Therefore, based on the authorities above cited, it is my opinion that there will be a county commissioner to be elected from District No. 3 of Franklin County, Indiana, in the coming General Election of 1962. The candidacy should be for the unexpired portion of the present term and the candidate elected and qualified will be entitled to serve the unexpired portion of the present term for District No. 3.

OFFICIAL OPINION NO. 21

March 16, 1962

Mr. Gene E. Laird
Secretary-Treasurer
State Board of Embalmers and Funeral Directors
Box 288
Amboy, Indiana

Dear Mr. Laird:

Your letter has been received requesting an Official Opinion on the following:

"I have been requested by the Indiana State Board of Embalmers and Funeral Directors to ask for your opinion on the following questions which have arisen under the Statute governing Embalmers and Funeral Directors.

"Moore and Kirk Funeral Homes, Inc. is a corporation using all of its assets in the funeral directing business under the direction and supervision of licensed funeral directors. At the present time the corporation is operating from five locations in Marion County, Indiana.

"George F. Usher is a licensed funeral director.

"The corporation and Mr. Usher propose to form a partnership, to share the facilities of the corporation, and to operate a funeral directing business at three of the locations presently operated by the corporation. The partnership will use the name ‘Moore and Kirk and George F. Usher Mortuaries.’ The corporation will
continue its business at all five of its locations, including the three locations to be used by the partnership.

"The Board of Embalmers and Funeral Directors requests your opinion as to whether or not the organization of the proposed partnership will violate any of the laws of the State of Indiana, and specifically whether the following features of the arrangement are permissible under the Statute governing Embalmers and Funeral Directors as amended:

"1. Can a corporation and an individual licensed funeral director engage in the funeral directing business as partners?

"2. Can such a partnership share the facilities of the corporate partner with said corporation?

"3. Can the partnership and the corporation both engage in the funeral directing business at the same location?"

Accompanying said letter is a verifaxed copy of the proposed Articles of Partnership.

Supplementing such request are your letters under which you specifically desire to know if this arrangement would be violative of Rule 5 or Rule 9 of your board if the board found this was not a bona fide partnership but a subterfuge for the solicitation of business. You have also furnished a certified copy of the Articles of Incorporation of this corporation which articles specifically authorize the corporation to enter into a partnership.

In answer to your first question, I wish to advise that, in an Official Opinion of this office, being 1951 O. A. G., page 225, No. 74, it was held that a corporation and an individual may enter into a partnership arrangement only where the Articles of Incorporation specifically grant the corporation the power to do so. It was necessary for the applicant in this case to furnish your board with this information from their Articles of Incorporation. Since this has been furnished and the operation of a partnership is authorized by your licensing statute, your second and third questions must necessarily be answered in the affirmative.
Rule 5 of your board reads as follows:

“Rule 5. The employment by a licensed funeral director of a person or persons on part or full time, for the express purpose of making contracts for securing business, shall be considered by this board as a violation of Section 5, Subsection (g), of the Indiana State Embalmers' and Funeral Directors' Law, approved March 10, 1939. The payment of a commission or an agreement to pay a commission, or the giving or promising to give any money or other thing of value, to any person or persons for the solicitation of business directly from relatives or next of kin of deceased persons about to die, or the direct solicitation of business on the part of licensed funeral directors and licensed embalmers, shall also be considered a violation of said section of said act, and therefore prohibited.”

Acts of 1939, Ch. 165, Sec. 5, was amended by Acts of 1949, Ch. 38, Sec. 3, in such a manner that subsection (g) of said section was deleted by amendment. (See footnotes Burns' [1951 Repl.], Section 63-721.) Since your Rule 5 is predicated entirely upon an enforcement of said Subsection (g) of said statute it would, in my opinion, no longer be valid or enforceable since that subsection of the statute has been repealed. In other words, Rule 5 has no basis for operation and could not be considered as a separate independent rule since the rule itself is specifically predicated upon subsection (g) of said section of the statute.

Rule 9 of your board reads as follows:

“Rule 9. For the purpose of completing the records of the board, and assuring the profession in each case where a partnership is formed, and an application made for a funeral director's license, that it is a bona fide partnership, it shall be necessary that said applicants file with the board as part of the application, a certified copy of the partnership agreement which has been filed with the clerk of the court in the county in which the partnership is to be established.”

The applicant has complied with this rule by furnishing a copy of their proposed Articles of Partnership. From an exam-
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ination of the provisions of the Articles of Partnership, I could not say, as a matter of law, that they show on their face a violation of your Rule 9 on the basis of any attempt of subterfuge for the solicitation of business. The board has a right to apply its rules administratively to a given set of facts before it for its official action with a right of rehearing in the event of denial of a license and a judicial review thereafter by a court to determine if such action of the board is arbitrary or capricious.

OFFICIAL OPINION NO. 22

March 16, 1962

Mr. J. B. Kohlmeyer, Director
State Commission for the Reorganization
of School Corporations
1015 State Office Building
Indianapolis, Indiana

Dear Mr. Kohlmeyer:

Your letter of March 1, 1962, has been received requesting an Official Opinion on the following questions:

"1. In a county which has been completely reorganized into two community school corporations pursuant to the School Corporation Reorganization Act, Chapter 202 of the 1959 Acts as amended (Burns #28-6101 et seq.), may these new school corporations be consolidated into one Metropolitan School District covering the entire county pursuant to Chapter 226 of the 1949 Acts as amended (Burns #28-2442). Relative to this question your attention is invited to Sections 10 and 11 of Chapter 202 of the 1959 Acts (Burns #28-6121 and 6122) as well as Chapter 226 of the 1949 Acts.

"2. Assuming an affirmative opinion as to the above question, would the approval required under Section 10 of Chapter 202 of the 1959 Acts be required prior to or after any referendum that might be held relative to establishing a Metropolitan School District pursuant to paragraph (c) of Section 12 of Chapter 226 of the 1949 Acts (Burns #28-2442)."