

OFFICIAL OPINION NO. 53

December 11, 1956

Mr. Virgil W. Smith
Chairman
State Highway Department
State House Annex
Indianapolis, Indiana

Dear Mr. Smith:

This is in reply to your request for an Official Opinion which raises the following question:

Is it required as a condition precedent to payment to the State of Indiana of the consideration provided in contracts executed by counties for road construction under Chapter 298 of the Acts of 1945, that the County Auditor advertise the claims before the County Commissioners may approve the same for payment?

The Acts of 1931, Ch. 65, Secs. 1, 2 and 3, as found in Burns' Indiana Statutes (1948 Repl.), Sections 26-817 to 26-819, inclusive, read as follows:

"It shall be the duty of every county auditor within this state to publish all claims that have been filed for the consideration of the board of county commissioners and to publish all allowances made by the judge of any of the courts of the county. Such claims filed for the consideration of the board of county commissioners shall be published at least three [3] days prior to each session of the board of county commissioners, and such court allowances shall be published at least three [3] days before the issuance of warrants in payment of such allowances. Provided, That in publication of itemized statements filed for consideration of the board of county commissioners by assistant highway superintendents, the county auditor shall cause to be published the name of each party and the total amount due each party named in such itemized statements. The provisions of this act shall not apply to claims for statutory salaries, per diem of jurors and salaries of attaches of the courts. Such claims and allowances shall be pub-

lished one [1] time in two [2] newspapers as now provided by law.”

“It shall be unlawful for any board of county commissioners to consider or allow any claim, or for the auditor of any county to issue warrants in payment of the allowances made by the county commissioners or in payment of allowances made by any judge of any of the courts of the county until the provision[s] of section 1 of this act have been complied with. Any auditor who shall fail or refuse to comply with the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars [\$100].”

“This act shall be construed to be supplemental to existing laws, but where the provisions of this act are in conflict with the provisions of existing laws, the provisions herein contained shall prevail: Provided, There shall only be one [1] publication of the allowances of the board of commissioners.”

The Acts of 1897, Ch. 123, Sec. 4, as found in Burns' Indiana Statutes (1948 Repl.), Section 26-806 reads as follows:

“No claim shall be allowed by the board of commissioners of any county in this state unless such claim, duly itemized and verified by the claimant, or someone in his behalf, shall have been filed in the auditor's office of the proper county, and by him placed on the claim docket at least five [5] days before the first day of the regular or special session of such board: Provided, That nothing herein shall prevent the board from issuing warrants at the close of any term for the payment of money due officers of the commissioners' court for services rendered at such term: Provided, Claims for services as road or highway viewers or reviewers may be allowed at the session at which they are filed.”

The foregoing sections establish the requirement and manner of advertising claims generally and excepts certain categories. The type of claim after which you inquire does not fall within the exceptions.

The applicable portions of the statutes concerning Federal Aid and the coordination and cooperation of the federal government with the State and its municipalities, read as follows:

“The state highway commission of Indiana is hereby granted authority to cooperate with the federal government for postwar construction of highways and bridges under the act of the Congress, approved December 20, 1944 [58 Stat. at Large, ch. 626, p. 838], amending the Federal Aid Road Act of July 11, 1916, and to do and perform all acts as in said amendatory act provided, in order to procure for the state of Indiana the proper apportionment of federal funds available to the state of Indiana for the construction, maintenance and improvement of highways under the provisions of said amendatory act.”

“The several counties of the state, through their respective boards of commissioners, and the several municipalities of the state, through their respective and proper municipal authorities are hereby granted the authority, in so far as funds may be available or made available under the provisions of this act for the purpose, to enter into all agreements with the state highway commission of Indiana in the selection, construction, or maintenance, or in both the construction and maintenance of principal, secondary and feeder roads as provided for in said amendatory act of the Congress of December 20, 1944 [58 Stat. at large, ch. 626, p. 838]; and the state highway commission of Indiana is granted further authority, in cooperation with, and upon the approval of, the federal government, to construct or improve any such highway not within the system of highways under the control of said commission as may be selected by the commissioner of public roads of the federal government, under the provision of said amendatory act, as necessary to the national defense: Provided that the county or municipality having jurisdiction of any such highway so selected shall, by written agreement with said commission, duly approved by the commissioner of public roads of the federal government, reassume jurisdiction thereof upon comple-

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tion of such construction or improvement work and agree to maintain thereafter such highway.”

“The several counties of the state are hereby granted further authority to enter into agreements with the state highway commission of Indiana, in so far as funds are available, to contribute all or any part of the costs of construction work on any highway, within their respective boundaries, under the control of said commission.” [The Acts of 1945, Ch. 298, Secs. 1, 2 and 6, as found in Burns’ Indiana Statutes (1949 Repl.), Sections 36-180, 36-181 and 36-185]

There is nothing in the language of the statutes quoted immediately above which would operate to except or exempt claims arising out of contracts executed between the State and the County thereunder from processing and payment pursuant to the general statutes.

While statutes have been found which operate to exempt specific types of claims from approval of the County Commissioners as a condition precedent to payment and therefore are exempt from advertising, none of these are sufficiently broad as to include indebtedness of the nature of your inquiry. An opinion of the Attorney General of 1936, page 377, deals with claims of an exempted character.

Therefore, it is my opinion that under existing statutes a claim for payment of a consideration to the state under a contract made pursuant to the Acts of 1945, Ch. 298, *supra*, would require compliance with Acts of 1931, Ch. 65, *supra*, necessitating advertising and approval as therein set forth.