PUBLIC SERVICE COMMISSION: Right to charge utility for costs of investigations to determine revaluation of property.

January 30, 1939.

Hon. Perry McCart,
Public Service Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your letter of January 9, 1939, requesting an opinion as to the authority of the Commission in taxing certain expenses incurred by the Commission in investigations to the utility investigated. You say:

"The purpose of this communication is to obtain an opinion as to whether, in cases where the Commission has valued the property of a utility and later decides that there should be a revaluation of such property as authorized under Section 54-206, Burns Indiana Annotated 1933, Acts 1913, Chapter 76, Section 12, page 167, the Commission may charge against the utility the costs of such revaluation.

"You will note that in Section 54-205, same statute, the expense of an original valuation is chargeable to the utility and unless such revaluation is to be regarded the same as the original valuation, then there is no provision in the statute for charging the expenses of the revaluation to the utility.

"Section 54-204, same statute, provides that before final determination of the value of a utility property the Commission shall, after notice to the public utility, hold a public hearing, etc., etc.

"As to this the question is whether Section 54-204 applies equally to a revaluation made as provided for in said Section 54-206. Please give us your opinion as early as convenient for you to do so."

You further say:

"It has been the practice of the Commission to charge the expenses incurred by the Commission in making audits of the books and accounts of utilities as pro-
vided for in Section 54-214, Burns Indiana Statutes, Acts 1913, Chapter 76, Section 20, page 167."

As to the practice of the Commission in charging expenses in auditing the books of a utility under the provision of Section 20 of Chapter 76 of the Acts of 1913, Burns Indiana Statutes Annotated 1933, 54-214, I do not believe the Commission has any power under Section 54-206 referred to in your letter to charge such expense to the utility.

In an opinion from this office dated December 30, 1935 (See Opinions of the Attorney General 1935, pp. 451, 457), a ruling was given as to the scope of Chapter 60 of the Acts of 1925 (Burns Indiana Statutes Annotated 1933, 54-425) which was an amendment of Section 74 of the above Chapter 76 of the 1913 Public Utility Act. This Section 74 as amended in 1925 reads as follows:

"Section 74. In its order upon any investigation, made under the provisions of this Act, either upon complaint against any public utility, or upon the petition of any such public utility or upon the initiation of the Commission, the Commission shall ascertain and declare the expenses incurred by it upon such investigation, and the public utility affected thereby shall pay into the treasury of the State the amount of the expenses, so ascertained and declared, within a time to be fixed in the order, not exceeding twenty days from the date thereof. The Commission shall cause a certified copy of all such orders to be delivered to an officer or agent of the public utility affected thereby, and all such orders shall of their own force, take effect and become operative twenty (20) days after service thereof unless a different time be provided in said order. Provided, That so much of any order of the Commission as may increase any rate of such public utility shall not take effect until such expenses are paid into the State treasury. All such moneys paid into the treasury of the State are hereby appropriated to the Public Service Commission until and including the 30th day of September, 1925, to defray its expenses until said date and thereafter shall be paid into the general fund of the State."
The conclusion of the Attorney General in construing this provision was as follows:

"From what I have said, my opinion is that the Commission is empowered to assess the expenses of inquiring into and informing itself as to the facts necessary for it to regulate utilities, and the expenses of such inquiry may be properly assessed against a utility under investigation."

This statute above set out evidently contemplates that the costs so chargeable must be in an investigation which will result in some order, and it must be assumed that the costs will not be arbitrarily arrived at and that the utility will be given some opportunity to be heard as to the propriety of the expense.

It is my opinion, therefore, that the Public Service Commission may charge to the owner or operator of a utility the necessary expense incurred by the Commission in the revaluation of the utility property.

PUBLIC INSTRUCTION, DEPARTMENT OF: Furnishing of transportation or physically handicapped or indigent children not mandatory on school corporation.

February 1, 1939.

Mr. Grover Van Duyn,
Assistant Superintendent,
Department of Education,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of January 27, 1939, requesting an official opinion in answer to the following questions:

1. Are resident school corporations required to furnish transportation to indigent, physically handicapped children who, by reason of such physical handicap, are unable to walk to the special school provided for their training?

2. The compulsory school law requires the attendance of all able-bodied children from the age of 7-16. Section II of the Acts of 1913, page 655 as amended in 1933, page 414, provides that the transportation of high