motor vehicle common carrier legislation which the Commission has jurisdiction over is to be found in the Acts of 1925, at page 138, which legislation is generally referred to as the Motor Vehicle Supplementary Act, and subsequent amendments thereto.

I conclude, therefore, that the enactment of Chapter 44 of the Acts of 1933 has added nothing to the heretofore existing powers and duties of the Commission.

Your second question seeks my suggestions as to what rules and regulations the Commission may make under these general laws to regulate exclusively interstate commerce. Inasmuch as the question of interstate regulation of motor vehicle common carriers is now being considered by congress and statutes will no doubt soon be enacted by congress dealing with interstate common carriers, I hesitate to make any suggestions except that the Commission should, pending such statutory enactments by congress, continue as it has in the past to require all applicants for interstate certificates to obtain the approval of the Commission of its service and such part of its rates as are intrastate in character, and the posting of the required bond to insure Indiana shippers and persons availing themselves of the interstate service of the protection thus guaranteed. I would hesitate to suggest that the Commission go beyond that point at this time.

PUBLIC SERVICE COMMISSION: Statutory power—jurisdiction to make regulations dealing with rates and service of public utilities.

April 18, 1933.

Samuel L. Trabue, Member,
Public Service Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of April 10, 1933, to which is attached General Order No. 9519 of the Public Service Commission.

I have examined the order and inasmuch as you suggest that the Commission is about to pass a new general order covering the same subject matter, I offer the following suggestions.
It must be remembered that in the regulation of rates and service, the Public Service Commission is limited in the exercise of its statutory power to the control of rates and service of public utilities and it is a question of fact, to be determined in each instance, whether or not the proposed construction of a rural electric line is or is not to be considered a public utility within the legislative definition. If the proposed construction is of sufficient magnitude to fall within the definition of a public utility, it is evident that the utility before beginning its construction program would have to obtain from the proper county officials a franchise or grant to permit the construction of the same and therefore the provision of the old order now before me which makes the obtaining of such a franchise or permit a pre-requisite to the consideration of the application of those desiring to construct the line by the Commission.

Subsections (a), (b), and (c) of paragraph 1 of the order, I therefore deem, would be proper and within the jurisdiction of the Commission to promulgate.

Paragraph 2 of the order, I think, is proper and is sustainable under the provision of Section 8a of the Shively-Spencer Utility Commission Act dealing with physical connections. (Burns’ 1926 Annotated Indiana Statutes 12679.)

Paragraph 3 of the order which provides that no money shall be collected from any person in the State of Indiana as a contribution towards the building of any electric transmission line without the authority of the Commission, in my judgment, is a prohibition which is without the jurisdiction of the commission and if enforced would violate the right of individuals to contract for the construction of a proposed cooperative rural line over which the Commission might have no jurisdiction. Such a regulation as to a proposed public utility would be equally violative of the contract clause of our Federal Constitution.

Paragraph 4 of the order which deals with the fixing of the rate by the Commission for the sale of electrical energy to the proposed utility by an existing utility is within the jurisdiction of the Commission, and for the same reason Paragraph 5 of the order is a proper general regulation.

By way of conclusion, it is my opinion that the Commission has jurisdiction by way of a general order to make such regu-
lations as deal with the rates and service of the proposed utility and the rates and service between the proposed utility operating the rural line and the utility which generates or distributes the current at the point of interchange with the rural line. While perhaps the Commission should be vested with authority to control the contractual agreements of the parties prior to the construction of the proposed line, I do not believe the Commission has such jurisdiction and parties who might so desire to contract are free to do so without the approval of the Commission first having been obtained. If they have made an unwise contract or agreement, it is a matter over which the Commission has no jurisdiction.


April 18, 1933.

Hon. Wayne Coy, Under Secretary
To the Governor,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter concerning Chapters 203 and 237 of the Acts of 1933.

Chapter 203, *supra*, is an an act entitled,

“AN ACT to amend section 1 and the title of an act entitled ‘An Act to amend sections 1 and 2 of an act entitled “An Act authorizing the borrowing of money by boards of commissioners of counties in Indiana to pay claims incurred and filed with such boards by township trustees for relief of the poor, which claims are in excess of appropriations and tax levies made therefor, and where such counties have no funds with which to pay said claims, and for the payment of claims incurred and filed by trustees of townships for relief of the poor where appropriations and tax levies for such purpose have been exhausted, or are in danger of being exhausted, and requiring townships to levy a tax to repay such counties for any such funds so borrowed
