cause of death. In no case does the coroner certify to the cause of death on the certificate of death. The funeral director does not sign the certificate of death, and the cause of death should be certified only by the attending physician or the local health officer under the facts of the particular case.

OFFICIAL OPINION NO. 56

June 6, 1946.

Hon. John H. Lauer, Chairman,
State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have your letter of recent date in which you request a further clarification of the matters involved in official opinion No. 123 which I transmitted to you on December 5, 1945. In order to have a clear understanding of your questions, it will be necessary to restate them in the light of the additional facts which you have set forth in your last letter. A statement of the facts together with the questions arising out of such facts are in substance as follows:

Section 8 of the Federal-Aid Highway Act of 1944 provides that not to exceed $1\frac{1}{2}\%$ of the amount apportioned for any year to any state shall be used for surveys, plans, engineering and for highway research necessary in connection with projects for future construction of highways in this state.

Section 27 of the State Highway Act (as amended by the Acts of 1935, page 249, same being Section 36-127 of Burns' 1933 (Pocket Supp.)) provides in part that the State Highway Commission is further authorized to cooperate with the United States Government under any federal law in any manner necessary to secure for the State of Indiana the proportion of any federal appropriation which may be made in the future.
In accordance with Section 8 of the Federal-Aid Act of 1944 approximately $180,000.00 of federal funds with $180,000.00 of state funds could be available a year for work including research.

Section 26 of the State Highway Act (as amended by the Acts of 1937, page 1151) provides that the State Highway Commission may cooperate with and assist Purdue University in developing the best methods of improving and maintaining the highways of the state and respective counties thereof, and that the State Highway Commission may expend from the funds appropriated to its use for Miscellaneous Service, not to exceed $50,000.00 annually for the use and benefit of Purdue University in carrying on programs of highway research and highway extension.

The Advisory Board of the Joint Highway Research Project which governs the activities of Research as provided for in Section 26, as outlined above, has recommended certain continuing research work in cooperation with the Public Roads Administration. The Public Roads Administration has indicated their willingness to cooperate and has suggested that the State Highway Commission include this work in their research program as provided for in the 1944 Act. The proposed work involves $15,000.00 a year as Federal-Aid funds and $15,000.00 a year of state funds.

It is our intention that $35,000.00 of the annual $50,000.00 which has been going to Purdue for research under the provisions of Section 26 of the State Highway Act, above referred to, be continued and that the remaining $15,000.00 be used to match $15,000.00 of Federal-Aid funds. Thus, the State Highway Commission would be sending to Purdue $65,000.00 per year, which sum would be made up of (1) the regular $35,000.00 per year, (2) the balance of the annual amount or $15,000.00, and (3) the $15,000.00 which the federal government will pay to the State Treasurer for reimbursement of the federal government's participation in the project. Our records would thus show an issuance of $65,000.00 to Purdue, but actually
only $50,000.00 of state funds will be involved, the remaining $15,000.00 being federal reimbursement to the State Highway Fund through the State Treasurer.

The foregoing statement of facts gives rise to these two questions:

1. May the State Highway Commission in programming this work in accordance with Section 27 above have this research work carried on by the Joint Highway Research Project and turn over to Purdue University the sum of $65,000.00 annually as stated above?

2. If such work is programmed, must work be carried on only by the State Highway Department and not through its Research Project in conjunction with Purdue University in order to receive the federal funds?

In order to intelligently answer your questions, it will be necessary to refer to the Federal-Aid Highway Act and the Indiana Statutes in order to determine to what extent and in what manner the federal government and the state government cooperate in the construction and the maintenance of highways.

The Federal-Aid Highway Act of 1944 (Chapter 626, Public law 521) is set forth in United States Code Cong. Service, 1944, at pages 840 to 845. By Section 2 of said act there was authorized to be appropriated the sum of $1,500,000,000.00 to become available at the rate of $500,000,000.00 a year for each of the three successive post-war fiscal years, provided that $100,000,000.00 may be appropriated in the first fiscal year to become available immediately upon apportionment of the authorization for said fiscal year for the making of surveys and plans and for construction. It was further provided that the first post-war fiscal year shall be that fiscal year which ends on June 30th following the termination of the existing war emergency as declared by the president or joint resolution of Congress. The authorization for the first post-war fiscal year shall be apportioned among the states within thirty days from the passage of this act.
Section 2 further provided that as soon as the funds for each of the post-war fiscal years have been apportioned, the Commissioner of Public Roads is authorized to enter into agreements with the State Highway Departments for the making of surveys and plans, the acquisition of rights of way in the post-war construction projects. Approval of any such agreement by the Commissioner shall be a contractual obligation of the federal government for the payment of its pro rata share of the cost of the construction.

