organizations, such as United Spanish War Veterans, Disabled American Veterans of World Wars, and Veterans of Foreign Wars. In all of the Appropriation Acts we find the Term "Encampment". In several of the Acts it is specifically provided: "That the appropriation for annual encampment shall be expended in the city in which the annual encampment is held, * * *" likewise the provisions "To assist in the payment of the annual encampment" and "For the National Encampment."

I believe that these provisions or expressions are indicative that the Legislature was using the term "Encampment" for convention. I am therefore of the opinion that the appropriation mentioned herein is for the convention to be held here in Indianapolis for the Grand Army of the Republic. This organization like other organizations has within it a women's auxiliary. Though the record may read that all of Indiana's Civil War veterans have passed away, still there are a few of the living old Guard within the nation.

It is my thought that the Legislature in passing this appropriation had these men and the women's auxiliary in mind. Therefore, it is my opinion that the appropriation made can be used for the purposes named in your letter.

OFFICIAL OPINION NO. 36
June 12, 1950.

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

Dear Sir:

I have your request for an official opinion on questions set forth in your statement of facts, which, so far as material, reads as follows:

"The State Highway Commission of Indiana, on May 10, 1950, submitted to the Budget Committee a request for the transfer from that part of the biennial appropriation made by the Legislature in the Session
of 1949 for construction of highways to the fund designated for maintenance of highways the sum of $2,554,758.51. The Commission, as shown in the request submitted to the Budget Committee, proposes to use for maintenance for the period ending June 30, 1950, on projects previously approved, the sum of $549,758.51, and the balance for the period from July 1, 1950, to about November, 1950, on projects tentatively approved. Of the amount requested to be transferred, $293,850 is to be expended in the widening, repair and improvement of bridges.

"The request by the Commission for the transfer was based on a provision of the Appropriation Act of 1949 (Acts 1949, Ch. 257, p. 875) applicable to the Highway Commission, which provision reads as follows:

'PROVIDED FURTHER, THAT if an emergency should arise in any maintenance district wherein an appropriation, as above provided, would be insufficient or where the necessity may arise in a district to do certain work not contemplated in the maintenance allocation and, that wherein an emergency may arise for the need of money in the maintenance division for the purpose of meeting any federal grant, allotment or project, or if any emergency should arise because of changed conditions which would render the appropriation for miscellaneous, maintenance and/or supervisory service insufficient, the budget committee may, after said emergency has been shown to its satisfaction, transfer from the appropriation for any classification of service to the appropriation for any other classification of service such sums as may in its judgment be necessary';

Acts 1949, pp. 916, 917.

"The request to the Budget Committee further set forth the purpose of the Commission in seeking the transfer as follows:

'It is the expressed purpose of the Commission that, if and when the transfers above recommended are approved, the funds thus made available will be used in
pursuit of an intermediate program of heavy maintenance work, not otherwise contemplated under the division of construction by contract method but by force account wherein deemed advisable so to do and under direct supervision of the division of maintenance.

'It is thought that by this method we can accomplish an earlier and more generally improved condition of those highways which do not and cannot be reached through any advanced or early program of construction, re-construction or resurfacing.'

"The Budget Committee, on May 12, 1950, has authorized the transfer of $1,149,758.51, and the proposed transfer of the balance has been approved.

"Questions have been raised concerning the authority of the Commission to perform the work contemplated with its maintenance forces, thus dispensing with the advertising for, and the acceptance of, competitive bids and the letting of contracts for performance of the work.

"The Commission, therefore, respectfully requests an official opinion on the following questions:

"(1) Is the Commission authorized to perform work of maintenance through contract?

"(2) May the Commission, through its maintenance forces, perform the work designated in the request to the Budget Committee as 'heavy maintenance', which part of the work as proposed consists of resurfacing?

"(3) What are the legal limitations of the Commission in the performance of work with its own forces designated in the law governing the Highway Commission as 'maintenance' work?

"(4) May the Commission perform with its own maintenance forces any work consisting of the resurfacing of highways?

"(5) May the Commission, through its maintenance forces, perform the work of repairing a bridge on a highway?

"(6) In the event an existing bridge on a highway is outmoded or too narrow to meet the needs of the
modern means and conditions of traffic and, hence, a traffic hazard, may the Commission, through its maintenance forces, perform the necessary work of widening the bridge?"

