ample power to the insurance department to supply and pro-
mulgate necessary and reasonable rules relating to rates in-
volving automobile insurance against losses by collision, per-
sonal injury and property damage.

It appears from section 178(s) that all rates that were
used by the class of insurers referred to therein on or before
July 1, 1935, became established rates upon being filed in
verified form with the department, and it will be noted that
the insurers were permitted to make changes in their estab-
lished and published rates to become effective fifteen days
after the filing of such changes with the department, thus giv-
ing the department fifteen days' notice of the contemplated
changes. But there is nothing in these provisions inconsistent
with the supervisory authority in the department through its
rules to change or modify these rates.

It is my opinion, therefore, that your department has author-
ity, under the provisions of paragraph (c), section 14, to pro-
mulgate a rule or rules defining what is a safe or unsafe
manner and a safe or unsafe condition for conducting and
transacting business by any insurance company to which the
Act is applicable; and that any reasonable rule fixing, within
the sound discretion of your department, limitations as to
rates based upon experiences as to safe or sound insurance
practices would be valid, whether applying to insurance upon
automobiles and other vehicles against loss or damage by fire
and theft, or applying to insurance upon automobiles and
other motor vehicles against loss or damage by theft, collision,
personal injuries and property damage, or as applied to both.

HIGHEST COMMISSION, STATE: Pavement of streets be-
tween double rail tracks, whether duty of commission or
street railway company.

May 17, 1939.

Mr. T. A. Dicus, Chairman,
State Highway Commission,
State House,
Indianapolis, Indiana.

Dear Mr. Dicus:

Your letter of May 5, 1939, relative to the pavement of
a highway in a city where there is a double track street rail-
way, received. With your letter you submit a drawing in blue and red and state:

"The question involved is whether the State Highway Commission or the street railway company should pay for that area colored in blue on this sketch, which is that portion lying between the two lines which are 18" outside the inside rails of the two tracks. The street railway company takes the position that only that portion colored in red on the attached sketch should be paid for by their company and that the State should pay for that portion colored in blue."

Section 26 of chapter 53, Acts of 1919, which is now replaced and was the Act creating the highway commission, provided, among other things, as follows:

"In all cases where the track or tracks of any steam, electric interurban or street railroad company occupies any part of any highway which is ordered improved and maintained by the State Highway Commission under the provisions of this Act, such railroad company shall improve and maintain, or pay for the cost of improving that portion of the highway occupied by its tracks, including the space between the rails, the space between the tracks, if there be more than one track, and the space eighteen (18) inches in width on the outside of the rails, but in all cases where practicable, such improvement to the full width thereof shall be constructed outside the area occupied by such tracks and where not practicable to do so then the highway commission shall have the power to remove such tracks to that part of such highway outside the area to be so improved."

The legislature of 1933, enacted a new highway commission Act, chapter 18, page 67. Section 20 of this Act, however, contains exactly the same language as above quoted from section 26 of the Acts of 1919, except in section 20 of the Acts of 1933 the following language is used:

"* * * shall have the power to require such tracks to be so removed to that part of such highway outside the area to be so improved."
While the language used in section 26 of the Acts of 1919 is as follows:

"* * * shall have the power to remove such tracks to that part of such highway outside the area to be improved."

In other words the only change made is by the use of the word require.

It is perfectly clear that both under the Act of 1919 and the Act of 1933, a street railway company was legally bound to improve and maintain, or pay for the cost of improving, that portion of the highway occupied by its tracts, including the space between the rails, the space between the tracks, if there be more than one track, and the space eighteen (18) inches in width outside of the rails. However, in 1937 the legislature enacted chapter 256, p. 1199, which materially changes the provisions of the Acts of 1919 and 1933 relative to the duties of railroad companies in constructing and maintaining the space between tracks, if there be more than one track.

In section two (2) of the Act of 1937, we find the following language:

"That whenever any such street is occupied by the track or tracks of any street railway, interurban railway or steam railroad said commission shall not be required to maintain, construct or reconstruct the portion of said street between said track or tracks and for eighteen inches on the outside of the outer rails thereof."

It is very significant that the language here used omits to say anything about the space between two or more tracks. In the Acts of 1919 and 1933 the language used was specific and required the railroad company to construct and maintain said space. The language of the present Act (1937)

"between said track or tracks"

can only mean, in my judgment, to refer to the space between the rails of the track and eighteen inches on the outside thereof and could not be construed to mean the space between two tracks if there were double tracks or more.

This interpretation and construction of the aforesaid language is strengthened and fortified by the further language used in said section which is as follows:
"* * * and in case of tracks it shall be the duty of such owner or owners to pave the portion of such street between the rails of said tracks, and eighteen inches on the outside thereof."

Here we find an affirmative duty of the railroad companies to only pave the portion of a street between the rails of the track and eighteen inches on the outside thereof. The legislature has here said specifically and clearly what the railroad company shall do and nothing more. It would, therefore, appear that the legislature by the Act of 1937 intended to and did relieve the railroad companies of the duty of constructing, maintaining and improving the space between two or more tracks and the only duty of the companies is to improve and maintain the space between the rails of the track or tracks and eighteen inches on the outside of each track.

There can be no question but that the Acts of 1933 and 1937, as to the provisions herein discussed, are in conflict and section 22 of the Acts of 1937 provides that:

"Any part of any law in conflict herewith is hereby repealed to the extent of such conflict."

The aforesaid provisions being in conflict, the provisions of the Act of 1933 are repealed by the Act of 1937.

I am of the opinion, therefore, that the Street Railway Company is not legally required to make the improvement, or pay for the same, designated by the blue coloring.


May 17, 1939.

Hon. T. A. Gottschalk, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your request of May 17, 1939, for an official opinion regarding the construction of House Bill No. 190, which will be chapter 123 of the Acts of 1939 as passed by the General Assembly of the State of Indiana at its recent session.