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to in your letter, in case of his voluntary retirement with 29 years of service and at the age of 46 years could not have received retirement benefits from said fund until reaching the age of 50 years. However, the statute provides that a teacher with 25 years of service may provide an annuity for a dependent "in case of the death of said teacher during the remainder of his period of active service." There are no words limiting the taking effect of such annuity and in the absence of any such words of limitation none should be furnished by construction. Any such limitation should be left to the Legislature.

I am, therefore, of the opinion the joint-survivor is entitled to receive an annuity effective on the death of the teacher "based upon the annuity that would be available had such teacher retired at the time of his death adjusted to the actuarial of such annuity, taking into consideration the ages of the teacher and the dependent."

OFFICIAL OPINION NO. 3

January 6, 1953.

Mr. Samuel C. Hadden, Chairman,
State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

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

"May we respectfully request an opinion as to the extent of the legal authority of the State Highway Commission, by its Chairman, for expenditure of highway funds conferred by Chapter 217, Sec. 2c, of the Acts of 1951. The question of authority is asked in so far as it relates to the powers of the Chairman of the State Highway Commission to extend such funds under the provisions of Chapter 281, Sec. 20, Acts of 1951. The question refers to the expenditure of such monies, appropriated to the State Highway Commission of Indiana, as may be necessary for the study of any toll road

project or projects, for the use of the State Highway Commission's engineering and other forces, including consulting engineers and traffic engineers, for the purpose of effecting such study, and all such expenses incurred by the Chairman of the State Highway Commission prior to the issuance of toll road revenue bonds, under the provisions of said Sec. 20, Chapter 281, Acts of 1951.

"This inquiry is with particular reference to the question as to whether or not the Chairman of the State Highway Commission may approve the expenditure of funds for the payment of legal services, and the salaries and traveling expenses of the members of the State Toll Road Commission and its employees, including under the item of traveling expenses the matter of initial cost and operating cost of motor vehicles for the use of members of the Toll Road Commission and its employees."

There are three sources of authority which it is necessary to examine in order to determine the authority and manner of making the expenditures to which you refer. The first of which is the Indiana Toll Road Act, same being Chapter 281 of the Acts of 1951. Pertinent portions of this act are as follows:

"Section 2 * * * All expenses incurred in carrying out the provisions of this Act shall be payable solely from funds provided under the authority of this Act and nothing in this act contained shall be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by the state or any political subdivision thereof."

"Section 3 * * * Each member shall be reimbursed for his actual expenses necessarily incurred in performance of his duties. All expenses incurred in carrying out the provisions of this act shall be payable solely from funds provided under the authority of this act and no liability or obligation shall be incurred by the commission hereunder beyond the extent to which moneys shall have been provided under the authority of this act."

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“Section 4 (c) * * * The word ‘cost’ as applied to a toll road project shall embrace the cost of construction, including bridges over or under existing highways and railroads, the cost of acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the commission for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of diverting highways, interchanges of highways, access roads to private property, including the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, *cost of traffic estimates and of engineering and legal expenses, plans, specifications, surveys, estimates of cost and revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expenses as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation.* Any obligation or expense hereafter incurred by the state highway commission with the approval of the commission, for surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed to the state out of the proceeds of toll road revenue bonds hereinafter authorized.”

“Section 5 (c) * * * To maintain a principal office and sub-offices at such place or places within the state as it may designate; * * *.”

“(k) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act.”

“When the cost under any such contract or agreement, *other than compensation for personal services*, involves an expenditure of more than one thousand dollars, the commission shall make a written contract with the lowest and best bidder after advertisement for not less than two consecutive weeks in a newspaper of general circulation in Marion County, Indiana, and in such other publications as the commission shall determine.”

“(1) To employ consulting engineers, superintendents, managers, and such other engineers, construction and accounting experts, attorneys, and other employees and agents as may be necessary in its judgment, and to fix their compensation: Provided, That all such expenses shall be payable solely from the proceeds of toll road revenue bonds issued under the provisions of this act or from revenues;”

“(o) To do all acts and things necessary or proper to carry out the powers expressly granted in this act.”

The second source of authority in this regard is the appropriation to the Highway Commission. This appears in Section 2c of Chapter 217 of the Acts of 1951 which provides in part as follows:

“There is hereby appropriated from funds accruing to the State Highway Fund the following amounts:

“FOR THE STATE HIGHWAY COMMISSION—
For Operating Expenses and Capital Outlays \$47,175,000.

“* * * From funds herein appropriated expenditures made for the specific purpose of constructing and improving highways, which shall consist of: (a) wages;
* * *

“From funds herein appropriated expenditures made for the specific purpose of providing for administration and supervisory service, which shall consist of: Salaries, per diem and traveling expenses of the commissioners, their stenographers and assistants, all employees of the division of auditing, all employees paid

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with funds of the State Highway Commission engaged in traffic surveys and research and any other employees whose services cannot be principally identified with either maintenance or construction of roads or bridges or the repair and maintenance of buildings and equipment may equal the sum of six hundred seventy-five thousand dollars (\$675,000.00) during each fiscal year."

The third source of information on this subject is the opinion of the Supreme Court of Indiana in the case of *Samuel Ennis v. State Highway Commission of Indiana, et al.* (1952), — Ind. —, 108 N. E. (2d) 687. This opinion deals with the authority of the Toll Road Commission to spend money and the authority of the Commission to advance funds to the Toll Road Commission in two places. The court stated as follows:

"Since the State Highway Commission of Indiana is charged by law with the duties generally of constructing, maintaining, and repairing state highways, it seems to us that the title of the act is sufficient to put the legislators and the public in general on notice that the commission might be involved in the enforcement of the act in such a manner as to become liable for costs incurred. Subsection (c) of Section 4, Chapter 281, of the Acts of 1951, defines the word "cost" as applied to toll projects. Therefore any obligation or expense incurred by the State Highway Commission would be a part of the cost of the toll road and should be reimbursed to the State Highway Commission. Section 36-3220, Burns' 1949 Replacement (1951 Supp.). That portion of Subsection (c) of Section 4, Chapter 281, of the Acts of 1951, does not violate Section 19, Article 4, of our Constitution.

