OFFICIAL OPINION NO. 64

October 7, 1950.

Honorable James M. Propst,
Auditor of State,
Room 238, State House,
Indianapolis 4, Indiana.

Dear Sir:

I have your letter of September 16, 1950, requesting an official opinion as to whether or not there is a minimum width requirement in determining roads to be included in the computation of road mileage as a basis for distribution of Motor Vehicle funds.

Omitting its formal parts, your letter reads as follows:

"1. Is there any basic requirement as to the width of a county highway in order to entitle it to be counted in the road mileage as a basis of distribution of State Motor Vehicle Highway Funds under Chapter 270, Acts of 1949, Section 1, Paragraph (b), Page 986, or is all traveled highway counted regardless of width?

"2. Is there any State law regulating the width of county highways or is the matter entirely within the authority of county officials?"

Chapter 270 of the Acts of the General Assembly of 1949 amends the former law with respect to the distribution and allocation to cities and counties of funds in the Motor Vehicle Highway account and Paragraph (b) of Section 1, referred to in your letter, reads as follows:

"(b) Of the net amount in the motor vehicle highway account the auditor of state shall quarterly set aside for the counties of the state thirty-two per cent thereof: Provided, however, That as to the allocation to cities and towns under paragraph (a) of this section, and as to the allocation to counties under paragraph (b) of this section, in the event that the amount in the motor vehicle account fund remaining after refunds and the payment of all expenses incurred in the collection thereof, and after deduction of any amount appropriated by the general assembly for the division
of public safety and policing shall be less than twenty-
two million six hundred and fifty thousand dollars, in
any fiscal year then the amount so set aside in the next
calendar year for distributions to counties shall be
reduced fifty-four per cent of such deficit and the
amount so set aside for distribution in the next calen-
dar year to cities and towns shall be reduced thirteen
per cent of such deficit. Such reduced distributions
shall begin with the distribution January 1 of each year.

Paragraph (c) of said Section 1, Chapter 270, Acts of 1949,
reads as follows:

“(c) The amount set aside for the counties of the
state under the provisions of subsection (b) of this
section shall be allocated quarterly upon the following
basis:

“Five per cent of the amount allocated to the counties
to be divided equally among the ninety-two counties.

“Sixty-five per cent of the amount allocated to the
counties to be divided on the basis of the ratio of the
actual miles, now traveled and in use, of county roads
in each county to the total mileage of county roads in
the state; which shall be annually determined, accu-
rately, by the state highway commission and the county
highway department; and

“Thirty per cent of the amount allocated to the
counties to be divided on the basis of the ratio of the
of the motor vehicle registrations of each county
to the total motor vehicle registration of the state.
All money so distributed to the several counties
of the state shall constitute a special road fund
for each of the respective counties and shall be under
the exclusive supervision and direction of the board of
county commissioners in the construction, reconstruc-
tion, maintenance or repair of the county highways
and/or bridges on such county highways within such
county.”

It is obvious that the distribution of Motor Vehicle High-
way funds is to be made, in part, upon a basis “of the ratio
of the actual miles, now traveled and in use, of county roads in each county to the total mileage of county roads in the state; which shall be determined, accurately, by the state highway commission and the county highway department.”

The Acts of 1905, Ch. 167, Par. 15, Burns Indiana Statutes, (1949 Repl.) Section 36-1807, reads as follows:

“Highways by use—Width—Recording.—All highways heretofore laid out according to law, or used as such for twenty (20) years or more, shall continue as located and as of their original width, respectively, until changed according to law; and hereafter no highway shall be laid out less than thirty (30) feet wide, and the order for the laying out of the same shall specify the width thereof. The board of commissioners shall have power to cause such of the roads used as highways as shall have been laid out, but not sufficiently described, and such as have been used for twenty (20) years, but not recorded, to be ascertained, described and entered of record. Such action of the board shall be on petition filed by one (1) or more resident freeholders of the county, of which petition notice shall be given by posting in three (3) public places along the line of such road twenty (20) days before the session at which such petition shall be considered. And such board shall declare and establish the width of any such highway, which width shall not be less than thirty (30) feet; and where any such highway shall be located upon a line dividing the lands of different owners, one-half thereof shall be taken from the land of each owner.”

Your attention is called to the fact that after the date of that enactment no highway shall be laid out less than thirty (30) feet wide but it also provides that all highways laid out prior thereto, and those used as such for twenty (20) years or more, should “continue as located and as of their original width, respectively, until changed according to law.”

With certain exceptions the roads under control of the counties, and designated as county roads, are those which lie outside the corporate limits of incorporated towns and cities. There are also certain highways lying within such limits of
incorporated towns and cities which are included in the county highway system because they form portions of county roads built under the "three-mile road law." By Chapter 16, page 28, Acts of 1932, the jurisdiction of all township highways was transferred from the township trustees to the boards of commissioners of the counties and it is provided that thereafter all such highways shall be deemed to constitute a part of the county highway system to be maintained by the counties out of funds derived from the gasoline tax and motor vehicle registration fees paid to the counties by the state.

In none of the enactments has there been inserted an express definition of what constitutes a county road. None of our highway laws contain any requirement as to the minimum width a highway shall have in order to constitute a county road other than as to those laid out after the effective date of said Chapter 167, Acts of 1905.

It is, therefore, my opinion that if the State Highway Commission and the County Highway Department shall determine with respect to any year that a public highway constitutes a "county road traveled and in use" then your computation of total mileage of county roads in the State for such year should include the length of such public highway.

OFFICIAL OPINION NO. 65

October 26, 1950.

Mr. Ralph N. Tirey, President,
Indiana State Teachers College,
Terre Haute, Indiana.

Dear Mr. Tirey:

Your letter of September 21, 1950, received requesting an opinion on the following questions:

"1. The Indiana State Teachers College now has on hand certain funds which were derived from sources other than those directly appropriated by the General Assembly for specific purposes."