The questions presented involve the determination of the legislative intent as expressed or implied in the provisions of the Acts of 1935 and 1945 governing the State Highway Commission and certain provisions of the Appropriation Act of 1949 applicable to the Commission, which provisions will be dealt with herein in the order of their passage.

Section 5 of the Act of 1935 (Acts 1935, Ch. 88, p. 249; Sec. 36-108 Burns' R. S. 1933) provides that "The State Highway Commission shall cause to be prepared, profiles, plans and specifications and estimates for the construction of the State highways as they are designated for construction, and the Chairman is hereby authorized, under the direction of and in conformity to the orders of the Commission, to purchase, hire or rent whatever tools, implements, materials or supplies and such labor as may be necessary for the proper maintenance and repair of the system of State highways and for the operation of this act. * * *" (Our emphasis.)

Section 6 of the Act of 1935, amending Section 12 of the Act of 1933, (Acts 1935, Ch. 88; Sec. 36-112 Burns R. S., Repl., 1949) provides for the receipt of bids by the Highway Commission, which provision contains this clause:

"* * * If, in the opinion of the Commission, no satisfactory proposal has been received, the Chairman may be given authority by the Commission to purchase the necessary material and equipment, and to employ the necessary labor and perform the work of constructing, improving or maintaining such highway or highways, but in no case shall the Chairman be given, by the Commission, the authority in such construction to expend more than eighty-five per cent (85%) of the amount of lowest and best proposal submitted for the kind of improvement proposed to be made * * *" (Our emphasis.)

It should be noted that the clause requiring the Commission to perform the work for eighty-five per cent of the lowest and best proposal is confined to construction.
This provision, in my opinion, in so far as it imposes upon the Commission the duty of performing construction work at a cost not to exceed 85% of the lowest and best bid, in the event of the rejection of all bids, is a duty so impracticable of performance as to amount to a prohibition. This is true, I think, for the following reasons:

The law imposes upon the Commission the duty, through its engineers, of preparing an estimate. The estimate is what the name implies—that is, an *estimate*. The word "estimate" does not import exactness. In other words, the Commission itself does not know exactly what the actual cost of a proposed improvement will be until the final completion of the project. This is true because contracts are let on a unit-price basis; that is, the estimate contains various items—each item consisting of an estimated number of units of proposed work—and the bidder submits his bid at a given price per unit. There may be over-runs or under-runs, and, consequently the ultimate contract cost is determined by the total of the units of work performed at the bid price per unit, in accordance with the proposal; hence, no one can know the exact total construction cost until final completion. Since the bidder's proposal is based upon the estimate of the various units as prepared by the engineers, the requirement that bids shall be on the estimate, so prepared by the engineers, is merely for the purpose of comparison of bids. The Commission could not know in advance that it could perform the work in the proposed contract for eighty-five per cent (85%) of the amount of the lowest and best proposal submitted. A proposal that is above the estimate may not be accepted, and that is to say the Commission would be required to do the work, in any event, for at least fifteen per cent (15%) below its own estimate; and, if the lowest and best bid is well below the estimate, the Commission would be compelled to do the work for fifteen per cent below the low bid.

The condition, however, is expressly applied to construction and not to maintenance. It is significant that the legislature thus authorized the Commission to perform the work of "constructing, improving, and maintaining" highways, but, in imposing the condition aforesaid as to cost, the legislature expressly limited the condition to "such construction." The provision, however, lends some force to the conclusions here-
inafter stated concerning the authority of the Commission to perform work with its own forces, under the statutory provisions now in force.

Section 7 of the Act of 1933 (Acts of 1933, Ch. 18, p. 67), as amended by Section 4 of the Act of 1935 (Acts 1935, Ch. 88, page 249, Section 36-107 Burns R. S., Rep'l., 1949), contains a definition of maintenance. This provision, sofar as material, reads as follows:

