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."
1950 O. A. G.

"The College desires to have constructed an addition to an existing men's dormitory. May the funds above described be used for that purpose?

"2. If the State Teachers College Board should authorize the construction of an addition to the men's dormitory and pay the cost thereof by the issue and sale of bonds pursuant to Chapter 137 of the Acts of 1927 of the Indiana General Assembly, may the college use the funds above described, or some part thereof, to purchase all or a part of such bonds?"

Section 28-5722, Burns 1948 Replacement, same being Section 1, Chapter 137, Acts of 1927, provides as follows:

"The trustees of Indiana University, the trustees of Purdue University and the board of trustees of the Indiana State Normal School are hereby respectively authorized and empowered, from time to time, and as such trustees shall find a necessity therefor exists, to erect, construct, equip, furnish, operate, control and manage dormitories at or in connection with Indiana University, Purdue University, the Indiana State Normal School at Terre Haute, and the Indiana State Normal School, Ball Teachers' College, Eastern Division at Muncie, for the purposes of said respective institutions; and the said trustees are further respectively authorized and empowered to acquire, under this or any other law, now in force or hereafter enacted, by purchase, lease, condemnation, gift or otherwise, such property, real or personal as, in the judgment of said respective trustees shall be necessary for such purposes and the said trustees are further respectively authorized and empowered to use any real or personal property heretofore acquired by said trustees for such purposes. Title to all property so acquired, including the improvements thereon, shall be taken and held by and in the name of the said trustees in their corporate capacities for the purposes of this act."

Section 28-5723, Burns 1948 Replacement, same being Section 2, Chapter 137, Acts of 1927 further prescribed:
"For the purpose of raising funds for the acquisition of such property and the erection, construction and completion of dormitories thereon, said trustees are further respectively authorized and empowered to issue and sell bonds of said institutions, which bonds, and the interest thereon, may be secured by pledge or mortgage of any property, real or personal, used or acquired or to be acquired and used for dormitory purposes and the improvements made or to be made thereon, or by pledge or mortgage of the net income from said property, or by pledge or mortgage of said property and the net income therefrom, as said trustees may determine; and the lien of said pledge or mortgage, to the extent thereof, as determined and provided by said respective trustees, and as herein authorized, shall be a first and primary lien for the payment of said bonds and the interest thereon. Said bonds may be issued for such amount or amounts as said trustees shall determine, not however to exceed the total estimated cost of acquiring property for and erecting, constructing and completing and furnishing any proposed dormitory or dormitories as such respective trustees shall find such cost to be. Said bonds may be issued in such denominations and with such maturities and for such rate of interest as such respective trustees may fix and determine, and, in the discretion of said respective trustees, said bonds may be sold either privately or at public letting, but shall not be sold for less than the par value thereof. Said bonds and the pledge or mortgage securing the same, shall be issued and made in the name, and on behalf of such respective corporations by such officer or officers as said trustees shall respectively designate."

The above statutes are supplemental to the old statute which also authorized the building and erection and construction of such dormitories, same being Section 28-5223, Burns 1948 Replacement, being Section 1, Chapter 89, Acts of 1925.

Under the provisions of Section 58-2712 and 58-2713, Burns 1948 Replacement, same being Sections 1 and 2 of Chapter 139 of the Acts of 1931, the trustees of your college are authorized to accept gifts, bequests and devises of personal and
real property for the maintenance, use or benefit of your college and to receive, accept, hold, administer and use any such property subject to such terms and orders upon such gifts or bequests at the time of receiving of same.

Your letter does not state the source of these other funds that you now have on hand. If they were received by your Board without any conditions or limitations as to their use you would in my opinion be authorized to use them under the above statute for the construction of an addition to an existing men's dormitory and if not sufficient for that purpose part of the dormitory costs could be raised by a bond issue under the above statutes. However, if any of these extra funds were received subject to limitations, by gift or otherwise, which would not make them available for dormitory purposes, then they could not be used for such purpose. This in my opinion fully answers your question number one.

As to your question number two if bonds are issued for the construction of an addition to the men's dormitory under the above statute, I am of the opinion you could not use extra funds on hand, above referred to, for the purchase of your own bonds. This would seem to be true for two reasons:

(a) if the funds could not be used to construct the building they could not be used to purchase the bonds issued for the construction of the building as they would be impressed with the same limitations in either case and you could not do indirectly what you could not do directly.

(b) to institute and carry out such a program contemplated in your second question would in fact be contracting with yourself in the purchase of your own bonds for which I fail to find any authority and which would seem to be against public policy.

Your second question is therefore answered in the negative.