The above language seems to be very clear and mandatory and leaves nothing to be done in the way of construction or interpretation.

While your board has nothing to do with the salaries of local officers legally fixed by proper authority, the increase of salaries after the final approval of the budget is not such an emergency as is provided by statute which would authorize an additional appropriation.

PUBLIC SERVICE COMMISSION: Power of Commission to regulate installation and operation of block signal and interlocker devices as provided in Sec. 26 of Interstate Commerce Act.

January 28, 1938.

Hon. Charles O. Mattingly,
Secretary, Public Service Commission,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion as to the effect of the 1937 Federal Railroad Safety Statute on certain Indiana railroad laws. Your letter is as follows:

"The public service commission has pending before it petitions which involve the following statutes:

"Section 10-3909, volume 4, Burns' Indiana Statutes, 1933, which provides in substance a penalty for moving trains on steam railroads, or interurban cars, or trains on electric railroads over railroad crossings at grade without stopping unless same is protected by a system of interlocking systems approved by the public service commission;"

"Section 55-629, volume 10, Burns' Indiana Statutes, 1933, which provides in substance that whenever interlocking or other safety devices are constructed and maintained, and have the approval of the public service commission, trains or cars may move over railroad crossings at grade without stopping, any law or the provisions of any law now in force to the contrary notwithstanding;"
“Section 55-626, which provides in substance the public service commission shall have authority to order the carrier to install a system of interlocking, or other works or figures, at a railroad grade crossing or at any swing or draw bridge;

“Section 55-101, which provides in part the public service commission shall supervise the installation and maintenance of interlocking plants at interurban railroad crossings at grade in this state;

“Section 55-1254, which provides in substance that steam railroads and interurban railroads in this state shall install and maintain a block system approved by the public service commission unless the commission relieve the carrier of such installation;

“Section 55-130, Burns’ Indiana Statutes, 1933, which provides in substance that the commission must keep itself informed as to the condition of railroads and railways and the manner in which they are operated, with reference to the security and accommodation of the public;

“Section 55-130 (b), provides in substance, which among other things, that when any carrier in this state does not keep its road or equipment in proper condition or repair for the health and safety of its employees or the public, it shall be the duty of the commission to cause such investigation to be made as it may deem necessary and shall also recommend such reasonable changes and improvements, etc., as are, in the opinion of the commission, necessary to remedy such faults, neglects, requirements or defects.

“Chapter 818, first session, Seventy-fifth Congress, amends section 26 of the Interstate Commerce Commission Act, as amended, and delegates to the Interstate Commerce Commission certain jurisdiction over the matters of block signal systems, interlocking, automatic train stop, train control, and/or cab-signal device, and/or other similar appliance, methods, and systems intended to promote the safety of railroad operation, a copy of which is hereto attached.
"In the light of the aforementioned Indiana statutes and Act of Congress, your opinion is sought by the public service commission on the following questions:

"1. Of what jurisdiction, if any, is the public service commission deprived over the matters and things referred to in the six (6) sections of the Indiana statutes referred to above, since the enactment of chapter 818, first session, Seventy-fifth Congress?

"2. What jurisdiction, if any, does the public service commission have over said matters and things since the enactment of said Act of Congress?

"3. Does said Act of Congress relieve the public service commission from any of the duties placed upon said commission by said Indiana statutes?

"4. What are the duties of the public service commission under said Indiana statutes since the enactment of said Act of Congress?"

