as determined in said Act in the performance of public work
as therein defined and provides upon conviction for the impos-
ition of fines, together with the forfeiture of contract for a
conviction of a second offense.

The statutory duties imposed upon the Commissioner of
Labor are those as contained in Acts of 1945, Ch. 334, Sec. 8,
as found in Burns’ (1952 Repl.), Section 40-2137, which do
not expressly include any language by which you are “to cause
prosecution and enforcement” of any statute providing for the
imposition of criminal penalties for violation of an Act. The
actual causing of the prosecution and enforcement as provided
in Burns’ Section 53-303, supra, is a function of the Prosecut-
ing Attorney in the county in which the alleged violation
occurred, to whom the aggrieved workmen should be referred.

OFFICIAL OPINION NO. 29

July 29, 1957

Hon. William H. Hardwick
Director of the Budget
302 State House
Indianapolis, Indiana

Dear Mr. Hardwick:

I have your request for an Official Opinion on the following
questions:

“1. Section 2c, Chapter 285, Acts of 1957, at page
702, reads, in part, as follows:

‘From funds herein appropriated, expendi-
tures made for the specific purpose of providing
miscellaneous services, which shall consist of:
* * *; (g) payment for improvements to exist-
ing buildings including grounds for construction
of new buildings including the cost of land for
building sites, architects’ fees and inspectors’
 salaries; * * * shall not exceed the sum of
* * *.’

“If the State Highway Commission desired to pur-
chase an already existing building, to be used to house
their administrative offices, could the purchase price and the cost of remodeling said building be charged against the State Highway Fund appropriation, under the category of 'Miscellaneous Services'?

"2. If your answer to question number one is to the affirmative, is there any statute which would prohibit the State Highway Commission from purchasing an existing building, to be used to house their administrative offices, and charging the cost of purchasing and remodeling the building to the State Highway Fund appropriation for 'Miscellaneous Services'?

"3. If your answer to question number two is to the negative, is there any statute which authorizes the State Highway Commission to purchase, from the State Highway Fund, an existing building to be used to house the administrative offices of the State Highway Department?"

The Acts of 1957, Ch. 285, is the general appropriation act for the 1957-1959 biennium. It contains the following provisions relating to your question:

* * *

"The term 'capital outlay,' as used in this Act, shall be construed to include all payments made for 'equipment' and 'land and structures.'

* * *

"The term 'land and structures,' as used in this Act, shall be construed to include all payments made for any and all new land acquired together with the accrued tax thereon, new buildings, additions to buildings, and betterments in structures; and shall be construed to include all payments made for driveways, sidewalks, sewers, tunnels and landscaping and all other similar improvements." (Our emphasis)

See Acts of 1957, Ch. 285, Sec. 1.

The general appropriation for the Highway Department appears at page 701 of the Acts of 1957, and reads, in part, as follows:
OPINION 29

"SEC. 2c. There is hereby appropriated from funds accruing to the State Highway Fund the following amounts:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>FOR THE STATE</th>
</tr>
</thead>
</table>
| 1957-1958  | HIGHWAY DEPART-
|            | MENT          |
|            | For Operating Expenses |
|            | and Capital Outlays.... |
|            | $49,876,390    | $50,798,670" |

(Our emphasis)

In view of the foregoing, it is my opinion that the purchase price of a building purchased by the State Highway Department would be classed as a payment for "land and structures" and, as such, would be a "capital outlay" under the statutory provisions above set out.

The matters included in the category of "Miscellaneous Services" appear at page 702 of the Acts of 1957, and are as follows:

"From funds herein appropriated, expenditures made for the specific purpose of providing miscellaneous services, which shall consist of: (a) Payments for general repairs, motor vehicle repairs, repairs to buildings, repairs to equipment other than motor vehicles, repairs to small tools, light, heat, power and water used in office buildings or garages, transportation, communication, printing other than office supplies, other operating expenses, office supplies, motor vehicle supplies, and all other supplies; (b) wages for employees repairing and servicing equipment, tools or buildings; (c) special payments under the Workmen's Compensation Law; (d) payments for office equipment, laboratory equipment, all passenger automobiles owned and operated in carrying on the operations of the State Highway Department, motorless equipment not used for highway maintenance or highway construction purposes, motor equipment not used for highway maintenance or highway construction purposes, other equipment not used for highway maintenance or highway construction
purposes, and small tools; (e) payments for the rent of office and other working quarters of the Highway Department; (f) payments for rent of office equipment, laboratory equipment, and other equipment not used for highway maintenance or highway construction purposes; (g) payments for improvements to existing buildings including grounds for construction of new buildings including the cost of land for building sites, architects' fees and inspectors' salaries; (h) payments to Purdue University for Highway Research; (i) payments to persons sampling materials (payment is by number of samples taken); shall not exceed the sum of five million nine hundred one thousand five hundred dollars ($5,901,500) during the 1957-1958 fiscal year and shall not exceed six million four hundred thirty-seven thousand eight hundred dollars ($6,437,800) during the 1958-1959 fiscal year * * *

Under (a) and (g) above, it would be proper to charge the cost of remodeling a building to "Miscellaneous Services," but the actual purchase price of the building itself does not appear to be included within the category of "Miscellaneous Services" and the limitations applicable thereto.

In addition to the above, the following statutory provisions are also applicable to your questions:

"The State Highway Commission of Indiana, as hereby created, shall be entitled to all office rooms and other rooms now being occupied by said State Highway Commission; also to all books, records, papers, furniture, equipment, motor vehicles, and other matters now belonging to or in possession of said State Highway Commission.

"Said offices shall be kept open at such times as the business of the commission and the convenience and interest of the public shall require. Such office shall be the repository for all the records of the commission, and shall be furnished by the state with all necessary stationery, office supplies, fixtures, apparatus and engineering instruments. The commission shall have the authority to rent, purchase, acquire, or construct office and other work-quarters, if suitable and necessary
arrangements are not provided as hereinabove required.” (Our emphasis)

Acts 1941, Ch. 12, Sec. 8, as found in Burns’ (1949 Repl.), Section 36-167.

The powers and authority of the former State Highway Commission were transferred to the present State Highway Department by Acts of 1953, Ch. 225, Sec. 7, as found in Burns’ (1957 Supp.), Section 36-173g.

In view of the foregoing, my answers to your questions are as follows:

1. If the State Highway Department purchased an existing building it would be proper to charge the cost of remodeling said building to “Miscellaneous Services” while the purchase price of the building is merely a “capital outlay” and need not be charged against the “Miscellaneous Services.”

2. I know of no statute specifically prohibiting the Highway Department from purchasing a building and charging the cost of remodeling same to “Miscellaneous Services.” As previously stated, the purchase price of the building is not included in the category of “Miscellaneous Services” but that would not prohibit the Department from purchasing an existing building since the provisions above set out, relating to “Miscellaneous Services” are a restriction, not a grant of authority, and there appears to be no restriction therein contained as to a “capital outlay” for the purchase of a building.

3. Burns’ 36-167, supra, authorizes the Highway Department to purchase a building if suitable arrangements are not otherwise provided. If such be the case, then the purchase price could be paid from the monies appropriated from the State Highway Fund for capital outlays as contained in the general appropriation for the Highway Department in Acts of 1957, Ch. 285, supra. It is my opinion this expenditure could then be charged to the State Highway Fund as a “capital outlay.”