Section 4 of this act provided that the sum of $225,000,000.00 per year available for projects on the Federal-Aid Highway System shall be apportioned among the states as provided by another section of said act. Subsection (d) of this section provided that any sums apportioned to any state under the provisions of this section shall be available for expenditure in that state for one year after the close of the fiscal year for which such sums are authorized, and any amount so apportioned remaining unexpended at the end of such period shall lapse. It was further provided that such funds shall be deemed to have been expended if covered by formal agreement with the Commissioner of Public Roads for the improvement of a specific project as provided by this act.

Section 5 of this act provided that the federal share payable on account of any project provided for by the funds made available under the foregoing provisions of this act shall not exceed 50% of the construction cost thereof, except in certain cases therein enumerated.

Section 6 of the act provided that if the Commissioner of Public Roads shall determine that it is necessary for the expeditious completion of projects undertaken pursuant to this act, he may advance to any state from funds heretofore or hereafter made available, the federal share of the cost thereof to enable the State Highway Department to make prompt payments for work as it progresses. The funds so advanced shall be deposited in a special trust account by the State Treasurer or other state official authorized under the laws of the state to receive federal aid highway funds, to be disbursed solely upon vouchers approved by the State Highway Department for work actually performed in accordance with plans, specifications, and estimates approved by the
Public Roads Administration under the provisions of this act. Any unexpended balance of funds so advanced shall be returned to the credit of the appropriation from which the funds have been advanced. Any advance made to any state under the provisions of this section and not repaid shall be deducted from any apportionment allocated to such state under the provisions of this act for the year next succeeding the year in which such advance is made.

Section 8 of this act then provides as follows:

"With the approval of the Federal Works Administrator, not to exceed 1½ per centum of the amount apportioned for any year to any State under the Federal Highway Act, as amended and supplemented, except sections 3 and 23 thereof, shall hereafter be used with or without State funds for surveys, plans, engineering, and economic investigations of projects for future construction in such State, on the Federal-aid highway system and extensions thereof within municipalities, on secondary or feeder roads, urban highways or grade-crossing eliminations, and for highway research necessary in connection therewith." (Our emphasis).

The manner in which Federal-aid funds are paid to the states is set forth in the Federal Highway Act of 1921, as amended (23 U.S.C.A., Sec. 1, et seq.). Section 11 of 23 U.S.C.A. provides that when any state shall have met the requirements of this chapter the Secretary of the Treasury, upon receipt of certification of the Governor of such state to such effect, approved by the Secretary of Agriculture, shall immediately make available to such state, for the purpose set forth in this chapter, the sum apportioned to such state as herein provided. Section 12 provides that when the Secretary of Agriculture has approved any state highway project including the surveys, plans, specifications and estimates, he shall certify that fact to the Secretary of the Treasury. The Secretary of the Treasury shall then set aside the share of the United States payable under this chapter on account of such projects.

Section 14 of this act provides that when the Secretary of Agriculture shall find that any project approved by him
has been constructed or reconstructed in compliance with
the plans and specifications, he shall cause to be paid to the
proper authorities of said state the amount set aside for said
project. Such payments shall be made by the Secretary of the
Treasury on warrants, drawn by the Secretary of Agricul-
ture, to such official or officials or depository as may be desig-
nated by the State Highway Department and authorized
under the laws of the state to receive public funds of the
state.

Section 21b of U.S.C.A. (Pocket Part) provides that all
sums herein or hereafter authorized and apportioned to the
states shall be available for expenditure for one year after
the close of the fiscal year for which said sums, respectively,
are authorized, and any sum remaining unexpended at the
end of the period during which it is available for expenditure
shall be reapportioned among the states as provided in Section
21 of the act.

The Indiana Legislature in 1945 enacted an enabling statute
which specifically authorized the State Highway Commission
of Indiana to do all things necessary to qualify for the bene-
fits of the Federal-Aid Act of 1944. Section 1 of this act pro-
vided as follows (Acts of 1945, Chapter 298, page 1289;
Burns’ 1933, Section 36-180 (Pocket Supp.)):

“The state highway commission of Indiana is here-
by granted authority to cooperate with the federal gov-
ernment for postwar construction of highways and
bridges under the act of the Congress, approved De-
cember 20, 1944 (58 Stat. at Large, ch. 626, p. 838),
amending the Federal Aid Road Act of July 11, 1916,
and to do and perform all acts as in said amendatory
act provided, in order to procure for the state of Indi-
ana the proper apportionment of federal funds avail-
able to the state of Indiana for the construction, main-
tenance and improvement of highways under the pro-
visions of said amendatory act.”

