ship assessor within the county employ the same firm as his technical adviser, such firm being subject to the supervision and control of its employer, the township assessor, with respect to lands and improvements within such township.

Therefore, unless each township assessor within the county were to be agreeable to employ the same professional appraisal firm on an employee basis, the benefit to be obtained from the recommendation of such firm on a county-wide basis could not be derived since the authority to make the assessment is vested in the local township assessor who could not be required to employ the same professional appraisal firm as a technical adviser that his fellow township assessors within the county might choose to employ. If such a practice be contemplated, it can only be stated that any appraisal firm so employed would derive its powers from the township assessor and be subject to the control and supervision of the township assessor to the same extent as any other deputy assessor or employee of the assessor.

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OFFICIAL OPINION NO. 18

May 2, 1960

Hon. Robert S. Webb
Chairman, Public Service Commission
Room 401 State House
Indianapolis 4, Indiana

Dear Sir:

This is in answer to your recent request for my Opinion concerning the determination of an allowance for depreciation in arriving at a rate base for a public utility.

Your request includes four separate questions, the first two of which will be discussed together and are as follows:

"1. May the Commission provide an allowance for depreciation of the plant and property of a utility actually used and useful in rendering utility service to patrons where the plant and property were contributed to the utility corporation as a contribution in aid of construction, the contribution hav-
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ing been made by the developing contractor for the sum of $1.00 and all of the outstanding stock of the utility corporation?

“2. Under the aforementioned fact situation, may the Commission properly find that the utility has no rate base because there was no cost to the utility for the property and plant in service?”

In regard to these questions, the applicable statutory material is found in the Acts of 1913, Ch. 76, Sec. 22, as amended, as found in Burns’ (1951 Repl.), Section 54-216, which reads as follows:

“Every public utility shall carry a separate, proper and adequate depreciation account whenever the commission, after investigation, shall determine that such depreciation account reasonably can be required. The commission, from time to time, shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates, tolls and charges shall be such as will provide the amounts required over and above the reasonable and necessary operating expenses, to maintain such property in an operating state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates, so ascertained and determined by the commission. The commission shall make changes in such rates of depreciation, from time to time, as it may find necessary.”

Section 24 of said Act, being Burns’ 54-218, makes it mandatory that the Commission provide an allowance for depreciation as follows:

“The commission shall provide for such depreciation in fixing the rates, tolls and charges to be paid by the public.”

Thus, the allowance for depreciation becomes part of the rate base determination. In this respect, Section 9 of the above Act, being Burns’ 54-203, expresses the following:

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“(a) The commission shall value all property of every public utility actually used and useful for the convenience of the public at its fair value, giving such consideration as it deems appropriate in each case to all bases of valuation which may be presented or which the commission is authorized to consider by the following provisions of this section. As one of the elements in such valuation the commission shall give weight to the reasonable cost of bringing the property to its then state of efficiency. In making such valuation, the commission may avail itself of any information in possession of the state board of tax commissioners or of any local authorities. The commission may accept any valuation of the physical property made by the inter-state commerce commission of any public utility subject to the provisions of this act. (b) The lands of such public utility shall not be valued at a greater amount than the assessed value of said lands exclusive of improvements as valued for taxation. In making such valuation no account shall be taken of presumptive value resting on natural resources independent of any structures in relation thereto, the natural resource itself shall be viewed as the public’s property. No account shall be taken of good will for presumptive values growing out of the operation of any utility as a going concern, all of such values to rest with the municipality by reason of the special and exclusive grants given such utility enterprises. No account shall be taken of construction costs unless such costs were actually incurred and paid as part of the cost entering into the construction of the utility. All public utility valuations shall be based upon tangible property, that is, such property as has value by reason of construction costs either in materials purchased or in assembling of materials into structures by the labor or [of] workers and the services of superintendents, including engineers, legal and court costs, accounting systems and transportation costs, and also including insurance and interest charges on capital accounts during the construction period. As an element in determining value the commission may also take into account reproduction costs at current prices, less depreciation, based on the
items set forth in the last sentence hereof and shall not include good will, going value, or natural resources."

The reference to "construction costs" in the above does not preclude consideration by the commission of bases of valuation as suggested elsewhere therein, nor does it preclude consideration of the value of the consideration paid for the property after it was constructed by someone other than the public utility. As the Indiana Supreme Court stated in the case of Indiana v. City of La Porte et al. (1934), 207 Ind. 462, 193 N. E. 668, at page 469, "* * * it is the amount allowed, and not the method of arriving at it that is important" insofar as a reasonable depreciation allowance rate is concerned. That opinion recognized the validity and usefulness of the so-called "straightline method" of computing depreciation allowance adopted by the Interstate Commerce Commission and the present value method adopted by the Federal Courts as well as the "depreciated cost method." The whole tenor of the Court's opinion is that if the method used results in a reasonable allowance annually for depreciation, it will be sustained, the method used to be the most reasonable in light of the existing circumstances.

Therefore, it is my opinion in answer to your first question that the Commission may provide for an allowance for depreciation, and it is not restricted to a consideration of only the original cost of the property to the company.

In regard to the second question it is my opinion that the Commission could not find that the utility had no rate base inasmuch as Burns' 54-203, supra, provides for and requires the Commission to give consideration to bases of valuation appropriate in each case and sets out alternative methods of valuation to be used in arriving at an appropriate rate base.

Your third question is as follows:

"3. If the answer to the second question supra is in the affirmative, what effect shall the Commission give to Burns' Indiana Statutes Annotated 54-216, which provides in part that the rates, tolls and charges shall be such as will provide the amounts required over and above the reasonable and necessary operating expense, to maintain such property
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in an operating state of efficiency corresponding to the progress of the industry?"

Since the answer to the second question was in the negative, your third question needs no answer other than to point out that a depreciation allowance based on an appropriate method of valuation would “provide the amounts required over and above the reasonable and necessary operating expense, to maintain such property in an operating state of efficiency corresponding to the progress of the industry.”

Your fourth question is as follows:

“4. If your answer to the third question supra is that the utility is entitled to a reasonable depreciation allowance to provide for maintenance and obsolescence, could the Commission properly make a finding of an annual depreciation rate to be adopted by the utility, which finding shall be based upon an engineer’s estimate of the useful life of the property and plant and annual maintenance to preserve the operating efficiency of the utility plant?”

The method to be used by the Commission in making a finding of annual depreciation rate set out in question four is, in my opinion, within the purview of Burns’ 54-203, supra, and the Commission is specifically authorized thereby to consider this method where, as here, it is appropriate.

OFFICIAL OPINION NO. 19

May 12, 1960

Hon. Harold F. Miller
Indiana State Representative
2206 South Main Street
Goshen, Indiana

Dear Representative Miller:

This is in response to your request for an Official Opinion on the following question:

"* * * are the County Commissioners of the county authorized to appropriate funds for the purchase of