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
land, materials and equipment for the construction, erection, installation and operation of a fire training and rescue tower for use of both/either paid fire departments-volunteer fire departments within the limits of the governmental county unit, such fire training and rescue tower anticipated to be exploited by all such paid and volunteer fire departments within the county for classroom instruction, drills, education in fire prevention, extinguishing and other related activities of life saving and civil defense purposes from time to time.”

I have been unable to discover any express statutory authority for erection of fire towers; therefore, it is necessary to determine whether such authority is necessarily implied by any statute. The only statute providing any authority for county commissioners in respect to fire-fighting or fire prevention is the Acts of 1947, Ch. 268, Sec. 3, as found in Burns’ (1951 Repl.), Section 65-507b, which reads as follows:

“County commissioners of any county in the state of Indiana are hereby authorized and empowered to purchase for such county, fire-fighting and fire-extinguishing apparatus and equipment for use in extinguishing and preventing fires within the limits of such county, such purchases to be made in the manner now provided by law.”

Burns’ 65-507b, supra, was added to the Acts of 1927, Ch. 229, by the Acts of 1947, Ch. 268. Prior to 1927, only cities and towns had fire-fighting powers delegated to them by statute. The 1927 Act enabled townships to purchase equipment singly, or jointly with other townships or with neighboring cities or towns, in order to furnish fire protection to parts of townships not within the limits of cities or towns. Townships were also enabled to contract with city fire departments or with volunteer fire companies to furnish fire protection using apparatus and equipment owned by the township.

The Acts of 1937, Ch. 260, amended the Acts of 1927, Ch. 229, and empowered townships to contract with cities and towns for fire protection in the township, but outside city limits, without having the township purchase any equipment
or apparatus. The independent Acts of 1945, Ch. 130, similarly enabled townships to contract with volunteer fire-fighting organizations owning their own equipment. The Acts of 1945, Ch. 95, was supplemental legislation which empowered townships to employ firemen.

The amendatory Acts of 1947, Ch. 268, legalized contracts and payments for fire-fighting services wherein the equipment owned by one township was used to fight fires in an adjoining one, and also provided that county commissioners could purchase fire-fighting and fire-extinguishing apparatus and equipment, as set out in Burns' 65-507b, supra.

This historical review of legislation on fire-fighting powers outside of cities and towns indicates that the Legislature has progressively provided (1) for purchase of equipment by townships individually or in cooperation with cities and towns to be used by city or volunteer personnel, (2) for townships to contract with other units of government to furnish fire protection without purchasing equipment, (3) for enabling townships to purchase equipment and to hire firemen, jointly or severally. By the time that it was provided that county commissioners could purchase fire-fighting and fire-extinguishing equipment, cities, towns and townships, between them, had power to provide fire protection for whole counties and could co-operatively purchase apparatus and equipment. Giving county commissioners power to purchase equipment parallels the 1927 provision whereby townships could purchase equipment but not maintain fire departments, and is a logical step in the legislative trend to authorize purchase of firefighting equipment and apparatus by ever-larger groups and so effect economies through co-operative sharing of the use of, and financial responsibility for, fire-fighting apparatus and equipment.

This authority for county commissioners to purchase fire-fighting and fire-extinguishing equipment for use in the county, by Burns' 65-507b, supra, is not to be construed as a delegation of general power but must be limited to its express provisions.

It is a cardinal rule of statutory construction that officers created by statute have only such powers as are expressly provided or necessarily implied.
Your letter indicates that the proposed fire tower would be used for "classroom instruction, drills, education in fire prevention, extinguishing and other related activities of life saving and civil defense purposes," all of which are commendatory pursuits, but only education in fire prevention and fire-extinguishing approximate the statutory language which is the source of county commissioners’ authority. It is to be noted that Burns’ 65-507b, supra, authorizes the purchase of fire-fighting and fire-extinguishing apparatus only, even though it defines their use as being to extinguish and prevent fires. It appears that the proposed fire-training and fire rescue tower would be useful primarily as an educational device for training firemen, and could not be termed fire-fighting or fire-extinguishing apparatus and equipment even though, broadly speaking, it might contribute to fire prevention.

It is recognized that there are in existence fire-training and rescue towers even though there is no statutory provision concerning them; however, authority to hire firemen necessarily implies authority to train them in any reasonably effective manner. Furthermore, there is statutory authority for first class cities, in particular, to conduct a school for firemen. There is no necessary implication in the language of Burns’ 65-507b, supra, from which county commissioners could derive authority to construct a fire tower even though it seems that such facility could increase the efficiency of fire protection in the county and would be financially feasible only if its construction and maintenance were the responsibility of a governmental unit larger than a town or township; however, that is a matter for legislative consideration.

It is my opinion that present legislation gives no authority to county commissioners to construct, erect, install or operate a fire-training and rescue tower for the use of all fire departments within the county.