Previous to this 1945 Act of the Indiana Legislature there
was enacted a statute of this state which specifically author-
ized the State Highway Commission to enter into all contracts
and agreements with the United States government relating
to the construction and maintenance of highways in order to
secure for the State of Indiana the proportion of any federal apportionment which may be made in the future. Said statute provided in part as follows (Burns’ 1933, Section 36-127 (Pocket Supp.)):

"* * * The state highway commission is further authorized to cooperate with the United States government under any federal law in any manner necessary to secure for the state of Indiana the proportion of any federal appropriation which may be made in the future. All money accruing to the state highway fund created by this act and available for expenditure in the construction and maintenance of highways, and all federal funds apportioned to this state under any Act of congress shall be expended upon the highways comprising the system of state highways provided for by this act: Provided, that the commission shall be authorized to expend any such federal funds upon such projects as may be approved by the federal authorities, whether on the state highway system or not: And, provided further, That the commission is authorized and empowered to pay out of the state funds appropriated to it, the cost of surveying, engineering, supervising, letting and inspecting any such federal projects, together with any other incidental expense connected therewith. The state treasurer is hereby authorized to receive any and all money due the state of Indiana, under the provisions of this act, and shall pay out the same on orders of the state auditor which shall be issued by said state auditor upon orders by the state highway commission."

In connection with the payment of the federal government to this state of Federal-aid funds for highway construction, it is provided by Section 36-125 of Burns’ 1933 that there is created a State Highway Fund in order to carry out the provisions of the State Highway Act. This section provides in part as follows:

"In order to provide funds for the carrying out of the provisions of this act there is hereby created a state highway fund from the following sources:
“(a) All money now in the general fund to the credit of the state highway account.

“(b) Any and all sums which shall be received from the federal bureau of public roads or other federal agency and known as federal aid. * * *”

Also, it is provided in the Appropriation Act of 1945 (Chapter 186, p. 557) that the funds appropriated for the State Highway Commission are appropriated from the unencumbered balance of July 1, 1945 of the Highway Fund, the amount of fees received from automobile license fees, etc., together with all receipts, reimbursements and collections of the State Highway Commission paid in to the general fund of the state, including monies from the United States government and all other monies received by or transferred to the State Highway Fund.

From the foregoing federal statutes and laws of the State of Indiana there is thus created a means whereby the federal government and the State of Indiana may enter into agreements for the construction and maintenance of highways. Under such agreements the federal government is authorized to pay a portion of the cost of the improvement, usually limited to 50% of such cost. After the proposed project is submitted to the federal government, it sets aside the amount of its share of the cost and, on completion of the project, the Secretary of the Treasury makes the payments to such official or officials of the state as may be designated by the State Highway Department and authorized under the laws of the state to receive public funds of the state. Under the Indiana law set forth above such payments by the federal government become a part of the State Highway Fund.

One of the exceptions to this procedure of payment by the federal government has been set forth above in Section 6 of the Federal-Aid Highway Act of 1944. There it is provided that the Commissioner of Public Roads, if he deems it necessary for the expeditious completion of projects, to advance to any state the federal share of the cost thereof to enable the State Highway Department to make prompt payments for work as it progresses. In such a case such funds are deposited in a special trust account by the State Treasurer, to be disbursed solely upon vouchers approved by the State High-
way Department for work actually performed in accordance with the plans, specifications and estimates approved by the Public Roads Administration under the provisions of the Act.

It thus appears that the State Highway Commission of Indiana is authorized to enter into any agreements for the construction of highways, including research projects, and to use any amount of available funds in the state highway account to match federal funds. As a matter of fact, Section 36-123 of Burns' 1933 and Section 36-169 of Burns' 1933 (Pocket Supp.) specifically authorizes the State Highway Commission to make advance payments of any sums of money for any purpose whatever out of the State Highway Fund. Also, the 1945 Appropriation Act, at page 561, expressly provides that if an emergency should arise because of conditions which would render the appropriation for Miscellaneous, Maintenance and/or Supervisory Service insufficient, the budget committee may, after emergency and changed conditions have 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. It thus appears that the State Highway Commission has ample authority to use funds in the state highway account to match federal funds in research projects.