"Any highway hereafter or heretofore taken into the state highway system may be located in whole or in part on any existing public highway, or in whole or in part upon a new location as may be determined by the commission. Before designating any highway as a state highway, the commission is authorized to make a survey or surveys of such highway or new location therefor and to negotiate for a right of way for such highway, but such right of way shall not be paid for until such highway is designated as a state highway as hereinbefore provided: Provided, That as a condition to the taking of any highway into the state highway system, or to the maintenance or construction of any highway heretofore taken into the state highway system and not now maintained, the commission may require that the board of county commissioners of the county or counties in which such highway is situated shall pay the cost of the right of way thereafter or such portion thereof as the highway commission shall deem equitable. Maintenance of highways shall consist of the preservation and repair of surfaces, road-beds, rights of way and structures, and the development of surfaces and road-beds, and of means to facilitate and promote safety of traffic on such highways; Provided, That such commission may, in its discretion, let any of such work by contract to the lowest and best bidder, after giving notice and taking like bond as is required by this act in the letting of construction contracts. All state highways shall be constructed, reconstructed, repaired and maintained out of the funds created by this act, or with any other funds available by law for such purpose." (Our emphasis.)
It should be noted that the definition of "maintenance" contained in this provision is in the same language as that set forth in the provision of the Appropriation Act (Acts 1949, Ch. 257, p. 916) with reference to maintenance expenditures by the Highway Commission. The underscored language was not in Section 7 of the Act of 1933; hence, the Legislature evidently intended to broaden the meaning of maintenance and also to make the letting of contracts therefor discretionary.

Section 3 of the Act of 1945 (Acts 1945, Ch. 359, p. 774; Sec. 36-165 Burns R. S., Rep'l., 1949) provides for the establishment of three divisions of the Commission, namely: (1) Division of Construction; (2) Division of Maintenance; and (3) Division of Audit. This same provision was in the Act of 1919 and also in the Act of 1941. This provision, in itself, is not decisive of the question presented, in view of the other provisions in the acts governing the Commission and in the Appropriation Act, as hereinafter shown.

Section 6 of the Act of 1945 (Acts 1945, Ch. 359; Sec. 36-170, Burns R. S. Rep'l. 1949) contains this provision:

"The chairman, as soon after appointment as practicable, and before any work is ordered, shall cause to be prepared and shall adopt and place on file in the office of the commission, standard specifications for three (3) or more distinct types of modern highways, of which at least (2) shall be a hard surface type and one (1) or more shall be of the nonrigid type of modern pavement, to be designated as the type of highways for which bids are to be received. Such specifications may be amended from time to time, or new specifications may be substituted therefor. When any part of such state highway is ordered to be constructed or reconstructed, the state highway commission of Indiana shall cause to be prepared profiles, plans and specifications and estimates for these state highways as they are designated by the commission for construction or reconstruction and, if the proposed work consists of only resurfacing improvement or repair of a state highway, it shall be necessary for the commission to prepare and place on file only specifications and estimates, and it shall be the duty of the chairman when any part
of such state highway is ordered to be constructed, reconstructed, resurfaced or improved by the com- mission, to advertise for proposals and he shall give notice by one (1) publication in two (2) newspapers repre- senting the parties casting the highest and next highest vote in the county, of general circulation in the county, where the work is to be performed, that on a date to be named by the chairman, in such notice, sealed proposals will be received by the chairman, at the office of the state highway commission of Indiana, or other designated place, for the construction, reconstruction, resurfacing or improvement of such state highways in accordance with the place and specifications which have been adopted, and which are on file in the office of the state highway commission of Indiana, and when such order provides for the construction, reconstruction, resurfacing or improvement of such highways, or any part thereof, such notice shall state that bids will be received on one (1) of the types of highways approved by the commission."

The foregoing provisions, however, should be read in con- nection with provisions in the Appropriation Act of 1949. The Appropriation Act of 1949 makes separate provisions with reference to maintenance, construction, and for miscellaneous service. (Acts 1949, Ch. 257, pp. 914-919.) The provision with reference to maintenance of highways under control of the commission reads in part as follows:

"From funds herein appropriated, expenditures made for the specific purposes of maintaining highways and detours, which include the preservation and repair of surfaces, roadbeds, rights-of-way and structures, and the development of surfaces, roadbeds and roadsides, including the care, maintenance and operation of roadside parks and other roadside facilities for the public and the operation, maintenance and development of means to facilitate and promote safety of traffic on such highways * * *"

The provision then sets forth the various items on which such expenditures can be made from the maintenance fund.
Among other items are these: wages; payments for materials; payments to contractors; "(f) salaries * * * of the superintendent * * * district office engineers * * * and any other employees.”

The provision governing expenditures for construction contains this provision:

"From funds herein appropriated, expenditures made for the specific purpose of constructing and improving highways, which shall consists of (a) wages; (b) materials purchased and used by the State Highway Commission; (c) materials purchased and furnished to contractors; (d) payments to contractors; * * *”

The provision of the Appropriation Act (Acts 1949, Ch. 257, pp. 916, 917), set forth in your letter, which provision authorizes a transfer of funds by the Budget Committee, does not purport to define the method to be adopted for the performance of the work for which the transfer of funds is made.

In the approach to the answers to the questions presented, it is necessary to recognize certain well-settled principles of law and rules concerning the construction of statutes.

First, the legislature has plenary control of the highways of the state (School Town of Windfall vs. Somerville (1913), 181 Ind. 463); hence, the authority to prescribe the manner or method of improvement, construction and maintenance is a legislative function.

Secondly, statutory officers have only such authority as is prescribed by statute. In other words, the doctrine of apparent authority as between principal and agent in private business transactions has no application to the relationship between the state and its agents (Carolina State Bank vs. State, 85 Am. St. 865). In applying this rule, the Supreme Court, in Department of Insurance vs. Church Members Relief Ass’n. (1939), 217 Ind. 58, uses this language:

“When the right to do a thing depends upon legislative authority, and the Legislature has failed to authorize it, or has forbidden it, no amount of acquiescence, or consent, or approval of the doing of it by a ministerial officer, can create a right to do the thing which is unauthorized or forbidden. The administrative
officers of the State, as well as appellee, were bound by the statute * * *,” citing authorities.

Thirdly, in applying the provisions of statutes to the questions presented, it is necessary to give effect to the intention of the legislature as expressed in the statutes.

State ex rel. v. Thompson (1936), 211 Ind. 267, and cases cited.

If the language of the statutory provisions involved is plain and unambiguous, the intent as so expressed must be given effect, since, in that event, there is no reason for resort to rules of construction.

Leach v. City of Evansville (1936), 211 Ind. 444, 446; Lutz v. Trustees of Purdue U. (1936), 102 Ind. App. 482, 487; Tucker v. Muesing (1941), 219 Ind. 527.

Consistently with these rules, it has been held that statutes on the same subject should be considered in pari materia; that is, they should be treated as a whole and reconciled, if possible, in such manner that each may be given effect.

State v. Gephart (1896), 143 Ind. 439; Meyer v. Town of Boonville (1903), 162 Ind. 265.

But if there is apparent conflict in the provisions—necessitating resort to rules of construction—the last expression of the legislature on a given subject prevails over a previously-enacted, conflicting provision.

Woodring v. McCaslin (1914), 182 Ind. 134, and authorized cited; Cox v. Timm (1914), 182 Ind. 7; Curliss v. Watson (1913), 54 Ind. App. 110.

On the other hand, if a statute is ambiguous or susceptible of different meanings because of the use of particular terms, the legislative intent as gathered from an examination of the whole will prevail over the import of particular terms, and
will control the strict letter of such terms in order to avoid contradictions, injustice, or absurd consequences.

Murray v. Gault (1913), 179 Ind. 658;
Woodring v. McCaslin, *supra*.

Question No. 1, in view of the express statutory provisions hereinbefore quoted, is not difficult. Section 4 of the Act of 1935 (Sec. 36-107, Burns R. S. 1949, *supra*) expressly authorizes the commission to let any such work by contract; and the Appropriation Act of 1949, *supra*, expressly recognizes “payments to contractors” as an item for expenditure from the maintenance fund. Question No. 1 is, therefore, answered in the affirmative.

The remaining questions are more intricate and involved; and, in view of the fact that the provisions of the statutes hereinbefore cited were enacted at different sessions of the legislature, the remaining questions do not admit of unqualified answers. The answer to question No. 2, however, I think, will answer for the most part each of the remaining questions.

The answer to question No. 2—whether the commission may perform what is designated as “heavy maintenance,” which consists of resurfacing—involves the definition of “maintenance” as set forth in Section 4 of the Act of 1935 (Sec. 36-107, Burns R. S. 1949, *supra*), considered in connection with the provision of Section 6 of the Act of 1945 (Section 36-170, Burns R. S. 1949, *supra*) and the provision of the Appropriation Act of 1949, *supra*, which contains the same definition of “maintenance” as set forth in Section 4, *supra*, of the 1935 Act.