The Act of Congress, referred to above, which confers additional power on the Interstate Commerce Commission, is found under title 49, section 26, of the U. S. C. A. The Act applies to any "carrier" by railroad (including any terminal or station company) but does not include "any street, interurban, or suburban electric railway unless such railway is operated as a part of a general steam-railroad system of transportation." Paragraph (b) contains the following provision:

"(b) That the commission may, after investigation, if found necessary in the public interest, order any carrier within a time specified in the order, to install the block signal system, interlocking, automatic train stop, train control, and/or cab-signal device, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation, which comply with specifications and requirements prescribed by the commission, upon the whole or any part of its railroad such order to be issued and published a reasonable time (as determined by the commission) in advance of the date for its fulfillment: * * *

The Act requires railroads to file with the Interstate Commerce Commission their rules governing inspection and main-
tenance of their block signal system or interlocking devices. The commission is authorized to inspect the system and to determine whether it is in proper condition to operate and whether it provides adequate safety, and any failure of the system to function properly must be reported to the commission. The commission is further required to see that its orders and regulations are carried out, and a penalty is provided for an infraction of the statute or the orders of the commission.

The former Act of Congress, of which this 1937 Act is an amendment, applied only to automatic train stop or train control devices or other safety devices which comply with specifications and requirements prescribed by the Interstate Commerce Commission. (Act of February 28, 1920.) The 1920 statute did not include within its terms "interlocking devices," which is commonly understood to mean a safety device that automatically protects trains crossing another railway at a grade crossing. In Delaware & Hudson Co. v. United States, 5 Fed. (2d) 831, the 1920 Act was treated as though it was simply a block signal or a train control regulation. The statute was also so construed by the court of civil appeals of Texas in International Great Northern R. Co. v. R. R. Commission, 281 S. W. 1084, and the Texas decision was affirmed by the Supreme Court. (275 U. S. 503.) In that state decision, it was held that although a state, under its police power, may not regulate interstate commerce or unduly burden it, it might require interlocking devices at a grade crossing of railroads for the protection of the public and railroad employees, and that the 1920 Federal Act did not include interlocking devices at crossings, but left that to state regulation.

It must be noted that the 1937 Act considerably enlarges the powers of the Interstate Commerce Commission over the authority contained in the 1920 statute and confers upon that commission substantially the same authority over interlocking devices at railroad crossings that it theretofore had with respect to train control or block signal system. The 1937 Act also adds under paragraph (d) a provision for the inspection and testing of such systems by the Interstate Commerce Commission.

The 1937 federal law with its inspection provision evidently puts the entire matter of regulating railroad block signal systems or interlocking devices under the authority of the
Interstate Commerce Commission. The statute is much like the Safety Appliance and the Boiler Inspection Law which have been held to give to the Federal Commission exclusive authority over railway equipment, even as to those safety provisions which ordinarily fall under the police power of the state.


In the Southern Railway case, it was definitely decided that the Boiler Inspection Act of Congress extended to the whole subject of equipping locomotives and cars with safety appliances and that such Act superseded any state regulation on the same subject.

In the case of Napier v. Atlantic Coast Line, supra, the court had under consideration the boiler inspection law of 1924 (title 49, U. S. C. A., section 23, and following sections).

In its opinion, the Supreme Court submitted this question: "Does the legislation of Congress manifest the intention to occupy the entire field of regulating locomotive equipment?" The court then rules that the Act did confer upon the Interstate Commerce Commission exclusive power over railway equipment. The court said: "The duty of the commission is not merely to inspect. It is also to prescribe rules and regulations by which fitness for service shall be determined. Unless these rules and regulations are complied with, the engine is not ‘in proper condition’ for operation. Thus, the commission sets the standards. By setting the standard, it imposes requirements."

The court then refers to the state laws which were called in question and which were prescribed primarily to promote health and comfort of engineers and firemen, and says on page 613:

"We hold that state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the commission leads to that conclusion. Because the standard set by the commission must prevail, requirements by the states are precluded, however commendable or however different their purpose."
More recent decisions have somewhat clarified the subject of federal and state regulation over facilities used in interstate commerce. In the case of N. W. Bell Telephone Co. v. Ry. Comm'n, 297 U. S. 471, the problem was whether or not a state had power to prescribe certain accounting rules for an interstate telephone company. The company contested the validity of the state rules upon the ground that they were in conflict with the authority of the Interstate Commerce Commission. The Supreme Court referred to the fact that Congress had directed the Interstate Commerce Commission to prescribe depreciation rates for telephone companies as soon as practical, but that this could hardly be read "as authority for telephone companies to fix the rates for themselves in defiance of state power," and that the federal law could not be interpreted as authorizing the Interstate Commerce Commission to supplant the state power in the particular matter "except by prescribing a rate administratively determined by the commission itself."