However, you state in your letter that the State Highway Commission desires, if possible, to undertake the research project in question exclusively in cooperation with Purdue University, and that it is desired to pay Purdue University a total sum of $65,000.00 annually composed of $50,000.00 coming directly out of state funds and $15,000.00 coming from the federal government for such research project. As shown by Section 36-126 of Burns' 1933 (Pocket Supp.), there is specific authority for the State Highway Commission to pay to Purdue University a sum not to exceed $50,000.00 annually for research projects in connection with highway construction. By such act the Legislature has prohibited the State Highway Commission from paying more than $50,000.00 annually from the funds appropriated to its use for Miscellaneous Service.

It therefore becomes necessary to interpret this provision of the statute which limits the payment to Purdue University
to the sum of $50,000.00 annually for research. It will be
noted that the specific prohibition of this statute is that the
State Highway Commission may expend from the funds appro-
priated to its use for Miscellaneous Service, a sum not to
exceed $50,000.00 annually for the use of Purdue University.
It then becomes pertinent to inquire as to whether the Legis-
lature was merely setting a limitation on the amount to be
paid Purdue University out of the Miscellaneous Service
appropriation with no prohibition that additional payments
could be made to Purdue University out of other appropria-
tions made in the State Highway Account, or whether the
Legislature was intending to limit all payments to Purdue
University for research out of the state highway account
either under the Miscellaneous Service appropriation or any
other item of appropriation.

In the 1945 Appropriation Act (Acts 1945, Chapter 186,
p. 463) the Legislature in making appropriations for the
State Highway Commission provides for appropriations for
research in two ways. On page 558 of the 1945 Acts it is
provided that from funds appropriated in the act, expendi-
tures made for the specific purpose of providing miscellaneous
services shall not exceed the sum of $2,200,000.00 a year.
Specifically included under the item of Miscellaneous Service
are the payments to Purdue University for highway research.
The term "payments" as used in this connection must be
read in connection with Section 26 of the State Highway Act,
above referred to, which specifically limits the amount to be
paid out of this Miscellaneous Service appropriation to the
sum of $50,000.00 annually to Purdue University. On page
560 of the 1945 Acts it is further provided that from funds
appropriated in the act, expenditures made for the specific
purpose of providing for administration and supervisory serv-
ice shall not exceed the sum of $390,000.00 per year. Speci-
fically included in this item are payments to employees of the
State Highway Commission engaged in traffic surveys and re-
search. Unless these persons who are engaged in the reserach
project at Purdue University are employees of the State High-
way Commission, they could not qualify under this latter
item of appropriation. It would therefore appear that the
only item of appropriation under the 1945 Act for research
available to persons who are not employees of the State High-
way Commission would be the specific one to Purdue University under Miscellaneous Service.

Under the 1945 Appropriation Act therefore it appears that the State Highway Commission has funds available for research carried on by its own employees, and also carried on in cooperation with Purdue University. It is therefore my opinion that the Legislature intended to classify all payments to Purdue University for research under the item of Miscellaneous Service in the Appropriation Act of 1945 and, as heretofore pointed out, the amount to be paid under this item is limited to $50,000.00 annually, which amount includes both state and federal funds. However, this limitation of the amount to be paid annually to Purdue University is not in any way a limitation as to the total amount which the State Highway Commission may expend for research. As already pointed out the State Highway Commission has available in the state highway account other funds to carry on research projects in its own department by its own employees.

In connection with this limitation of $50,000.00 annually to be paid to Purdue University, it may be argued that this limitation only applied strictly to state funds, and federal funds should not be included in making up this amount. It may be further argued that the federal funds are kept separate and apart from the state funds and are to be used solely for the purpose specified by the federal government. It may be further argued that the limitation in the statute for the payment of $50,000.00 annually to Purdue University is limited to the funds appropriated for the use of the State Highway Commission and that the federal funds do not become appropriated for the use of the State Highway Commission, but are separate and apart therefrom. However, as first pointed out in this opinion in reviewing the Federal Highway Act, it is shown that Federal-Aid funds are paid by the Secretary of the Treasury to the proper official of the state or depository designated by the State Highway Commission to receive such payments.

Also, under our statutes as above shown, the Federal-Aid funds paid to the state by the federal government are a part of the State Highway Account from which appropriations are made. In such a case such federal funds are appropriated for the use of the State Highway Commission and are not
funds which are kept separate and apart from state funds, but actually are a part thereof. The one exception to this rule is the one stated in Section 6 of the Federal-Aid Highway Act of 1944 wherein it is provided that the Commissioner of Public Roads may advance funds to the state in certain instances, in which case such funds are kept in a special trust account by the State Treasurer to be paid out on order of the State Highway Commission.

