In answer to your first question, it is therefore my opinion that you should take action against these schools as prescribed by Section 16, Chapter 72, Acts 1935 (Sec. 63-1816, Burns' Indiana Statutes Annotated, 1933 Supplement) which provides in part as follows:

"Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than twenty-five dollars ($25.00) and not more than two hundred dollars ($200.00), to which may be added imprisonment not to exceed thirty (30) days:

"(1) The violation of any of the provisions of Section 1 (Sec. 63-1801) * * *.""

In answer to your second question, I direct your attention to Section 23, Chapter 72, Acts 1935, which recites in part as follows:

"The Board shall have authority to make reasonable rules and regulations, not inconsistent with the provisions of this act, for the administration of the provisions of this act. * * *"

That administrative boards may adopt reasonable rules for the administration of an act, is no longer open to question.

Blue v. Beach, et al., 155 Ind. 121.

It is my opinion that your proposed rule is not unreasonable, its purpose being to facilitate the administration of your law and is, consequently, within the power of your Board to adopt.

SEcurities COMMISSION: "Public Offering", meaning of, as used in Indiana Securities Act.

February 23, 1940.

Mr. Joseph O. Hoffman,
Securities Commissioner,
State House,
Indianapolis, Indiana.

Dear Sir:

You asked for an opinion upon a question stated in your letter of February 20th as follows:
“Section 5 (c) of the Indiana Securities Act for the year 1937, provides that the provisions of said act shall not apply to the sale of any security, as follows:

"'Sales by or for the account of a bona fide owner other than an issuer or underwriter with no intent to avoid the provisions of this act or not involving a public offering.'

“The Securities Act for 1937, Section 3, which is that section defining certain words as used in the act, does not define what is meant by a public offering. The Commission desires an opinion as to what amounts to a public offering in connection with said sub-section (c) of Section 5 of the act, as above set out. * * *”

Your letter states that the Securities Act of 1937 does not define the term public offering. This term is hardly possible of exact definition so as to be made applicable, without modification, to all cases or instances that might arise in which the term becomes involved.

It would be as difficult to define public offering for legal purposes as to attempt definitely to define from a legal standpoint what constitutes "doing business." The latter term the courts have rarely defined except as pertaining to some specified or particular state of facts. Search of the authorities does not disclose that a concrete definition of public offering has ever been attempted by the courts.

You are aware, of course, that the term public offering appears in various sections of the Federal Securities and Exchange Act. This act, the same as the Indiana law, makes no attempt at definition. The Securities and Exchange Commission, however, has been called upon at various times to apply the term to specific cases, and these applications have been stated in so-termed releases issued by the Commission, found in The Corporation Trust Company’s Stocks and Bond Service which, I believe, are available to you.

I call your attention to these releases, even though you are undoubtedly familiar with them, since they show careful preparation, and will serve to throw considerable light on the subject in the absence of actual definitions.