

1. The sheriff of a county having a population of 300,000 or more is entitled to collect and retain as his own separate property the fees accruing on writs and processes issued by court or proper officer thereof, of any county other than the county of his office, whether such fees accrued prior or subsequent to the effective date of Chapter 179 of the Acts of 1945.

2. The sheriff of such a county is entitled to collect and retain as his own separate property the sheriff's fees accruing on any writ or process issued by any court of the county of his office or proper officer thereof in causes venued to such county, provided that such fees accrued after the effective date of Chapter 179 of the Acts of 1945.

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OFFICIAL OPINION NO. 123.

December 5, 1945.

Honorable John H. Lauer, Chairman  
State Highway Commission of Indiana,  
Statehouse Annex,  
Indianapolis, Indiana.

Dear Sir:

I have your request for an opinion on the following statement of facts:

“Section 8 of the Federal Aid Highway Act of 1944 provides that not to exceed 1½ per centum of the amount apportioned for any year to any state shall be used 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.*”

“Section 26 of the State Highway Act (As amended Acts 1937, Page 1151) on ‘Joint Road Meetings’ states 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 annually, for the use and benefit of Purdue University in carrying on programs of highway research and highway extension, etc.

“Section 27 of the State Highway Act (As amended Acts 1935, Page 249) on ‘Rural Post Roads—Federal Aid—Cooperation—Powers of Commission’ states *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 1944 Act, approximately \$180,000 of Federal funds with \$180,000 of state funds could be available a year for work including research.

“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 a year of Federal Aid funds and \$15,000 a year of state funds. We would like to have the following questions clarified.

“1. Can 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 an additional \$15,000 per year to cover the cost of the state’s portion, or

“2. If such work is programmed, must the 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.”

The provision in the Act of 1937 (Acts 1937, p. 1151, sec. 26; Sec. 36-126 Burns' Supp. 1943), referred to in your request, fixes a maximum amount "not to exceed \$50,000 annually, for the use and benefit of Purdue University in carrying on programs of highway research and highway extension," or for use "in connection with Purdue University for the annual road school held at Purdue University." Your request states that the Advisory Board of the Joint Highway Research Projects governs the activities provided for in this section and this Board has recommended "certain continuing research work in cooperation with the Public Roads Administration," of the federal government, with which recommendation the Public Roads Administration has indicated its willingness to cooperate. The proposed cooperation, if it is to be carried out with Purdue University, therefore, would seem to amount merely to an extension of the research work under the setup that has been, and is now, in existence between the State Highway Commission and Purdue University under Section 26 of the Act of 1937, *supra*.

Since the provision authorizing the contribution to Purdue University fixes a maximum amount but does not require the Commission to contribute to Purdue University the maximum amount so fixed, I am of the opinion that the work of cooperation with the Public Roads Administration could be effected under the provisions of the legislation, both federal and state, referred to in your request without the necessity of further contribution by the Commission to Purdue University. It does not necessarily follow, I think, that, because the federal and state legislation authorizes cooperation between the federal and state governments in the construction of roads, cooperation between the State and Purdue University has been authorized to an extent as to cost in excess of the maximum contribution fixed in the 1937 act, *supra*. In other words, I think, if there is to be an increase of the maximum amount of \$50,000 fixed by the Legislature to the extent of \$15,000 as a contribution to Purdue University by reason of an extension of the research program, the increase should come from federal funds by way of matching to that extent the state contribution authorized by the 1937 Act, *supra*, since this construction would harmonize the legislation, federal and state, on the subject without doing violence to either the federal or state legislation.

Section 26 of the 1937 act amounts to continuing appropriation to Purdue University for the purpose mentioned; and, I think, the Commission is required to follow literally its language, in view of Section 3, Acts 1937, page 175 (Sec. 61-207 Burns' R. S. 1933), governing the expenditure of state funds, which provides:

“In the accounting for moneys expended, the items of the appropriation act shall be literally followed and in no case shall moneys appropriated for one (1) specific purpose be diverted for the purpose of another.”

This is true, I think, despite the fact that the Appropriation Act of 1945 contains a proviso authorizing the Budget Committee upon proper application, in case of emergency, to order the transfer of funds to the Miscellaneous Fund from other funds destined in the Appropriation Act, since the authorization for the contribution to Purdue University is specific and limited in amount and, to the extent of this limitation, this amount, I think, stands as a fixed charge. Had the Legislature intended that the Budget Committee should have power also to enlarge the contribution to Purdue University, it would have expressly so provided.

If the Public Roads Administration sees fit to enter into the program now in operation at Purdue University, I see no objection to the proposal for cooperation by the Commission in the research project under the authority of Section 26 of the 1937 Act; but, for reasons hereinbefore stated, I think the contribution to the University may not be increased. Your first question is therefore answered in the negative. The answer to your second question follows from what has been stated—that is, the research work in conjunction with Purdue University may be carried on in cooperation with the Public Roads Administration to the extent in cost of the maximum contribution fixed in Section 26 of the 1937 Act.