educational institution such as the State Teachers College by means of this act, when the adequate financial support of such institution is presumably provided for by biennial appropriation regularly made.

PUBLIC SERVICE COMM.: Application for ten per cent reduction of gas and water rates for New Albany National Cemetery.

August 30, 1933.

Division of Public Service Commission,
State House,
Indianapolis, Indiana.

Gentlemen:

I have before me your letter of August 3rd with regard to the application of the New Albany National Cemetery, by G. W. Ewell, contracting officer, for a reduction of ten (10%) per cent in gas and water rates for the New Albany National Cemetery, together with copies of correspondence had between your commission and various military officers of the United States with regard thereto.

The letter of Lieut. Col. G. W. Ewell dated June 20, 1933, is addressed to "Public Utilities Commission, Indianapolis, Indiana," and your letter asks whether the public service commission has authority to consider a petition addressed in this manner.

In response to this question, I call your attention to the fact that the procedure before the public service commission is rather informal in its nature. Section 57 of the Shively-Spencer Utility Commission Act of May 1, 1913 (section 12728 Burns R. S. 1926) merely requires that a complaint be made against any public utility and does not require any particular form of complaint. Section 61 of the same act (section 12732 Burns R. S. 1926) authorizes the commission to institute proceedings upon its own motion. Hence, the fact that this letter is addressed to the "public utilities commission" would not deprive the public service commission from taking cognizance of the request if it so desires to do. On the other hand, it may, if it desires, elect to stand upon its rights to require the complaint and application to conform with its customs and rules and the requirements of section 57, supra.
Your question No. 2 asks whether the petitioner comes within the class of complainants set out in section 57 of the Shively-Spencer Utility Commission Act. Going upon the theory that the commission does not desire to institute the proceedings on its own motion, in accordance with section 61, supra, it is my opinion that the New Albany National Cemetery is not a mercantile, agricultural or manufacturing society, nor is it a body politic or municipal corporation. Such being the case, it would not be entitled to demand a hearing as of right from the Public Service Commission on the matter of rates. In order to secure such a hearing, as a matter of right, the application would necessarily have to be made by the United States Government through its proper officers.

Your question No. 3 is whether the petition is sufficient to give the commission jurisdiction to conduct a hearing therein. Here again it is well to note the difference between your power and authority to assume jurisdiction, if you so desire, and the right of the applicant to demand that you assume jurisdiction. In order that the applicant be entitled to demand that you assume jurisdiction, it is necessary that a showing be made that the service is unreasonable, unsafe, insufficient or unjustly discriminatory. Since there is no allegation to this effect in the letter above referred to, the application for hearing is insufficient.

In this connection, it might be well to call your attention to section 47 (Section 12718 Burns R. S. 1926) of the act, which provides, that it shall be unlawful for any public utility to charge, demand, collect or receive a less compensation for any service performed by it within the state than is specified in its printed schedule. Again, section 112 of the act (section 12785 Burns R. S. 1926) provides, that if any public utility shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination. It is true that section 49 of the act (Section 12720 Burns R. S. 1926) provides that service may be classified and that such classification may take into account the quantity used, the time when used, the purpose for which used and other reasonable consideration.
This probably authorizes your commission, if the facts and reasons therefor would warrant the same, to classify cemeteries and to make certain differences in rates by reason of the amount of water or gas to be used, the time when used, the purpose for which used, and such other reasonable considerations as would warrant the difference in the rates. However, there is nothing in the law which would authorize the utility to grant to this cemetery a flat, arbitrary reduction in rates without reason therefor or which would not be granted to other cemeteries under the same circumstances, nor would it be proper for the commission to grant the right to such utility to so reduce the rates merely because this cemetery is demanding such reduction.

PUBLIC INSTRUCTION, DEPT. OF: State aid—schools entitled to same; transfer of pupil and selection of school to which transferred. 

August 30, 1933.

T. H. Mahan, Assistant Director, 
School Inspection Division, 
Department of Public Instruction, 
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of August 29, 1933, reading as follows:

"Your opinion regarding the state school relief law or state aid law, approved March 8, 1933, is desired.

"Question one: May a trustee obtain state aid for a nine months term of school?

"Question two: May a township trustee transfer a student from a nine months first-class commissioned high school to an eight months continuous commissioned high school for state aid purposes?

"Question three: May a trustee select the school to which a pupil is transferred?"

The answer to question one depends upon the circumstances of the particular case. If the state aid is desired for a first-class commissioned high school where a nine months term of school is necessary, the same would be entirely proper. It