process of improvement. In fact, that Section of said "Standard Specifications for Road and Bridge Construction and Maintenance," as above set out, expressly prohibits the operation of any equipment which damages in any way any finished surfaces.

Since the enforcement of weight limitations is purely an exercise of the police powers of the State for the protection of the public highways and the promotion of public safety, it follows that such weight limitations may be enforced as to all motor vehicles, including those being operated by or for the contractor, while the same are being operated upon that portion of the public highway under contract for reconstruction or repair, whether or not such portions of such highways are at such time open to public travel generally.

It is my opinion, therefore, that your enforcement personnel have full powers to enforce weight limitations upon all motor vehicles being operated by or for a contractor while the same are being operated upon any highway laid out and established as a public highway. This applies to the type of contracts described in paragraphs numbered "2" and "3" of your letter as hereinabove set out but not to the type of construction contract described in paragraph numbered "1" as to construction of new highways where none had existed before and where the same had not yet been accepted and opened to public travel.

OFFICIAL OPINION NO. 37

April 26, 1951.

Honorable Conn J. Sterling,
Commissioner of Revenue,
141 South Meridian Street,
Indianapolis 13, Indiana.

Dear Mr. Sterling:

Your letter of April 6, 1951, has been received requesting an opinion on the question as to the status of a pipeline company under the provisions of the Indiana Gross Income Tax Act, as set out in your letter as follows, to-wit:

> "The question arises as to the status of a pipe line company which purchases, produces, or severs natural

gas, then transports the same in its own pipe lines (either leased or owned) from another State into Indiana and sells such gas to municipalities, utilities, industrial firms and to domestic users. The pipe line maintains its own pipe line and establishes stations for the increase and reduction of pressure, and maintains metering stations wherever necessary.

"Would such a pipe line company be classified as a utility under the laws of Indiana and within the included meaning of Section 3(e)?"

Section 3(e) of the Gross Income Tax Law provides:

> *"With respect to that part of the gross income of every person received from* producing, transmitting, furnishing, wholesaling, and/or retailing electrical energy; or *producing, transporting, furnishing, wholesaling, and/or retailing artificial gas, natural gas, or mixtures of artificial and natural gas,* operating a steam and/or electric railway, street car line, motor vehicle, steam or motor boat, or any other vehicle for the transportation of freight, express, and/or passengers for hire; operating a pipe-line for the transportation of any commodity for hire; operating any telephone and/or telegraph line; operating any water or sewerage system *or operating any other utility not expressly provided for in this section, the tax shall be equal to one (1) per cent of such part of the gross income."* (Sec. 64-2603(e), Burns' Annotated Statutes, 1949 Cum. Pocket Supplement.)

That part of the language underscored in the quoted section of the Gross Income Tax Act is referred to in your letter and sets out the provisions pertinent to your inquiry.

Sec. 54-105, Burns' Annotated States, 1951 Replacement, defines a "public utility" and the term "utility" as used in that act having to do with regulation by the Indiana Public Service Commission, as follows:

> "The term 'public utility' as used in this act shall mean and embrace every corporation, * * * that now or hereafter may own, operate, manage or control * * * any plant or equipment * * * for the transmission,

> delivery or furnishing of heat, light, water or power, * * * either directly or indirectly to or for the public * * *.
>
> "The term 'utility' as used in this act shall mean every street railway or interurban railway, and every plant or equipment within the state used for the conveyance of telegraph and telephone messages, or for the production, transmission, delivery, or furnishing of heat, light, water or power, * * * either directly or indirectly to the public: * * *."

The section of the Gross Income Tax Act above set out has to do with gross income of utilities, referring to several specifically, including persons furnishing electrical energy, transporting gas, operating railways, street car lines, operating vehicles for transportation of freight, express or passengers for hire, operating telephone and telegraph lines, etc. It seems obvious from the language thus used that the Legislature had in mind such utilities generally regarded as public utilities. While the word "utility" may be broader than the phrase "public utility" certainly it includes "public utility." If therefore a pipeline is a public utility under the Indiana laws, it necessarily follows that it is a utility.

After quoting the language of Sec. 54-105 just referred to, the Supreme Court of Indiana said in the case of Public Service Company of Indiana v. City of Aurora (1939), 215 Ind. 311, 19 N. E. 2d 255:

> "It is clear therefore that a 'public utility' is the owner of one or more 'utilities,' and that a 'utility' is the property or plant which furnishes service to the public."

Chapter 53 of the 1945 Acts, page 110 (Burns' Annotated Statutes, 1951 Replacement, Sec. 54-601(a)) added a section to the Indiana Public Service Commission Act dealing directly with natural gas business. By that act it was provided:

> "(4) the term 'gas utility' means and includes any public utility selling or proposing to sell or furnish gas directly to any consumer or consumers within the state of Indiana for his, its or their domestic, commercial or industrial use; * * *"

After referring to the provisions of the Indiana statutes just mentioned, the Supreme Court of Indiana in the case of Public Service Commission v. Panhandle Eastern Pipeline Co. (1946), 224 Ind. 662, 71 N. E. 2d 117, said:

> "The bottom question on this phase of the case is whether the appellee is furnishing gas in Indiana directly or indirectly to or for the public. Admittedly it is selling gas in Indiana indirectly to and for the public through distributing companies and that makes it a public utility under the Indiana statute, subject to regulation and control by the Indiana Public Service Commission. Also admittedly it is selling and proposing to sell gas directly to consumers within the state. This part of its business and its interstate transportation and its sales to local distributing utilities are so integrated that in any practical consideration of the state's right to regulate direct sales to consumers that activity must be appraised as a part of its entire business in Indiana."

The case of Public Service Commission v. Panhandle Eastern Pipeline Co., *supra,* was affirmed by the United States Supreme Court in 1947, 333 U. S. 507.

From the foregoing it is clear that a pipeline company transporting, distributing and selling gas, as described in your letter, is a public utility and is therefore a utility. In this regard there is no basis for differentiating between a public utility and a utility. That this was the intention of the Legislature would seem even more obvious when it is noted that the language of Sec. 3(e) of the Gross Income Tax Act refers to gross receipts "from producting, transporting, furnishing, wholesaling, and/or retailing artificial gas, natural gas or mixtures of artificial and natural gas."

Specifically answering your inquiry, it is my opinion that such a pipeline company is a utility under the laws of Indiana and within the included meaning of Sec. 3(e) of the Indiana Gross Income Act.