Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Wickersham:

This is in reply to your letter of April 19, 1955 which reads as follows:

"House Enrolled Acts 180 and 295, being Chapters 216 and 230, Acts 1955, present questions upon which your official opinion is requested.

"(1) Will furnishing and maintaining one or more vehicles for the use of the surveyor or coroner, his deputy or assistant pursuant to the provisions of Section 1, Chapter 230, preclude reimbursing such officials for use of a privately-owned vehicle in addition to the vehicle or vehicles furnished and maintained at county expense?

"Section 2, Chapter 230 seems to give the board of commissioners permissive authority to request the county council to appropriate a sufficient amount to reimburse the officials named in the act for the use of their privately-owned vehicle. Apparently it is at the discretion of the county council to appropriate an amount pursuant to the request. The time for the request by the commissioners and action by the council as stated in the act is 'at the time of the preparation of the county budget.'

"(2) Does this mean that the request and action must be restricted to the time the annual county budget estimates are considered?

"(3) Is the mileage provision for a surveyor, his deputy or assistant under this act in conflict with the mileage provision of 8¢ under the drainage laws found at Burns Section 27-103, 1953 Pocket Supplement?"
"(4) If your answer to question 2 is in the affirmative, what mileage allowance will a surveyor, his deputy or assistant receive in drainage matters if no allowance is made pursuant to the provisions of Chapter 230?

"(5) If your answer to question 2 is in the negative and a request and an appropriation is made pursuant to the provisions of Chapter 230, will the surveyor, his deputy or assistant be entitled to receive mileage at the rate of 8¢ in ditch matters and mileage at the rate of 10¢ for other duties of a surveyor's office?

"(6) Mileage under Burns 27-103 is paid out of the general ditch improvement fund and charged as an assessment against the improvement. Mileage contemplated by Chapter 230 would be paid out of the county general fund. At what amount would mileage be charged as ditch assessments if the provisions of Chapter 230 supersede the provisions of Burns 27-103?

"(7) If the board of commissioners furnish a vehicle or vehicles for the surveyor, his deputy or assistant in lieu of a mileage allowance, what amount, if any, would be charged as an assessment against ditch improvements?

"Chapter 230, Acts 1955 also applies to county coroners, their deputies and assistants in all counties of the state. Chapter 216, Acts 1955 provides for a mandatory mileage allowance of 10¢ for county coroners only but applies only to coroners in counties with a population of 100,000 or less. Both acts were approved March 10, 1955. Chapter 230 became effective March 10 while Chapter 216 does not become effective until July 1, 1955.

"(8) If any board of commissioners in counties having a population of 100,000 or less has furnished a vehicle or vehicles for the use of the coroner, his deputy or assistant pursuant to the provisions of Section 1, Chapter 230, will such officials be entitled to receive 10¢ per mile for
the use of their privately-owned vehicle on and after July 1, 1955 pursuant to the provisions of Section 7, Chapter 216?

“(9) May the board of commissioners in counties with a population of 100,000 or less furnish a vehicle or vehicles for the use of a coroner, his deputy or assistant after July 1, 1955 pursuant to the provision of Section 1, Chapter 230 in lieu of paying mileage to the coroner as required by Section 7, Chapter 216?

“(10) If any board of commissioners has furnished a vehicle or vehicles pursuant to the provisions of Section 1, Chapter 230, Acts 1955, subsequent to March 10, can the coroner refuse to use such car on and after July 1 and demand mileage at the rate of 10¢ per mile pursuant to the provisions of Section 7, Chapter 216?”

The Acts of 1955, Ch. 230 which was House Enrolled Act No. 295, which became effective March 10, 1955, provides as follows:

“SECTION 1. Whenever it is deemed expedient and economical the board of county commissioners of any county may authorize any county surveyor or coroner, his deputy or assistant, to use a privately-owned vehicle in the conduct of the official duties of his office. When so authorized by the board of county commissioners, any such county official, his deputy or assistant, shall be reimbursed for such use of his privately-owned vehicle at the rate of ten cents per mile for each mile traveled in the conduct of the official duties of his office.

“In lieu of the above provisions any board of county commissioners may furnish and maintain vehicles for the use of the county surveyor or coroner, his deputy or assistant.

