Mr. John Peters  
Chairman  
State Highway Department  
State House Annex  
Indianapolis, Indiana

Dear Mr. Peters:

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

"The State Highway Department in co-operation with the United States Bureau of Public Roads are making plans for the construction of the Interstate System of Highways in accordance with Federal laws and regulations. These laws and regulations require that these highways be limited access and in many cases require the closing of certain county roads and city streets at the right-of-way line of the Interstate Routes.

“What consent if any is necessary from the County officials to make these closures? What consent if any is necessary from City and Town officials to close these City streets and alleys?"

The pertinent sections of the statutes which affect the question are set forth in the Acts of 1945, Ch. 245, Secs. 3 and 4, as found in Burns’ (1949 Repl.), Sections 36-3103 and 36-3104, and read as follows:

“The highway authorities of the state, counties, cities, and towns, acting alone or in cooperation with each other or with any federal, state, or local agency of any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use whenever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities—Provided, That within cities and towns such authority
shall be subject to such municipal consent as may be provided by law. Said highway authorities, of the state, counties, cities and towns, in addition to the specific powers granted in this act, shall also have and may exercise, relative to limited access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said units may regulate, restrict, or prohibit the use of such limited access facilities by the various classes of vehicles or traffic in a manner consistent with section 2 of this act.

“The state highway commission of Indiana and the proper authorities of any county, city, or town having charge of any highway or street affected by this act, are authorized to design any limited access facility and to regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended. In this connection such authorities are authorized to divide and separate any limited access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from, or across limited access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time by rules and regulations adopted and promulgated as by law provided.”

The question presented of course has had no judicial determination in our court of last resort and while the act as phrased is in general conformity with uniform limited access laws adopted by other states, the matter of degree of cooperation necessary between the state and its municipalities does not appear to have been decided in sister states and any such decision upon the part of the courts of another state would be helpful only to the extent that there have been similar grants of authority to other municipalities and their agencies as have been made in Indiana.
The reasoning of this opinion is therefore predicated primarily upon rules of statutory interpretation applied to the act itself with regard to the various types of authority and jurisdiction delegated to the State Highway Department of Indiana and to the various municipalities under their laws. It is, however, supported by the reasoning of authors of treatises upon the subject.

Burns' Section 36-3103, supra, contains the language that "The highway authorities of the state, counties, cities and towns acting alone or in cooperation with each other * * *" may "plan, designate, * * * vacate, alter, improve, maintain and provide limited access facilities * * *." Where there is no conflict of interest or jurisdiction over highways, whether those of the state with counties, or cities, or towns, no problem is presented.

It could not be assumed from the language, however, that counties or cities or towns could act alone and without regard for the jurisdiction and authority of the State Highway Department in a manner so as to establish ways within their jurisdiction as limited access facilities at points crossing the state highway system at grade and thereby effect the closure of the state route. It would be equally incongruent to give one interpretation to the language of the Legislature as it applies to counties, cities, and towns, and to give the same language of the same provision a different interpretation as it applied to the state.

The section of the statute last-referred to makes specific reference to the procurement of such consent as may be provided by law in the case of cities and towns. This is further evidence of the fact that it was not the legislative intent to disregard the authority and jurisdiction presently invested in such municipalities by the acts of the Legislature.

Burns' Section 36-3104, supra, provides that "The state highway commission of Indiana and the proper authorities of any county, city, or town * * * are authorized to design any limited access facility * * *," the language being in conjunctive, as between the state, and in the disjunctive, as between the municipalities. This can only contemplate a meeting of minds as between the state and any of the named affected municipalities.
Therefore, in conclusion, my answers to your questions are as follows:

1. Consent from county officials—The consent of the County Commissioners is necessary because they are the governing body having control and jurisdiction of all county roads within the limits of their respective counties, and

2. Consent from city and town officials—In cities of the first and second class, that have a Board of Public Works, inasmuch as such body has control over streets and alleys in their municipalities, an approving resolution must be adopted and made a part of the record; in cities of the third, fourth and fifth classes, a resolution or ordinance, showing approval is necessary and in towns, the approval of the Board of Town Trustees is necessary. Thus the necessary contemplated meeting of the minds, as between the state and any of the affected municipalities will be achieved.

OFFICIAL OPINION NO. 45

October 25, 1957

Honorable Allan G. Weir
State Representative
620-22 Wyisor Building
Muncie, Indiana

Dear Representative Weir:

I have your letter dated October 5, 1957, in which you ask the following question:

"Does the City of Muncie have the authority under Section 48-7402 of Burns' Indiana Statutes to enter into a contract with a private ambulance service to supplement the City facilities and to guarantee sufficient personnel and equipment to handle any anticipated emergency?"

That portion of the statute referred to above as found in Burns’ (1950 Repl.), Section 48-7402 which is pertinent reads as follows:

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