their joint accounts, but the word "costs" when used with reference to material or supplies, generally refers to the invoice price. If there is an actual transportation cost to the place of use that cost would be a proper addition to invoice price, but having received a 10 per cent for superintendence or overhead on the labor, I do not believe the "cost" of material contemplates any other charge in the nature of surcharge, handling cost or overhead. The memorandum of the Bureau of Roads, heretofore referred to, provides for no addition to the book cost of materials other than actual transportation expense not exceeding seven miles per ton mile (Sections 19 to 21).

In my opinion, therefore, the 10 per cent and the 4.75 per cent are proper cost items to be included, and the 15 per cent additive to material is not allowable, except an actual transportation charge should be added to the invoice cost of material.

ACCOUNTS, STATE BOARD OF: Schools. Employment of teachers in absence of appropriation.

June 1, 1938.

Hon. William P. Cosgrove,
State Examiner, Division of Accounting and Statistics,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 26 in which you submit the following question:

"The advisory board of a certain township has endeavored to force the abandonment of a two-teacher school, by reducing the budget request of the township for the 'pay of teachers' for 1938 by the amount of the salary to which these teachers would be entitled. The trustee contracted for the teachers for this particular school, and paid them in full for services performed to December 31, 1937, but has made no payment for 1938.

"Can the trustee legally pay these teachers for services performed in 1938 out of the appropriation made for the 'pay of teachers,' even though such payment
will deplete the appropriation available to pay all teachers to December 31, 1938?

"Can the advisory board, by their refusal to make sufficient appropriation for 'pay for teachers,' force the abandonment of a school which has an average enrollment of fifty-five to sixty students?"

In reply to the question contained in the last paragraph of your letter, it is my opinion that failure to appropriate money for the employment of teachers does not afford legal grounds for the abandonment of a school. Schools can only be abandoned by a township trustee under certain conditions provided by statute. Failure to appropriate money with which to employ teachers is not one of the reasons upon which abandonment may be predicated. Where insufficient funds have been appropriated by the advisory board to meet the pay roll for teachers, there is a serious question presented as to the validity of a contract of employment for a sum in excess of the minimum wage authorized by law. As was said by the Appellate Court of Indiana in the case of Mitcheltree School Township v. Baker, 53 Ind. App. 472:

"The statute with reference to the employment of teachers by a township trustee does not differ in any essential respect from statutes relating to other contracts of township trustees, and the 'Township Reform Act' (Sections 9590-9602 Burns' 1908, Acts 1899 p. 150, Acts 1901, p. 415) applies to contracts made by the township trustee with his teachers, as well as to all other contracts made in behalf of the township. It is held however, in the case of Rutherford School Tp. v. Craney, supra, that the minimum wage which must be paid the teacher and the minimum school term are matters definitely fixed by statute, which can not be reduced by a contract with the trustee, and to this extent the Legislature has made the contract for the parties. But as to the excess of pay over these minimum requirements all such contracts must be held to fall within the provisions of the township reform act. By that Act it is provided, 'The trustee shall * * * present a detailed and itemized statement in writing of his estimated expenditures for which appropriations are asked, specifying the number of teachers necessarily employed, their salaries
respectively * * *. The advisory board shall have full power * * * to appropriate for any purpose a sum not greater than that estimated in the items therefor.' Section 9593 Burns' 1908, Acts 1899, p. 150, Section 4. 'Upon a special call of the township trustee * * * said board may * * * determine whether an emergency exists for the expenditure of any sums not included in the existing estimates and levy. In the event that such an emergency is found to exist, said board may authorize * * * the trustee to borrow a sum of money * * * sufficient to meet such emergency. * * * In no event shall a debt of the township be created except by the advisory board of such township, and in the manner herein specified, and any payment of any debt not so authorized from the public funds of such township shall be recoverable upon the bond of the trustee * * *.' Section 9595 Burns' 1908, Acts 1901, p. 415. Since it is made to appear that the township trustee entered into the contract in suit without sufficient funds on hands at the time the contract was made and without making provision therefor in the manner provided by law, such contract was without the authority of the trustee to make, except as to that part thereof which the statute commands."

It is apparent from the above authority that teachers employed by the township trustee can force payment of the minimum salary authorized by law regardless of the existence of an appropriation providing funds for such purpose. It is my opinion, therefore, that the trustee is legally bound to pay the minimum salaries of the teachers in question even though there was no appropriation made therefor by the township advisory board. In the absence of funds with which to make this payment, it is my further opinion that a suit could be successfully maintained against the township and a judgment obtained for the balance due on such contract.

Without knowing the particular items set forth in the published budget, I am unable to state definitely whether or not the payment of the full contract price can be paid any teacher in the township if the same is in excess of the minimum wage scale. In other words, only such contracts in excess of the minimum wage scale are enforceable where funds are appro-
priated to meet such obligations. It may be that a failure to appropriate a sum sufficient to pay all teachers employed in the township would operate to prevent the payment of any teacher a sum in excess of the minimum wage scale. I feel, however, that the township trustee can determine his course of action from the principles of law above set forth.

PUBLIC SERVICE COMMISSION: Authority of Commission to cancel indemnity undertaking of Peoples Motor Coach Co., after it has been taken over by Indianapolis Railways, Inc.

June 1, 1938.

Mr. Perry McCart,
Chairman, Division of Public Service Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in response to your recent request for an opinion as to the authority of your commission in the matter of certain indemnity undertakings. You say:

"On the 28th day of April, 1930, a certain written indemnity undertaking executed by American States Insurance Company guaranteeing payment of damages by George C. Forrey, Jr., receiver of Indianapolis Street Railway Company and Peoples Motor Coach Company was filed with and approved by the Public Service Commission of Indiana. The date of approval was July 9, 1930.

"This indemnity undertaking guaranteed the payment of all damages which may result from any and all accidents due to negligence in the use or operation of motor vehicles by the said George C. Forrey, Jr., receiver of the said railway company, his agents and/or employees, from and after April 18, 1930, and by said George C. Forrey, Jr., receiver of the Peoples Motor Coach Company, his agents and/or employees, from and after April 26, 1930, such guarantee inuring to the benefit of, and being payable to the State of Indiana

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