“SEC. 2. The board of county commissioners may, at the time of the preparation of the county budget, request the county council to appropriate a sufficient amount to reimburse the county surveyor or coroner, his deputy or assistant, for the use of his privately-
owned vehicle, and the county council may appropriate the amount requested.

"SEC. 3. The owner of each motor vehicle which is authorized to be used under the provisions of section 1 of this act, shall file each month an itemized claim for reimbursement for the use of his privately-owned vehicle with the board of county commissioners, which claim, when approved by the board, shall be paid in the same manner as other claims are paid.

"SEC. 4. The mileage allowance as herein provided shall be in addition to all other compensation received by such county surveyors or coroners, their deputies or assistants.

"SEC. 5. All laws and parts of laws in conflict with the provisions of this act, are hereby repealed.

"SEC. 6. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage." (Our emphasis)

The Acts of 1955, Ch. 216 which was House Enrolled Act No. 180, which will not become effective until July 1, 1955, provides as follows:

"SECTION 1. As used in this act the word 'census' shall mean and refer to the last preceding United States census.

"SEC. 2. In counties having a population of fifteen thousand or less according to the census, each coroner may receive an annual salary of not to exceed five hundred dollars.

"SEC. 3. In counties having a population of fifteen thousand one to thirty thousand according to the census, each coroner may receive an annual salary of not more than one thousand two hundred and fifty dollars.

"SEC. 4. In counties having a population of thirty thousand one to fifty thousand according to the census, each coroner may receive an annual salary of not more than one thousand five hundred dollars.
"SEC. 5. In counties having a population of fifty thousand one to seventy-five thousand according to the census, each coroner may receive an annual salary of not to exceed two thousand dollars.

"SEC. 6. In counties having a population of seventy-five thousand one to one hundred thousand according to the census, each coroner may receive an annual salary of not to exceed three thousand dollars.

"SEC. 7. The salaries provided for by this act shall be subject to the approval of the Board of County Commissioners and shall be the total compensation to which each coroner is entitled, and shall be in lieu of all salaries, fees, per diem or remuneration of whatever kind, other than for mileage which shall be ten cents for each mile necessarily traveled.

"SEC. 8. In each county having a population of two hundred thousand or less according to the census, the coroner shall name all deputies and the number of the same shall be fixed by the board of county commissioners, and their salaries fixed by the county council.

"SEC. 9. In each county having a population of two hundred thousand or less according to the census, the coroner shall name such clerical assistants as in his judgment may be deemed necessary. The number of such assistants shall be subject to the approval of the board of county commissioners. Each such assistant shall receive a per diem for each day actually so employed in an amount of not less than five dollars as fixed by the county council.

"SEC. 10. All laws and parts of laws in conflict herewith are hereby repealed and Section 1, Chapter 225, of the Acts of 1945 is hereby specifically repealed.

"SEC. 11. Whereas an emergency exists for the more immediate taking effect of this act, the same shall be in full force and effect on and after July 1, 1955.” (Our emphasis)

Your attention is also invited to Acts of 1955, Ch. 57 which was House Enrolled Act No. 91, which provides as follows:
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"SECTION 1. In all counties having a population of not less than 250,000 nor more than 400,000 according to the last preceding United States Census, the board of county commissioners may furnish and maintain a motor vehicle or vehicles for the use of the county surveyor and his duly authorized deputy or deputies in the performance of the duties of the office, and said board of county commissioners shall supply the necessary motor fuel to operate such vehicle or vehicles.

"SEC. 2. Whereas, an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage."

I will answer your questions in chronological order.

1. It is apparent, under Acts of 1955, Ch. 230, Sec. 1, supra, that the Legislature did not intend for surveyors, coroners, or their deputies and assistants to use their own vehicles and receive a mileage allowance therefor when a vehicle furnished by the county was available for such purposes. To this extent, the furnishing of a vehicle by the county would preclude reimbursement for the use of privately-owned vehicles. If, however, the vehicle or vehicles furnished by the county were not available for use at a given time because of mechanical failure, or because of being in use at the time by another member of the surveyor’s or coroner’s staff, or for other reasons, then I believe the county commissioners could authorize the use of privately-owned vehicles at the rate of 10¢ per mile.

