construction. We are also dealing with a project which will materially affect the tax rate of property owners in the City of Indianapolis and Marion County, even though the operation of such a municipal auditorium building may be expected to produce substantial income from conventions and other private uses, if the Legislature amends the Act so as to permit sub-leasing to private promoters.

Therefore, for the various reasons herein stated, it is my opinion that the item contained within the emergency appropriation ordinance passed by the Marion County Council for funds to be advanced to the Indianapolis-Marion Building Authority for a proposed municipal auditorium building is not legal under the statute in its present status. I have gone to great lengths in this opinion to emphasize various infirmities in the law for the sake of the proponents of a municipal auditorium building because the success of such a project should not be encumbered by unnecessary doubts, if a majority of the citizenry of the City of Indianapolis and Marion County or of any other city and county desire such a structure.

OFFICIAL OPINION NO. 29
July 25, 1960

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

Dear Mr. Webb:

This is in reply to your request for an Official Opinion stated as follows:

“The undersigned, Chairman of the Public Service Commission of Indiana, desires an official opinion concerning the proposed movement of coal by rail from Aurora, Indiana, to destinations in Indiana, particularly the Indianapolis area.

“Coal involved in this movement would be produced at coal mines in States other than Indiana and would move by Ohio River barges to the Aurora Terminal Company, Inc., Aurora, Indiana.
“Title to this coal would be taken by the Aurora Terminal Company at Aurora, Indiana. This commodity would then be stored in company’s storage bins. Upon receipt of an order from an Indiana customer, the Aurora Terminal Company would then load this coal into railroad cars and ship via rail to the Indiana destination.

“* * * As indicated the principle consideration involves a legal determination of whether rail shipments of coal, owned by an Indiana corporation, from storage at Aurora, Indiana, to destinations in Indiana, is a matter of intrastate, or interstate, character since the coal so shipped was originally acquired elsewhere—outside the borders of Indiana.

“Apparently the Indiana Gross Income Tax Division considers it to be intrastate, for purposes of taxation. Would the fact that these ‘stock-piles’ are being currently replenished affect the determination of these local shipments from the ‘stock-pile’?

“Your official opinion would be appreciated.”

There can be no doubt that the Public Service Commission has been empowered by the Legislature to regulate intrastate freight rates.

See Acts of 1905, Ch. 53, Sec. 3, as amended, as found in Burns’ (1951 Repl.), Section 55-101.

The general rule distinguishing between interstate and intrastate commerce was stated by Chief Justice Taft in Atlantic Coast Line R. Co. v. Standard Oil Co. (1927), 275 U. S. 257, 72 L. Ed. 270, 48 S. Ct. 107, at page 268 (U. S.) :

“The question whether commerce is interstate or intrastate must be determined by the essential character of the commerce, and not by mere billing or forms of contract, although that may be one of a group of circumstances tending to show such character. The reshipment of an interstate or foreign shipment does not necessarily establish a continuity of movement or prevent the shipment to a point within the same state
from having an independent or intrastate character, even though it be in the same cars."

The Court was following a previous decision having to do with the reshipment of coal within a state.


In that case coal was shipped from Illinois into Iowa. Defendant carrier refused to ship the coal to various points in Iowa in the same cars in which it arrived. The State Railroad Commission ordered the defendant to deliver the coal. One of the defenses of the carrier was that the shipment was in interstate commerce and therefore the Railroad Commission had no power to regulate. The Supreme Court held that when the coal reached Davenport, Iowa, the interstate character of the transaction terminated. They further held that even though the coal was shipped in the same cars in which it arrived such a shipment "does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same state from having an independent and intrastate character." The Court placed great weight on the fact that the consignee at Davenport had control over the subsequent disposition of the coal.

This case was cited with approval in Chicago & E. Illinois R. Co. v. Public Service Comm. of Indiana (1933), 205 Ind. 253, 186 N. E. 330. In this case the shipment contested occurred prior to the interstate shipment and the Indiana Supreme Court held that prior shipment to be intrastate commerce. However in so holding the Court stated at page 270:

"We think the same principle would apply whether the initial shipment was intrastate and the subsequent shipment interstate, or the initial shipment was interstate and the subsequent shipment intrastate as in the Clark Coal Case, supra * * * ."

For more authority along this same line see:

155 A. L. R. 936 at 943.
On the other hand it should be noted that in many cases an intent to evade the interstate rate has been held sufficient to constitute the shipments interstate ones.


Thus, if there were evidence that the termination at a given point in Indiana is just a part of a scheme to take advantage of intrastate rates as applied to interstate shipments, the shipments might be deemed interstate in their entirety.

In *Standard Oil Co. v. Federal Trade Comm. (1951), 340 U. S. 231, 95 L. Ed. 239, 71 S. Ct. 240,* the Supreme Court held that for purposes of the Clayton Act as amended by the Robinson-Patman Act the temporary storage of gasoline in Detroit shipped from Whiting, Indiana, did not deprive the gasoline of its interstate character in regard to a subsequent sale. However, this case is distinguishable from the present situation. The courts have traditionally given a broad interpretation to interstate commerce in the Clayton Act, as amended. As the Court said in *Standard Oil Co. v. Federal Trade Comm., supra,* at page 237:

"* * * Any other conclusion would fall short of the recognized purpose of the Robinson-Patman Act to reach the operation of large interstate businesses in competition with small concerns * * *."

In the present case the question does not seem to be affected with a problem of prior action by a Federal agency such as the Federal Trade Commission, as in the *Standard Oil Case, supra.* If the I. C. C. had already determined these shipments from Aurora to other Indiana points "interstate" shipments a different problem would arise than the one here presented.

The replenishment of the stock-piles has not been used as a criterion in determining whether a particular transaction was interstate or intrastate commerce. The test seems to be whether the interstate character of a transaction has truly terminated. Such a determination is not controlled by any "stock-pile" theory.

In conclusion, therefore, it is my opinion that the arrival of the coal at Aurora and the taking of title thereto by the
Aurora Terminal Company may be determined by your Commission to terminate the interstate character of the shipments, and the subsequent shipment of the coal to points in Indiana may be determined by you to be intrastate in character and the rates therefor subject to the regulation of your Commission. However, it should be noted that I am only suggesting such a possibility, since any determination must be made by your Commission in the light of all the facts presented and heard in a proper proceeding.

OFFICIAL OPINION NO. 30

July 26, 1960

S. T. Ginsberg, M. D.
Commissioner, Division of Mental Health
1315 West Tenth Street
Indianapolis, Indiana

Dear Dr. Ginsberg:

This is in reply to your letter requesting my Official Opinion as follows:

"Your official opinion is requested as to whether or not any liability exists for the cost of the care of criminal sexual psychopaths committed prior to July 1, 1959 who remain in residence after that date under the provisions of Chapter 324, Acts of 1959, which became effective July 1, 1959."

Acts of 1955, Ch. 339, as amended, as found in Burns' (1959 Supp.), Sections 22-4216 to 22-4227, provides that psychiatric patients, the estate of the patient, the guardian of the patient or the responsible relatives, including husbands or wives, parents, and adult children of the patient, are liable for the payment of the cost of maintenance of such patients. Section 2 of this Act originally provided that the maintenance charge should not apply "* * * to any inmate of any penal or correctional institution who has been transferred to any psychiatric hospital, or to any criminal sexual psychopath who has been committed to any psychiatric hospital * * *." This section was amended by Acts of 1959, Ch. 324, Sec. 1, as found