"B. That it assist with a maximum of efficiency the counties and other units of government in filling the needs of the people of Indiana and in carrying out their desires."

Article 9 of the Constitution makes the following provision for participation by a county in the services of the Indiana County Commissioners Association:

"County Participation.

"A county may participate in the services of the association if it pays the following fees:

a. A sum equal to 1/10th of 1% of the funds made available to the county through the motor vehicle account the previous year.

b. .01% of the property and poll taxes paid in the county during the previous year."

By using the words "a sum equal to", it is assumed that the intended effect was to avoid the objections of a diversion of funds already earmarked by the Legislature. Even though its effect would accomplish such purpose, in my opinion it still would not resolve the requirement that the Legislature must give its approval to such class of expenditures.

Therefore, in view of the foregoing, it is my opinion that a county could not lawfully expend public funds in accordance with said Article 9 of the aforesaid constitution, without the express authorization of the General Assembly.

OFFICIAL OPINION NO. 74

August 28, 1951.

Honorable Leland L. Smith,
Secretary of State,
State House,
Indianapolis 4, Indiana.

Dear Mr. Smith:

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

"Articles of Incorporation have been submitted to the Corporation Department, the proper handling and
disposition of the same require a legal interpretation of the Corporation Act concerning the power of a corporation to enter into a partnership. In order for this Department to reach a proper decision in this matter we respectfully request an official opinion and answer to the following questions:

"1. May a corporation in Indiana legally include in its Articles the express power enabling it to enter into a partnership?

"2. Does a corporation in Indiana have the power to enter into a partnership or make a contract which will create a partnership if:

"(a) the power is expressly stated in the Articles?

"(b) there is no express statement of power?"

Both questions must be considered together in order to arrive at the answers to your specific questions.

Section 2, Chapter 215, Acts 1929, same being Section 25-201, Burns 1948 Replacement, provides in part as follows:

"Corporations may be organized for pecuniary profit under this act for any lawful business purpose or purposes * * * ."

Section 3, Chapter 215, Acts of 1929, same being Section 25-202, Burns 1948 Replacement, provides in part as follows:

"(a) Each corporation shall have the capacity to act possessed by natural persons, but shall have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes for which it is formed and such as are not repugnant to law."

The above section then enumerates certain express powers which corporations may exercise. This enumeration does not include the power to enter into a partnership.

Section 25-216, Burns 1951 Cumulative Pocket Supplement, provides for the content of the articles of incorporation and (12) reads in part as follows:
“Any other provisions, consistent with the laws of this state, for the regulation of the business and conduct of the affairs of the corporation . . . .”

A corporation possesses only such powers as are expressly given by law, and such implied powers as are necessary to enable it to exercise the powers expressly given.

Franklin Nat. Bank v. Whitehead (1898), 149 Ind., 560;

According to the prevailing view, a corporation has no implied power to become a partner with an individual or another corporation. Only when the authority is expressly conferred may a corporation enter into a partnership.

14 Am. Jur., p. 830, “Corporations” Sec. 823;
6 Fletcher Cyclopedia Corporations, p. 324, Sec. 2520.

This rather well-settled rule has been adopted in Indiana.

Breinig v. Sparrow (1907), 39 Ind. App. 455;
Traders Loan and Investment Co. v. Butcher (1920), 74 Ind. App. 548.

In Traders Loan and Investment Co. v. Butcher, the Indiana Appellate Court said:

“It is well established as a general proposition of law that a corporation may not enter into a contract of partnership unless such power is, by its charter, expressly authorized.”

Before considering the Indiana Partnership Act, it should be noted that, independent of the Partnership Act, the Indiana law is clear. There is no express authority given by statute for a corporation to enter into a partnership and such authority will not be implied. Only when the power is by its charter, expressly authorized, may a corporation engage in such activity.
In 1949 Indiana adopted the Uniform Partnership Act. Section 50-402, Burns' 1951 Replacement, a definition section, defines "person" as follows:

"'Person' includes individuals, partnerships, corporations, and other associations."

Section 50-406, Burns' 1951 Replacement, defines "partnership" as follows:

"(1) A partnership is an association of two or more persons to carry on as co-owners a business for profit."

Construing these two sections of the Partnership Act together, the word "person" includes corporations and, in the provision defining partnerships, the word "person" is used in such a way as to indicate a corporation may be a partner. This was the construction placed upon the two sections in Memphis Natural Gas Co. v. Pope (1941), 161 S. W. 2d 211 (Tenn.).

It seems certain that the Partnership Act includes corporations in those eligible to enter into a partnership.

The question arises as to the effect of the Partnership Act upon Indiana corporation law, that is, does the Partnership Act authorize any corporation to enter into a partnership? It is my opinion that it does not. There is no indication that the Uniform Partnership Act sought to change existing corporation law but rather was directed toward the partnership relationship alone. It is necessary to look to the law of corporations to determine if and under what conditions a corporation may enter into a partnership.

My answer to your first question is that a corporation in Indiana may legally include in its articles of incorporation the express power enabling it to enter into a partnership.

My answer to your second question is that a corporation has the power to enter into a partnership only when such power is expressly provided for in the articles of incorporation.