This same question was also considered by the Supreme Court of the United States in the case of Kelly v. State of Washington, 58 S. Ct. 87, decided November 8, 1937. In that case, it appeared that the federal government had provided certain inspections for tugboats used in interstate commerce. The state of Washington provided a more extended inspection. The tugboat owners claimed that the state law had been suspended by the entry of the federal government into the regulatory field, and, even though the federal inspection did not actually cover all portions of the tugboats required to be inspected by the state law, nevertheless the field was occupied by the federal authority and the state law must give way. The Supreme Court found this contention to be erroneous and said at page 92:

"Under our constitutional system, there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. Minnesota Rate Cases, 230 U. S. 352, 402; 33 S. Ct. 729; 57 L. Ed. 1511; 48 L. R. A. (N. S.) 1151; Ann. Cas. 1916 A 18. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential
protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'"

From the above decisions it appears that the essential question to be answered is not whether Congress, or its agent, the Interstate Commerce Commission, has power to regulate certain railway facilities, but whether that power has been exercised so that any attempt of the State of Indiana to regulate would come in conflict with the federal regulation. As was stated in Townsend & Bernard v. Yeomans, et al., 57 S. Ct. 842:

"The case calls for the application of the well-established principle that Congress may circumscribe its regulation and occupy a limited field, and that the intent to supersede the exercise by the state of its police power as to matters not covered by the federal legislation is not to be implied unless the latter fairly interpreted is in actual conflict with the state law."

From what has been stated above, it can be seen that it is impossible to give categorical answers to all your questions. The purpose of the 1937 amendment to section 26 of the Interstate Commerce Act is to bring under the exclusive authority of the Interstate Commerce Commission all train control or block signal systems and all interlocking devices at railway crossings. That is clear.

Paragraph (b) of the federal law prohibits any railroad from removing or modifying their present interlocker without the consent of the Interstate Commerce Commission; that is, the federal authorities, for the present, have adopted the interlocker devices heretofore approved by the states.
As to street, interurban or suburban electric railways not operated as a part of a steam railroad, the state's authority is not affected by the 1937 Federal Act and the authority of the Public Service Commission over interlocker plants and train control systems on street or interurban and suburban electric lines, so far as given by section 55-101 of the Indiana law is not changed by the 1937 Federal Act.

It is my opinion that section 10-3909 referred to in your inquiry, is not affected by the 1937 amendment to section 26 of the Interstate Commerce Act. Section 10-3909 makes it an offense for a railroad train or interurban car to be run over railroad crossings without coming to a stop, unless the crossing is protected by an interlocking device. I believe, however, that if the interlocking device has the approval of the Interstate Commerce Commission, the state would have to go along with the federal body as to the kind of interlocker.

As to the duties put upon the Public Service Commission by sections 55-130 and 55-130(b) referred to in your letter, I do not believe that the 1937 federal law makes any change in the obligation of the commission to enforce the state laws except with respect to interlocker plants and train control systems of steam railroads.

Each case that comes before you, where there is a doubt as to whether your commission or the federal authority is to go forward, will have to be taken up and decided separately on its merits.

In the matter of accident reports, interstate carriers report both to the Interstate Commerce Commission and to your commission the facts about accidents within the State of Indiana. Also, in the case of a railroad accident, each commission is at liberty to make its own investigation. No doubt the same policy of cooperation should be carried out with respect to other matters of railway safety.

The state commission would hardly be justified in relaxing its vigilance over railroad operations except as to those particular situations where it is clearly evident that the federal authorities have assumed full responsibility.