"Section 20, Chapter 281, Acts of 1951, provides for the reimbursement to the State Highway Commission of all funds expended 'for the study of any toll road project or projects and to use its engineering and other forces, including consulting engineers and traffic engineers, for the purpose of effecting such study, and all such expenses incurred by the chairman of the state highway commission prior to the issuance of toll road revenue bonds * * * shall be paid by the chairman and

charged to the appropriate toll road project or projects * * *.' The State Highway Commission of Indiana is continually expending money for the study of its highways and using the necessary personnel to carry on this work. It is an incident to, germane to, and properly a part of the construction of highways in this State."

"Appellant contends that section 20 of the act here questioned fails to provide properly for the expenditure of state highway funds, in violation of Section 3, Article 10, of the Constitution of Indiana. This section provides:

"'No money shall be drawn from the Treasury, but in pursuance of appropriations made by law.'

"Section 20 of the act, heretofore set out, provides for the expenditure of funds and services of the State Highway Commission, and that the chairman of the commission 'shall expend out any funds available for the purpose of such moneys as may be necessary for the study of any toll road project or projects and to use its engineering and other forces * * *.' The identical question was discussed in Application of Oklahoma Turnpike Authority, *supra*, where the court said at pages 345, 346 of 203 Okla., at page 807 of 221 P. 2d:

"'Of course, the Highway Commission has general authority over the state to incur such preliminary expense in reference to highway construction, and when they incur such expense, on any particular line or route, the expenditure is not rendered illegal if that route or line is thereafter taken over by the Turnpike Authority and a toll road constructed thereon. It is only sound business and fair that in such an instance the Turnpike Authority should make reimbursement. In a case of such preliminary work and expense by the Highway Commission, even though made in possible contemplation of toll road construction by the Authority, if the Authority should fail or decline the line or route for toll road, the line or route might well be

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utilized as and for a portion of the state system of free roads. Thus it seems clear that any such preliminary work and expense that is generally done, or might be done, by the Highway Commission, would be in exact accord with its general duties and would be thoroughly covered by and included in the appropriation of money to the Highway Commission, or for general use by the Highway Commission within the scope of its duties as to the public highways of the state.'

"Chapter 217 of the Acts of 1951 (Acts 1951, p. 277) appropriates money for the construction of highways, among other things. The act before this court authorizes the State Highway Commission to expend funds. Funds have been appropriated for construction of highways, and Chapter 281 limits the funds to those necessary to be expended for the study of toll road projects. Chapter 281 places other duties on the State Highway Commission which would of necessity require a study by it of the projects, such as the requirements in Section 1 of Chapter 281.

"Section 3, Article 10, of our State Constitution, is not violated, as funds of the State Highway Commission may be expended 'out of any funds available for the purpose,' and these were appropriated by Chapter 217 of the Acts of 1951. The amount of funds is limited by 'moneys as may be necessary,' and as appropriated to the State Highway Commission. State, *ex.*, v. Defenbacher (1950), 153 Ohio St. 268, 91 N. E. 2d 512, *supra.*"

I think also the following language of this opinion is necessary to a determination of the questions presented:

"Appellant further contends that no standard is set for the expenditure of funds by the State Highway Commission under sections 4 (c) and 20. The Legislature provided in the act that the chairman of the State Highway Commission would provide funds 'as may be necessary,' and this only with the approval and consent of the controlling board. The necessity for the

expending of funds must be determined and be bona fide. This, coupled with the fact that the toll roads must be feasible and surveys made must show the toll roads to be self-financed, would set reasonable standards for the authority delegated under sections 4 (c) and 20. In *Kryder v. State*, *supra*, reasonable standards was discussed, and this court said at pages 425, 426 of 214 Ind., at pages 389, 390 of 15 N. E. 2d:

“The validity of legislation regarding public utilities rests, in many instances, upon the single limitation that rates and charges fixed by administrative boards and commissions shall be *reasonable*. Legislation of this character is sustained upon the theory that it is proper for the legislature to delegate to such boards and officers the function to determine what is and what is not reasonable under the particular facts. *Village of Saratoga Springs v. Saratoga Gas, etc., Co.* (1908), 191 N. Y. 123, 83 N. E. 693, 18 L. R. A. (N. S.) 713; *Idaho Power & Light Co. v. Blomquist* (1914), 26 Idaho 222, 141 Pac. 1083; *Minneapolis, etc., R. Co. v. Railroad Commission* (1908), 136 Wis. 146, 116 N. W. 905, 17 L. R. A. (N. S.) 821. The restriction imposed by the act before us that the holders purchased by the commissioner for distribution to the public shall possess quality, appearance and usability, is none the less definite and specific.

“Under a general statute giving to a state board of health power to restrict or suppress contagious and infectious diseases, such department has authority to designate such diseases as are contagious and infectious, and the law is not void for this reason on the ground that it delegates legislative power. *People ex rel. Barmore v. Robertson* (1922), 302 Ill. 422, 134 N. E. 815, 22 A. L. R. 835; *Ex Parte McGee* (1919), 105 Kan. 574, 185 P. 14, 8 A. L. R. 31.’”

Ennis v. State Highway Commission (1952),
— Ind. —, 108 N. E. (2d) 687.

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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?"