In this connection, it is not helpful to dwell at length on the definition usually accorded to the word “maintenance.” The line of demarcation between maintenance and construction at best is not always easy to prescribe, as an investigation of the opinions of courts throughout the land will disclose. It suffices to say that the word “maintenance,” standing alone, when applied to highways, means to maintain or keep in repair an existing highway in such manner as to preserve it, so far as practicable, in the same condition as it was when constructed. But, since the legislature has control of highways and may prescribe the methods of improvement, the legislature may prescribe its own definition. In this instance, the
legislature has prescribed a definition in the 1935 Act, supra. That definition includes the "preservation and repairs of surfaces, road-beds, rights, rights of way and structures"; "the development of surfaces and road-beds and of means to facilitate and promote safety of traffic on such highways."

It is significant, therefore, that in addition to the words "preservation" and "repair", the legislature has seen fit to add the word "development" as applied to both surfaces and road-beds. The definition also introduces a safety factor—that is, the word "development" applies to "means to facilitate and promote safety."

The word "development" is susceptible of rather broad connotations. Webster (Coll. Dict.) defines "develop" as meaning "to unfold more completely, to evolve the possibilities * * * to advance; * * * to promote the growth," and "development" as the act of doing of any of these things. It is evident that the legislature, by the usage employed in the definition, did not intend to confine "maintenance" to the word as used in the ordinary, limited sense.

The question presented here, however, does not turn solely on the determination of what the commission may or may not do through its Maintenance Division—but rather on the determination of whether it may do what is designated as "heavy maintenance," consisting of "resurfacing," with its own forces. This question involves a construction of the language used in Section 6, supra, of the Act of 1945, which requires advertising, acceptance of bids, and the letting of contracts "when such order provides for the construction, reconstruction, resurfacing or improvement of such highway, or any part thereof * * *"

In this connection, it should be noted that in a provision preceding the language last quoted, the word "repair" is used with reference to the requirement of the preparation of only "specifications and estimates," but is omitted in the provision last quoted, which requires advertising and the letting of contracts "when such order provides for the construction, reconstruction, resurfacing or improvement of such highway, or any part thereof * * *"

It is my opinion, in view of the rules hereinbefore stated, that the word "resurfacing" as employed in connection with the words "construction" and "reconstruction" in Section 6, supra, of the Act of 1945 partakes to an extent of the nature
of construction or reconstruction—that is, in the event the predominate purpose of the commission is to "develop" or place on the existing surface of a highway a new or different surface, in which process the existing surface is intended to serve as a part of the sub-grade along with the existing sub-grade but the process still does not require the adoption of detailed profiles, specifications and plans as required in cases of pure construction or reconstruction, the commission should follow the provision requiring advertising and the letting of contracts on only estimates and specifications.

This construction is in keeping, I think, with the legislative intent and the rule requiring a construction that permits the provisions of the acts hereinbefore quoted to operate in harmony. To construe the word "resurfacing" as used in Section 6, supra, of the Act of 1945, to include every act of resurfacing—for instance, such resurfacing as may be necessary merely to preserve or repair an existing surface—would result not only in contradiction and absurd consequences but in serious waste of public funds and injustice to the public. The provision defining the duties of the Maintenance Division, the provision defining "maintenance" and the provision of the Appropriation Act of 1949 allocating funds for maintenance would seem to support this construction. I think that there would be more reason for reading the word "resurfacing" out of Section 6, supra, than to construe it as the expression of a legislative intent that any act of resurfacing must be a subject of contract.

However, there is ground for the position that the legislature intended the word "resurfacing" in this instance to have such meaning as to accomplish the predominate purpose hereinbefore stated; and, in that event, it is the duty of the courts, or of the Attorney General, to construe it in accordance with the legislative intent. Whether the requirement is wise or unwise is not a question for judicial determination. The remedy, if it is unwise, rest with the legislature.

The reasoning hereinbefore set forth applies to the use of the word "repair" in Section 6, supra, of the Act of 1945. In this instance, in view of the statutory definition of "maintenance" and the provisions of the Appropriation Act of 1949, relative to the maintenance of highways, I think the usage falls within the rule hereinbefore stated to the effect that a
particular term must give way to the general intent as expressed in the whole law applicable to the duties and powers of the Highway Commission. A contrary conclusion would render meaningless the other provisions of the law applicable to the commission and would result in absurd consequences. If "repair" of a highway—either of the surface or the sub-base—in every instance were required to be a subject of contract, the cost to the public would amount to colossal proportions, to say nothing of the delays and inconvenience in procuring proper maintenance. There would perhaps be instances in which the commission could perform such work for the cost occasioned to a contractor in moving equipment to the site. These results could not be reasonably ascribed as within the legislative intent when the acts hereinbefore cited are considered as a whole. Furthermore, as hereinbefore stated, the word was omitted in the provision immediately following that requires advertising and the letting of contracts.

