all of the tenure teachers if they could justify their dismissal on the ground of "justifiable decrease in the number of teaching positions." (See on this subject the case of Harris v. State ex rel. Allen, 212 Ind. 386, quoting extensively from the case of Ehle, Trustee v. State ex rel. Wissler, 191 Ind. 502.)

There is at least one law in which the identities of the consolidating corporations are entirely lost and a new entity is created. Under such circumstances, reasoning by analogy, it seems to me that there would be no tenure rights with respect to the new entity. (See Burns' Indiana Statutes Annotated 1933, Sec. 28-4307, which shows clearly that the several contracts must be with the same school corporation).

ALCOHOLIC BEVERAGE COMMISSION: Dance Permits—whether refunds should be made in case permits are either rejected or withdrawn.

Whether dance permits are transferable.

Mr. Hugh A. Barnhart,
Excise Administrator,
Alcoholic Beverages Division,
Indianapolis, Indiana.

May 26, 1941.

Dear Sir:

This is in answer to your request for an opinion interpreting Section 30 of the Alcoholic Beverage Act, as amended by chapter 237 of the Acts of 1941, insofar as such chapter relates to the fee required for dancing permits.

You ask:

"1. (a) Should any refund be made to the applicants for a dancing permit if the application is rejected or withdrawn?

"(b) Why?

"(c) Should the entire amount be refunded or any part thereof?

"2. (a) A dancing permit, once having been
granted, is it transferable as to location and is it transferable as to person to person?

"(b) In the case of a transfer is a $20.00 transfer fee required?

The provision of the law, pertaining to your question, is as follows:

"It shall be unlawful for any permittee, other than a fraternal club, to allow any dancing, or for any person to dance, in any room in which alcoholic beverages are sold by the drink, in any manner, or in any room connected with such other room by means of a door or other opening, unless such permittee shall have a special permit authorizing such dancing. The application for a dancing permit shall be in such form and shall contain such information as the Commission may from time to time require. Such application shall be accompanied by the payment of an annual fee of fifty dollars ($50), which fee shall be paid into and constitute a part of the enforcement and administrative fund of the Commission, and shall be used and disbursed solely for the enforcement and administration of this Act and for no other purpose. The application for a dancing permit shall be submitted to and approved by a majority of the local board of the county wherein the premises are located before the Commission shall issue any such permit. A dancing permit shall expire one year from the date of its issuance unless revoked or suspended prior to said expiration date. * * *"

The Alcoholic Beverage statute contains no provision either for the retention of the $50 fee by the Commission, or for its return to the applicant; in the event his application for a dance permit is not granted. In my opinion the entire $50 annual fee should be returned if the application is denied.

There is no doubt about the fact that public dancing carried on in places where alcoholic beverages are sold adds somewhat to the moral hazards of the place, and requires police supervision in addition to that incident to the selling of liquor. The statute recognizes this and the fee required is to go into the enforcement fund of the Commission. When a dancing permit is denied a less fund is needed to regulate dancing.
The statute calls the fee "an annual fee." This language indicates the fee was regarded by the Legislature somewhat in the nature of compensation for an annual privilege granted.

In addition to the purpose of the fund and its nature, it seems to me no more than fair to an applicant that his money should be returned to him when a permit is refused.

As to your questions concerning the transfer of a dancing permit, section 7 of the Alcoholic Beverage Act, in par. (1) under "General Provisions" provides for the transfer of permits. This paragraph was in effect when the legislature added the provision for granting dancing permits, and I believe it was contemplated that the paragraph on transfer of permits generally would apply also to permits granted for dancing. The paragraph is as follows:

"* * * Notwithstanding any other provisions of this Act, transfers of permits from one holder to another holder, or from one location to another location may be made in case such permits have not less than three (3) months of unexpired terms, upon such terms and under such rules and regulations as the Commission may prescribe: Provided, however, That the application therefor shall conform in respect to notice and publication and investigation before the local board as in cases of original application therefor, and subject also to the payment of a cost fee in advance of twenty dollars ($20)."

It is my opinion, therefore, that a dancing permit is transferable both as to location and from person to person, and that in the case of a transfer being asked a cost fee of $20 is required in advance.

However, as to the transfer I make the following reservation. Inasmuch as a dancing permit is to be issued only to one who already holds a permit for the sale of alcoholic beverage, it is my opinion that the law does not contemplate a transfer of a dancing permit, without a transfer also of the alcoholic beverage permit to which it is attached, both in the case of a transfer from person to person, and, from one location to another; that is, such a permit is in the nature of a personal privilege to be granted only where the personal fitness of the applicant is established to the satisfaction of your commission, and where also the location is suitable, under such
rules as you may provide, and these conditions should be
taken into account by your commission when you are called
on to approve any transfer of a dancing permit.

ALCOHOLIC BEVERAGE COMMISSION: Authority of com-
mmission with reference to spending special enforcement
appropriation.

June 3, 1941.

Mr. Hugh A. Barnhart,
Chairman, Alcoholic Beverage Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of May 14, 1941, asking an official opinion
with respect to the powers of the Alcoholic Beverage Com-
mission, especially in regard to the expenditure of such
monies as are at its disposal. Summarizing your letter briefly,
you ask:

"1. Since the Commission is now supported entirely
by special enforcement and administrative taxes flow-
ing into a fund earmarked for the Commission's exclu-
sive use, what other laws applicable to all public funds
will affect the expenditures of the Commission?

"2. The Commission, through its Excise Adminis-
trator, has in the past purchased equipment, printing,
etc., through the Printing Board or the Central Pur-
chasing Agent. Since under the Stout Act the entire
Commission is responsible for all purchases, must the
Commission make purchases in the same manner as
in the past, or does it have the right to buy from what-
ever source it sees fit and whatever equipment it
deems necessary for the administration of the Act?

"3. To what extent must the Commission submit to
the control of the Budget Committee or secure its ap-
proval in administering and enforcing the 1941 Stout
Act?"

Under Section 48 of Chapter 237 of the Acts of 1941, (the
so-called Stout Act), a special enforcement tax is provided.