of such an agreement as this does not require the use of the same method as applies to the amendment of statutes, and probably a simpler method would be to provide that—"anything to the contrary in the original Trust Agreement or the Supplemental Agreement, said Agreement and Supplemental Agreement are hereby amended and modified so as to provide" et cetera (here set out the proposed modification).

In answer to your third question, I desire to say that this answer should be included in the amendment; however, I doubt whether such an amendment would be valid which placed the authority to determine as to whether a man, after reaching the age of fifty-five, may continue service with the Department with any other body than the Department itself.

POLICE, INDIANA STATE: Authority of State police and other law enforcement officers in case of fatal accidents at railroad crossings.

March 26, 1942.

Mr. Don Stiver,
Superintendent, Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Mr. Stiver:

Your request of March 3 is at hand for an official opinion reading as follows, to-wit:

"I respectfully request an official opinion from you as to the rights and duties of members of the State
Police and other law enforcement officers in cases of fatal accidents at railroad crossings, as to holding the train involved in the accident, or permitting the train to proceed before the arrival of the coroner if the body of the deceased is left in charge of a member of the train crew or other agent of the carrier, and as to the right of the carrier to move the body sufficiently to permit the train to proceed, if the body is on or so near to the track as to make that necessary.

I direct your attention to Chapter 29 of the Acts of 1939 which, including the title, reads as follows:

"AN ACT concerning the rights of common carriers in relation to the deaths of persons caused by violence or casualty.

"Death by Collision—Common Carrier—Duty.

"SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That when any person shall have come to his death by violence or casualty caused by a collision with a train, car or other conveyance of any common carrier, it shall be lawful for such train, car or conveyance to proceed on its journey before the arrival of the coroner and the holding of an inquest, if the body of such person be left in charge of a member of the crew of such train, car or other conveyance, or of some other agent of such common carrier."

(Burns' Indiana Statutes Annotated, Sec. 55-1339 (1941 Pocket Supp.))

It would appear from this law that the intention of the legislature, expressed in the words used in the act, is clear and unambiguous. There is, however, another law dealing with the powers and duties of county coroners. This is Chapter 241 of the Acts of 1935. Without quoting the entire chapter, it provides substantially as follows:

a. Every coroner, as soon as he shall be notified that the dead body of any person supposed to have come to his death by violence or casualty is within his county, shall immediately proceed to inquire, upon
view of the body, how and in what manner he came to his death.

b. This subsection provides that the dead body is not to be moved until the coroner shall take photographs of the same.

c. Subsection "c" provides that subsection "b" above should apply only to counties having a population of more than 200,000 and not to exceed 400,000.

(Burns' Indiana Statutes Annotated, Sec. 49-2904, (1941 Pocket Supp.))

At the present time this would only include Lake County. This is the only prohibition I have found against moving a dead body when the death of the person was caused either by violence or casualty or, for that matter, by criminal action.

It is noted that Chapter 241 of the Acts of 1935 is a general law concerning the duties of all coroners in the state in respect to the investigation of the death of any person supposed to have been caused by violence or casualty.

This being a general statute upon the subject of the duties of all coroners in the state, in my opinion it was superseded in part by the later special statute controlling the rights and duties of common carriers. When any person shall have come to death by violence or casualty by a collision with a train, car or other conveyance of any common carrier, I am of the opinion that Chapter 29 of the Acts of 1939 applies. (Burns' Indiana Statutes Annotated, Sec. 55-1339, (1941 Pocket Supp.))

It is a rule of statutory construction that general statutes upon a particular subject must give way to the special statutes upon the same subject.

Daly v. Carr, et al, 206 Ind. 554;  
Daniels v. State, 150 Ind. 348;  
Kegan & Co. v. Ossam, 190 Ind. 554.

The general statute in this case is the one defining the duties of a coroner when any person meets his death by violence or casualty. The special statute is the one pertaining to common carriers, that is, when any person meets his death by violence or casualty caused by a collision with a common carrier, the
crew or agent of the carrier may do the things provided for in Chapter 29 of the Acts of 1939. (Burns' Indiana Statutes Annotated, Sec. 55-1339, (1941 Pocket Supp.))

If a common carrier, in a collision, killed a human being and, in order to expedite the movement of traffic, left the body of the person killed in charge of a member of the crew or an agent of the carrier, the carrier, under the provisions of this law, would be justified in proceeding on its journey.

I am of the opinion that when any person shall come to his death by violence or casualty caused by a collision with any common carrier, such carrier may proceed on its journey before the arrival of the coroner if the body of such person be left in charge of a member of the crew of such carrier or some other agent of such carrier, and, further, that the body of the dead person may be moved sufficiently to allow the clear passage of the carrier.

MOTOR VEHICLES, BUREAU OF: Refunds—Whether refunds can be made to truck owners who obtained plates and paid the fees required by the 1941 Act subsequently held unconstitutional.

March 26, 1942.

Mr. R. Lowell McDaniel,
Manager, Bureau of Motor Vehicles,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 28 which reads in part as follows, to-wit:

"A number of 1942 truck plates had been sold before the Supreme Court held the last truck license law unconstitutional. The fee collected from purchases of these plates was greater than the fee now declared to be in effect for 1942 truck plates.

"We would appreciate your opinion as to whether or not we can, upon request, legally refund the difference in the fees referred to above."