The reasoning and the conclusion hereinbefore stated with reference to question No. 2 are applicable to questions Nos. 3, 4 and 5.

However, with reference to question No. 3, it is my opinion that the legal limitations of the commission in the performance of maintenance work with its own forces are not susceptible of hard and fast definition. The authority of the commission in this respect, in my opinion, involves the exercise of discretion, in view of the proviso in Section 4 of the 1935 act, supra. The right to exercise discretion, however, does not import the vesting of a roving authority to do as one pleases or to determine arbitrarily how and when the authority may be exercised. Discretion, as applied to the exercise of authority of officers, means a legal discretion—that is, the exercise of deliberate judgment with reference to the circumstances.


Hence, the commission may not arbitrarily determine that "resurfacing" to accomplish the predominate purpose as intended by the provision in the 1945 act may be performed with its own forces. Therefore, it is my opinion that resurfacing for the predominate purpose of merely preserving or repair-
OPINION 36

ing may be performed by the commission with its own forces. The exercise of discretion would involve the elements of time required to complete, the cost and extent of, the particular project involved in each instance, and the availability of forces, etc. It would not seem to be difficult for the commission, with the advice of skilled engineers, to exercise a sound discretion in distinguishing a “resurfacing” project as contemplated by the provision of the 1945 act, supra, which, in my opinion, requires the letting of a contract, from such resurfacing and repairing as fall in the lower class. In a case involving doubt on the subject, it would seem to be the part of wisdom to follow the provision in the 1945 act, since in any event the work may be performed through the Maintenance Division by contract.

The foregoing reasoning and conclusions provide the answers to questions Nos. 4 and 5. The answer to question No. 4 is in the affirmative, subject to the qualifying language stated; and No. 5 is answered in the affirmative.

With reference to question No. 6—whether the commission may widen bridges that are narrow and outmoded—it should be noted, as hereinbefore stated, the definition of “maintenance” in the Act of 1935 introduces a safety factor—that is, in maintenance operations the commission may “develop” means or facilities in the interest of safety. The inclusion of this factor, together with the authority of the commission to maintain highways with its own forces, as hereinbefore explained, I think confers authority to widen an existing, outmoded structure if the operation does not involve intricate and involved plans and specifications as required in cases of construction or reconstruction.

In the case of Clark Civil Tp. v. Brookshire, 114 Ind. 437, under a statute requiring a road superintendent to keep roads “in ordinary repair,” the Supreme Court held that the superintendent might even, if necessary, construct culverts. The authority in this instance, in view of the authority to develop facilities in the interest of safety, I consider broader than that involved in the case last cited. However, it is my opinion, in view of the provisions of the acts considered as a whole, the commission is required to exercise a sound discretion and to confine the work to such projects as do not involve intricate plans and specifications required in construction projects, as
hereinbefore stated. To require the advertising and letting of a contract for the mere widening, in the interest of safety, of each bridge of the state system of highways would subject the public to needless and enormous expense, and would result in absurdities as hereinbefore stated.

In the stating of my opinion on the questions submitted it has been the purpose to construe the various provisions involved as a whole and to arrive at what I consider a just result in the interest of the public, which result, I think, must be imputed to the intent of the legislature. If the reasoning and conclusions are not as definite as they should be, the remedy for further clarification rests with the legislature.

OFFICIAL OPINION NO. 37

June 23, 1950.

Mr. Thomas R. Hutson,
Commissioner of Labor,
Room 225, State House,
Indianapolis, Indiana.

Dear Mr. Hutson:

We have received your letter of May 17, 1950, in which you request an official opinion on the following:

"The question has arisen as to whether or not a fourteen (14) year old minor could be employed to operate a tractor. Would this be classified as farm labor or a hazardous occupation on moving machinery? Could the boy be covered by compensation the same as any other employee?"

The Workmen's Compensation Act (Acts of 1929), Chapter 172, Section 9, page 536, same being Burns 1940, Section 40-1209, provides that the Acts shall not apply "to farm or agricultural employees, * * * nor to the employer of such persons, unless such employer shall give notice in the manner provided in Section 3 (Sec. 40-1203, Burns) of their election to be so bound."

Your letter is not sufficiently clear as to where this particular minor will operate the tractor. In expressing my