There appears to be no provision by the Legislature authorizing or making such an appropriation. (See Daily v. Board of Commissioners (1905), 165 Ind. 99-109.)

Therefore, in my opinion the answer to your question number one (1) should be in the negative.

Since question number one (1) is answered in the negative, it follows that question number two (2) must be answered in the negative. Likewise, it follows that your question number three (3) must be answered in the negative.

WOL:vb

OFFICIAL OPINION NO. 78

August 22, 1949.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House, Room 304,
Indianapolis, Indiana.

Dear Sir:

Your request of August 2, 1949, for an official opinion is as follows:

"We have received numerous questions concerning the fee to be charged by County Recorders when recording various kinds of plats.

"Chapter 174, Acts 1949 (H. B. 26) which amends an Act of 1895, and fixes fees to be charged by County Recorders for recording various instruments, provides, with reference to plats, the following:

"'For recording town plat, the first one hundred lots or under, three dollars. For each additional lot, five cents.'

"The above provision is the same as in former acts and is the only specific provision we can find covering fees for recording plats."
"In view of the above we request your opinion on the following questions:

"1. In the case of a plat, drawn by engineers for the U. S. Department of Agriculture, showing a drainage system involving several tracts of real estate and several owners and incorporated in this plat is an agreement of the several owners concerning this plat and survey, together with intricate drawings in several colors of ink showing topography and elevations, what fee should be charged by a Recorder in recording such plat?

"2. What fee should be charged for recording a plat or survey showing the number of acres within the boundaries of a lake to establish acreage in order that motor boats comply with statutes under the Indiana Department of Conservation regulations concerning lakes of certain size?

"3. What fee should be charged for recording a Conservation Plat made for the purpose of classifying certain territory as Forest Lands? In this case the instrument covers an application and a drawing.

"4. What fee should be charged for recording a plat made of territory in the country or outside the limits of an incorporated town?

"We would appreciate an early reply."

One of the main questions involved is, what instruments are entitled to be recorded by the County Recorder under Indiana law.

We note the origin and purpose of a public recording of certain instruments as stated in American Jurisprudence, Vol. 45, pages 434, 435, 439 is as follows:

"The recording of deeds and other instruments affecting the title to land is purely a system of legal institution, and not of common right or abstract justice. * * *

"Recording acts were passed for the purpose of providing a place and a method by which an intending
purchaser or encumbrancer can safely determine just what kind of a title he is in fact obtaining. A record of the titles to land is made and kept so that the title and its history may be preserved and protected, and that all persons may obtain knowledge of the state of titles to real estate by deeds and conveyances, and also of all charges and encumbrances. It is recognized that intending purchasers and encumbrancers should be protected against the evils of secret grants and secret liens and the subsequent frauds attendant upon them. * * *

"* * *

"Inasmuch as the systems of recording which prevail throughout the United States are of statutory origin, no general rule, applicable to all jurisdictions, can be stated as to the conveyances and instruments which must be recorded in order to constitute notice to subsequent purchasers and encumbrancers. The statutes and the decisions construing them are to be consulted in each jurisdiction. * * * It may, however, be safely stated that in the majority of American jurisdictions, the recording statutes have been liberally construed to effect their purpose, so as to include any instrument by which the ownership of or title to land is affected, * * *"
tions to the public of certain described lands for highways and other public purposes.

It does not appear that a County Recorder is under any legal duty to record every instrument tendered to him. The law imposes upon the Recorder the duty to keep certain record books. Section 49-3205 of Burns' Indiana Statutes states:

"Such recorder, at the expense of the county, shall procure sufficiently large and well bound books, of good materials, in which he shall record all deeds, bonds, field notes and other instruments of writing delivered to him, which by law he is bound to record, * * *.*"

(Our emphasis.)

thereby inferring that there are instruments which he is not bound to record. That there are instruments which are not entitled to registry or record is stated in the case of Starz et al. v. Kirsch, 78 Ind. App. 431, 434 as follows:

"* * * An examination of these sections (certain sections of the statutes) discloses that they apply only to such instruments in writing as affect the title to land, or some interest therein, and not to those which merely evidence personal covenants. * * * We have not been able to find any statute which requires or authorizes the recording of such an instrument, * * *.*"

Likewise, in the case of Taylor et al. v. The City of Fort Wayne et al (1874), 47 Ind. 274, 282-3 the Court stated:

"The de facto record of a deed or other paper in the county record is not what is contemplated or authorized by the statute. If the paper is not authorized or required to be recorded, or if the record itself is not in compliance with the law, the act of recording is treated as a nullity. 1 Story Eq., sec. 404; Deming v. The State, 23 Ind. 416.

"* * *"

"The plats of out-lots laid off by Fairfield were not nor did they purport to be, town plats or additions thereto. They show on their face, that they are out-
lots in the sections named, and nothing more. They were not authorized to be recorded. They were out-lots laid out as a convenient mode of platting parts of the sections, but without any purpose of laying the land out as a town, or an addition to one. They could not be described as an addition to any town. None is named. They are simply out-lots in sections eleven and fourteen. * * *"

Brown et al. v. Budd (1850), 2 Ind. 442 is to the same effect.

Even though the maps, plats or surveys described in your letter were entitled by law to be recorded, I find no statutory measurement or formula by which to determine the lawful fee to be collected by the County Recorder.

Therefore, in my opinion, none of the four cases or instances cited in your letter come within the instruments or plats authorized by general statute to be recorded by a County Recorder. Except Section 1, Chapter 265, Acts of 1945, Burns’ Statutes, Section 32-304, Supplement, provides for the recording of plats of land surveyed for forestry purposes and the applications therefor, but the Legislature did not provide any fee for such recording. Such being true, there is no legal fee to be charged and collected by the County Recorder in the cases referred to.

WOL:vb

OFFICIAL OPINION NO. 79

Mr. Deane E. Walker,
State Superintendent of Public Instruction,
Room 227, State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of August 17, 1949, received requesting an official opinion on the following question: