ernment, but is a ligitimate exercise of the police power."

Furthermore, the ordinance is constitutional as to those properties already in existence. That is to say the ordinance does not have to be limited to those properties which are built after the enactment of the ordinance. That question was raised in the case of The Commonwealth v. Roberts, 155 Mass. 281, where the court said:

> "There can be no doubt that the statute in question is within the constitutional powers of the legislature as a police power. It is an Act for the preservation of the public health, and relates to the disposal of one of the most dangerous forms of sewage."

It is my further opinion that from a practical point of view the ordinance would be enforceable and I believe that the majority of the citizens of a town would give it their approval. With public opinion supporting the ordinance, it would seem to me that the enforcement officials would have a relatively easy task in compelling compliance with the provisions of the ordinance.

ACCOUNTS, STATE BOARD OF: Right of county commissioners to purchase insurance on county-owned motor vehicles.

April 22, 1937.

Hon. W. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of April 20 submitting the following question:

> "Can county commissioners purchase public liability and property damage insurance to cover county-owned trucks and automobiles and legally pay the premium for such insurance out of public funds?"

In reply to this question beg to say that prior to 1929 the

Supreme Court of our state, by a long line of decisions, has held that:

> "In the absence of a statute creating a liability, counties are not liable for the negligence or tortious acts committed by county officers or agents when engaged in the performance of their duties."
>
> Smith v. Board of County Commissioners of Allen County, 131 Ind. 116;
> Board of County Commissioners v. Reinier, 18 App. 119.

In 1929 our legislature passed an Act, section 20, chapter 162, providing that:

> "This state and every county, city, municipal or other public corporation within this state employing any operator or chauffeur shall be jointly and severally liable with such operator or chauffeur for any damages caused by the negligence of the latter while driving a motor vehicle upon a highway in the course of his employment."

While this statute was in force and effect our Supreme Court in the case of Steinkamp v. the Board of Commissioners of Decatur County, 200 N. E. 211, held that such statute imposed a liability on counties for the negligence of their employees in the operation of their county-owned trucks.

However, in the Acts of the Indiana General Assembly, 1931, section 20 of chapter 162 of the Acts of 1929 was repealed.

> Sec. 4, Chapter 178, Acts of the Indiana General Assembly, 1931.

Accordingly, there is now no statute in the State of Indiana imposing liability upon counties for the negligent operation of their county-owned trucks and automobiles.

It is my opinion, therefore, that in the absence of any liability on the county resulting from such negligent operation the county officials would not be authorized to expend money in the purchase of insurance against such contingencies. There being no liability, it is my opinion, therefore, that nothing of value would be furnished the county by an insurance policy contingent upon such liability and, therefore, such expenditure of public funds would be unlawful.