

chases under the sum of five hundred dollars (\$500.00) to be made without the giving of notice or the receiving of bids. Section 4 of the statute requires copies of the purchase orders to be filed with the local designated officer in the case of a county, city, *et cetera*, and in my opinion requires such purchases to be made by written contract if by bid and notice, or by written purchase order if not made pursuant to notice given and bids received.

OFFICIAL OPINION NO. 129

December 11, 1945.

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

Dear Sir:

I have your memorandum in which you submit questions for an opinion concerning certain provisions of the Appropriation Act of 1945 as they affect the expenditures of the State Highway Commission. The questions and supplementary facts as stated in your memorandum are as follows:

"1. May the Highway Commission charge the following expenses to its construction appropriation when incurred for the Highway Planning Survey?

(a) Repair of equipment other than motor vehicles used by the Highway Planning Survey.

(b) Electricity used in automatic traffic counters.

(c) Blueprints.

(d) Rent of International Business Machines and Supplies for same.

(e) General office supplies.

(f) Miscellaneous supplies.

(g) Other miscellaneous expenses.

"2. May the Highway Commission charge the construction appropriation and credit the miscellaneous appropriation with rental of automobiles and

trucks furnished employees of the Highway Planning Survey? These rental rates are approximately the cost of furnishing these machines and are the rates used by the Commission in its own cost records.

"The biennial appropriation made for the Highway Commission by the General Assembly for the fiscal years beginning July 1, 1945 and July 1, 1946 divides the appropriations for the State Highway Commission of Indiana into Miscellaneous Service, Maintenance Service, Construction Service, and Supervisory Service and defines the items that may be charged to each. You will note that all expenses for automobiles and trucks and all expenses listed in question No. 1 come under the class of items defined as Miscellaneous Service under the State Law.

"The Highway Planning Survey is a research department of the State Highway Commission of Indiana whose work is done in cooperation with the Public Roads Administration of the Federal Government. Under Act of Congress 'Federal-Aid Highway Act of 1944' and 'Federal-Aid Road Act approved July 11, 1916 as amended and supplemented,' one and one-half per cent of the amount appropriated for federal assistance in the construction of state highways shall be used for research and highway planning; the federal government paying one-half of all the expenses including the use of automobiles and trucks, but excluding permanent and non-expendable office equipment such as desks and typewriters and the cost of quarters when they are buildings owned by the State. Statistics gathered by the Highway Planning Survey are used principally for passing on the worth of proposed new construction projects and determining whether the federal government will participate in the cost."

The memorandum further states that Mr. Harr, the Associate Engineer of the Federal Public Roads Administration, contends that all expenses of the Planning Survey in which the federal government participates should be charged to the Construction Appropriation for the reasons:

(1) That the research work performed in highway planning is in fact a part of the construction work of highways; and

(2) That any excess of the fixed yearly appropriation for miscellaneous service is made available for construction and that federal reimbursements for expenditures out of the miscellaneous funds are also appropriated for construction; hence, that the activity of the Planning Survey may be curtailed by depletion of the appropriation for miscellaneous service.

Though the state legislation authorizes cooperation on the part of the State Highway Commission with the federal government in the construction of a state-wide system of highways even to the extent of entering into all necessary agreements to procure for the state its proportionate share of federal appropriations for the purpose (Acts 1933, as amended Acts 1935, Sec. 10, p. 67; Sec. 36-127 Burns' R. S. 1933; Acts 1945, Ch. 298), I am of the opinion that the Appropriation Act is not susceptible of a construction that would permit, in the first instance, the payment of any of the items set forth in your questions out of the appropriation for construction.

It is perhaps true that the planning work performed is in fact a part of the work of construction; but that is also true of other activities of the Commission, the cost of which are by the Appropriation Act made payable out of the appropriation for miscellaneous service.

In the last analysis I think all the activities of the Highway Commission are resolved into the work of construction, maintenance and control of highways. The Legislature, however, as a matter of bookkeeping, has set forth in the Appropriation Act the method for the expenditure of and accounting for the funds appropriated.

The appropriation, by means of provisos in the Appropriation Act, is divided, for this purpose, into four classes—miscellaneous service, maintenance service, construction and improving service, and administration and supervisory service; and the items to be included in each of these classes are specifically set forth. The items set forth in each of your

questions are included in the miscellaneous classification. Appr. Act 1945.

In the absence of any provision in the Appropriation Act liberalizing the method in this respect, I think the Commission would be bound to follow literally the provision in the act governing the expenditure of state funds, Acts 1897, Sec. 3, page 175 (Sec. 61-207 Burns' R. S. 1933) which reads as follows:

"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."

The Appropriation Act (1945), as it applies to the activities of the Highway Commission, makes provision for some flexibility respecting the amount and the disposition of the funds. Due to the manner in which the funds of the Commission are derived, the act provides for the decrease or an increase in the amounts allocated to the respective classes hereinbefore mentioned, depending upon whether there is a corresponding decrease or increase in the amount of fees, reimbursements and collections from which the Commission's funds arise. The Legislature also took into account the current economic conditions due to the war and apparently anticipated changes in conditions that might be reflected in the expenditures from the funds allocated for miscellaneous, maintenance and supervisory service. The act contains this proviso:

"Provided, further, That because the current war situation has made it impossible to foresee what the revenue of the highway commission will be or what duties it may be compelled to assume, if any emergency should arise because of changed 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."

Legislation, both federal and state, also anticipates and provides for post-war work in highway building and the Legislature evidently anticipated the possibility of an expansion of the program of the Highway Commission. Acts 1945, Ch. 298.

I think the provision of the Act of 1897 (Sec. 61-207, Burns' R. S. 1933) and the provisions of the 1945 Appropriation Act should be construed together and harmonized if possible. This result is possible, I think, by adhering to the definitions and classifications as made in the Appropriation Act; and that is to say the payments for the service itemized in your questions are chargeable to the miscellaneous fund. If changed conditions should develop that threaten a depletion of that fund, the remedy would be to make a proper showing by way of petition to the Budget Committee for a transfer to the miscellaneous fund of a sufficient amount from the construction fund. In the event of a proper showing, the favorable action of the Budget Committee would thus constitute the amount transferred a part of the miscellaneous fund. The result would harmonize the provisions of the statute on the subject and also meet the objection that federal reimbursements for expenditures for the service in planning are credited to the construction fund.

With this explanation, I, therefore, answer each of your questions in the negative.

OFFICIAL OPINION NO. 130

December 11, 1945.

Hon. Fern E. Norris, Reporter,
Supreme and Appellate Courts,
State House,
Indianapolis, Indiana.

Dear Mrs. Norris:

I have your letter of October 27, 1945, in which you ask for my opinion as follows:

"Dean Henry B. Witham of the Indianapolis Center
(Indiana University School of Law) has requested sets