2. The request for an appropriation for mileage, under Acts of 1955, Ch. 230, Sec. 2, supra, may properly be made at the time of preparation of the county budget. However, in cases of emergency, I would think additional appropriations could be made under and pursuant to Acts 1899, Ch. 154, Sec. 21, as amended, as found in Burns’ Indiana Statutes (1948 Repl.), Section 26-521.

3. The mileage provisions for surveyors, their deputies and assistants provided for in the Acts of 1955, Ch. 230, supra, is not in conflict with the provisions for mileage contained in Acts 1933, Ch. 264, Sec. 3, as amended, as found in Burns’ Indiana Statutes (1948 Repl., 1953 Supp.), Section 27-103, except as to the amount of mileage authorized for the use of
privately-owned vehicles for official business. I think the Legislature intended that surveyors, their deputies and assistants should receive 10¢ per mile mileage in all instances where privately-owned vehicles were used on official business after proper authorization under Acts of 1955, Ch. 230, supra. This would apply where the surveyor or his deputies were engaged in ditch and drainage work under the drainage laws. I would also think, however, that the county commissioners could either pay 8¢ of the 10¢ mileage for drainage work to the surveyor from the general ditch improvement fund, under the Acts of 1935, Ch. 264, Sec. 3, supra, or else reimburse the county general fund from the general ditch improvement fund at the rate of 8¢ per mile for mileage paid to the surveyor from the county general fund for drainage work.

4. If no mileage is authorized under the Acts of 1955, Ch. 230, supra, then the surveyor, his deputies and assistants would receive 8¢ per mile for drainage work under and pursuant to the Acts of 1933, Ch. 264, Sec. 3, supra, except in cases where a county-owned vehicle was used for such work, when no mileage is allowed.

The law contemplates that drainage work performed by the surveyor be paid for from the general ditch improvement fund which is raised by assessments against improvements and I do not think the Legislature, in the enactment of the Acts of 1955, Ch. 230, supra, intended to shift this expense to the county general fund.

A county which furnishes a vehicle for the use of the surveyor would stand in identically the same position as a county officer (in this case the surveyor) who furnishes his own or a hired vehicle for ditch work, under the Acts of 1933, Ch. 264, Sec. 3, supra. Therefore, I would think it would be proper to reimburse the county general fund from the general ditch improvement fund at the rate of 8¢ per mile for each mile necessarily traveled by the surveyor in a county car for drainage work.

5. I think my answers to questions 3 and 4 answer your questions 5, 6 and 7.

8. Where the county has furnished a vehicle for the use of the coroner under the Acts of 1955, Ch. 230, supra, the coroner will be entitled to mileage at the rate of 10¢ per mile only
where the county vehicle is not available for his use as set out in my answer to your first question.

9. The Acts of 1955, Ch. 230, supra, applies to all counties and I think any county may furnish a vehicle or vehicles for the coroner under this Act which does not appear to me to be in conflict with the Acts of 1955, Ch. 216, supra.

10. If the county furnishes a vehicle for the use of the coroner under the Acts of 1955, Ch. 230, supra, then the coroner should use this vehicle on official business and he would be entitled to claim mileage only when the vehicle was unavailable for his use as set out in my answer to your first question.

OFFICIAL OPINION NO. 21

June 13, 1955

Mr. James M. Knapp, Director
Indiana State Personnel Bureau
311 West Washington Street
Indianapolis 4, Indiana

Dear Mr. Knapp:

Your letter of May 25, 1955, has been received and reads as follows:

"The 1955 session of the General Assembly passed an Act regulating the practice of Chiropractic, and providing for the examination and licensing of chiropractors.

"Prior to this enactment, the Director of the State Personnel Bureau in conformity with the Rules of this agency, accepted medical certificates from attending physicians in cases where employees were requesting pay for sick leave. (Rule 11, Sections 5 and 6.)

"Since the effective date of this Act, the following question has arisen on which we wish an official opinion—'Does it become lawful under this new act to accept such certificates from licensed chiropractors in cases where employees are requesting pay for sick leave?'"

The above rules require a person requesting pay for sick leave to furnish "a medical certificate from the attending physician."