

OPINION 4

Matters of a similar nature were decided by the Ohio Supreme Court regarding the duties and powers of the Ohio Turnpike Commission. Your attention is called to these cases which are as follows:

State *ex rel.* Kaner v. Defenbacher (1950), 153 Ohio St. 268, 91 N. E. (2d) 512;

State *ex rel.* Allen *et al.* v. Ferguson (1951), 155 Ohio St. 26, 97 N. E. (2d) 660.

These two cases were used to a large extent by the Indiana Supreme Court in the Ennis case.

With the foregoing authorities in mind it is my opinion that as Chairman you may approve the expenditures outlined in your request. One expense, though, should be clarified. Any expenditure for motor vehicles must be made pursuant to Section 12, Chapter 217, Acts 1951.

OFFICIAL OPINION NO. 4

January 7, 1953.

Hon. Sam J. Bushemi,
State Representative,
Court House,
Crown Point, Indiana.

Dear Sir:

I have your request for an Official Opinion which reads as follows:

"The Lake County Attorney has requested that I obtain an Official Opinion from you, regarding the following question: Does the County Surveyor in counties having in excess of 350,000 population, have the authority and responsibility to make expenditures from the cumulative bridge fund, where such fund has been established by the Board of County Commissioners, pursuant to law, where a County Highway Supervisor has been appointed by the Board of County Commissioners and performing the duties prescribed by law?"

An examination of Chapter 27 of the Acts of 1933 which is found in Burns' 36-1101 *et seq.* shows that that law provides a comprehensive system for the maintenance of county highways. Some of the pertinent provisions of that statute are as follows:

36-1102

"* * * The county surveyor shall have general supervision of the maintenance and repair of all highways, bridges and culverts of the county which are maintained or repaired from the highway fund of the county, * * *."

36-1103

"* * * The county surveyor shall investigate and determine the method of highway maintenance best adapted to the various highways of the county under his supervision and shall establish standards for the maintenance of bridges, culverts and highways, giving due regard to the topography, condition, character and volume of the traffic, the availability of road repair materials, drainage, and of the financial ability of the county to pay the cost of repairs. * * *"

36-1105

"The board of county commissioners shall have power to contract, and may contract in the manner provided by law, for the purchase of all road and bridge repair material, and for all tools and machinery and supplies necessary for the proper repair of such roads, as such county surveyor shall, from time to time, deem necessary. The county surveyor shall call a meeting of all of his assistants, at least once a year, to discuss all matters concerning the repair work of the county highways."

36-1110

"* * * The board of county commissioners of any county of the state of Indiana shall have the right to employ any person other than the county surveyor as supervisor of county highways, such person to be known as County Highway Supervisor and who shall serve at the will of such board of county commissioners, *and who shall perform the duties that are provided in*

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*this act to be performed by the county surveyor, and whose salary shall be fixed upon the same basis as is otherwise provided in this act. * * **

The act which you refer to as creating the cumulative bridge fund is Chapter 299 of the Acts of 1951 and the only provision made for the utilization of the funds provided by that act is the last paragraph of Section 31 which reads as follows:

“No expenditures shall be made from said fund except after an appropriation therefor has been made in the manner provided by law for making other appropriations.”

On the basis of the statutes quoted herein, it is my opinion that it is clearly the legislature's intent that if a County Highway Supervisor is appointed that he, together with the board of county commissioners, would determine the necessity for expenditures and authorize especially expenditures of all funds in the building, repair, or maintenance of county bridges pursuant to an appropriation by the county council of the funds to be so expended.

OFFICIAL OPINION NO. 5

January 5, 1953.

Mr. Frank T. Millis,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. Millis:

I have your request for an official opinion which is as follows:

“Burns' Indiana Statutes 64-1505 *et seq.* provides that the various County Auditors shall furnish to the State Auditor a list of persons who are due money from the State of Indiana for salaries or services and who are delinquent in the payment of taxes to that county. The State Auditor is then required to withhold the amount of such delinquent taxes from the warrant of such person and pay such sum over to the County