It therefore appears that while the Federal-Aid funds are to be used for the specific purpose for which the federal government designates, they do become a part of the state funds on their payment to the state, except in the case above noted, and are therefore to be considered as a part of the funds appropriated for the use of the State Highway Commission and are thus within the limitations prescribed by the Legislature that not to exceed $50,000.00 annually shall be paid to Purdue University from the funds appropriated to its use.

Based upon the foregoing reasons and authorities it is my opinion that you would not be authorized to pay the total sum of $65,000.00 to Purdue University in the manner outlined above. However, it is suggested that it may not be necessary for you to exceed the $50,000.00 annual limitation of payment to Purdue in order to secure the benefits which you desire. Under Section 8 of the Federal-Aid Highway Act of 1944, above quoted, it is pointed out that it is apparently not absolutely necessary for the state to match federal funds in research projects. It is expressly provided that with the approval of the Federal Works Administrator, not to exceed 1½% of the amount apportioned for any year to any state under the Federal-Aid Highway Act, shall hereafter be used with or without state funds for highway research. Under the circumstances it may be that the Federal Works Administrator would enter into a contract with the State Highway Commission which would not require the state to put up another $15,000.00 in addition to the $35,000.00 annual appropriation which is already going to Purdue. Also, since there is already in existence this annual $35,000.00 payment to Purdue University for research, it may be quite possible that the Federal Works Administrator would consider $15,000.00 of this $35,000.00 going annually to Purdue, as a matching of the $15,000.00 sum to be paid by the federal government.
In either of these two cases the total annual payment to Purdue would not exceed $50,000.00 annually.

In answering your first question therefore, it is my opinion that the State Highway Commission may cooperate with the federal government under the Federal-Aid Highway Act of 1944 and may enter into agreements with the federal government whereby the State Highway Commission will match the funds to be paid by the federal government. The Commissioner may also carry on the research project contemplated by such agreements under the Joint Highway Research Project in connection with Purdue University, and may turn over to Purdue University a total sum of not to exceed $50,000.00 annually, comprising both strictly state funds and federal funds, but may not pay to Purdue any more than this amount annually.

In answering your second question, it is my opinion that the State Highway Commission has the authority, wholly without regard to the research projects carried on at Purdue, to enter into any agreements with the federal government for research projects to be carried on by the State Highway Commission itself, or any of its divisions in order to secure the benefits of the Federal-Aid Highway Act of 1944. In this connection I call your attention to the broad language contained in Section 36-127 of Burns' 1933 (Pocket Supp.), above set forth, which provides that the State Highway Commission is authorized to enter into all contracts with the United States Government relating to the construction and maintenance of highways under the Federal Highway Act of 1916 as amended and supplemented. It is further provided in that act that the good faith of the state is hereby pledged to make available funds sufficient to equal the sum apportioned to this state by the United States government.

This Act further authorizes the State Highway Commission to cooperate with the United States government under any federal law in any manner necessary to secure for the State of Indiana the proportion of any federal appropriation which may be made in the future.

Also, Section 36-107 of Burns' 1933 (Pocket Supp.), provides in part as follows:

"* * * For the purpose of financing projects on federal aid highways, constructed in whole or in part
with grants from the federal government, and in antici-
aption of the funds to be received from the federal
government on such projects, the state highway com-
mission, with the consent and approval of the depart-
ment of treasury or whatever other department the
duties of the state board of finance at the time may be
assigned, is hereby given the power and authority to
negotiate and make such loan or loans as may be
necessary to meet the payments required to be made
to contractors on such federal aid highway projects.

* * *

Also, as heretofore pointed out, the State Highway Com-
mission may make advance payments out of the State High-
way Fund and, in an emergency, the State Board of Finance
may authorize the transfer of funds from one appropriation
item to another in the State Highway Account. Also, the
1945 Appropriation Act, p. 557, provides that if the payments
into the State Highway Account exceed the amount specifically
appropriated, the balance may be used for constructing and
improving highways. There is thus ample authority for the
State Highway Commission to enter into an agreement with
the federal government in order to secure the benefits of the
Federal-Aid Highway Act, without regard to the specific
authority granted it to cooperate with Purdue University in
research projects.

The answer to your second question is that you may coop-
erate with Purdue University in the research project in
question to the extent and in the manner detailed in the
answer to your first question, and if you are unable to coop-
erate with Purdue University in the manner indicated in the
answer to your first question, you will have to carry on the
contemplated research project in connection with the federal
government under the State Highway Department.