STATE BOARD OF TAX COMMISSIONERS: Whether cost or repairs of county-owned ferry is payable out of general fund or from county highway fund. Whether cost of purchasing new ferry boat is payable out of county general fund or county highway fund.

June 5, 1943.

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Mr. Bedwell:

I have before me your letter requesting an official opinion in answer to certain questions submitted and based upon the following facts. You state in your letter that a county in Indiana owns and operates a ferry for the purpose of transporting persons traveling along one of its highways across a stream of water which intersects said highway at the place in question which is located wholly within this particular county. You state further that the ferry is in need of repairs. Your question is as follows:

“Is expense of the repair thereof payable from the County General Fund or from the County Highway Fund?”

Section 36-2817 of Burns' Indiana Statutes Annotated, 1933, Cumulative Pocket Supplement of December 1942, provides, among other things, as follows:

“* * * All money” (referring to the money distributed under the Motor Vehicle Highway Account Fund) “so distributed to the several counties of the state shall constitute a special road fund for each of the respective counties and shall be under the exclusive supervision and direction of the board of county commissioners in the construction, reconstruction, maintenance or repair of the county highways and/or bridges on such county highways within such county.”

Section 36-2818 of Burns' Indiana Statutes Annotated, 1933, Cumulative Pocket Supplement of December 1942, provides, among other things, as follows:
"The funds allocated to the respective counties of the state from the motor vehicle highway account shall annually be budgeted as provided by law, and, when distributed shall be used for construction, reconstruction and maintenance of the highways of the respective counties, ** * ."

The answer to your question, therefore, will necessarily be determined upon the basis as to whether a ferry, such as you describe, is comprehended in the language, "the county highways and/or bridges on such county highways within such county." It will be noted in the quotation from Section 36-2818, supra, that the words, "and/or bridges," do not appear. I do not attach any particular significance to that fact, however, since the question is not so much as to whether the ferry is a bridge as it is as to whether a ferry so operated and so held is a part of the highway. Manifestly the word "ferry" is not included. It is equally clear, I think, that as words are generally used, a "ferry" is not a "bridge," although as pointed out later, it does, to a certain extent, supply the convenience of a bridge.

Before referring to the cases, I desire to refer to the rule for the construction of statutes, which, in my opinion, is very important in this connection. I refer to Section 347 of Lewis' Sutherland Statutory Construction, 2d Edition, where the author among other things says:

"It is indispensable to a correct understanding of a statute to inquire first what is the subject of it, what object is intended to be accomplished by it. When the subject-matter is once clearly ascertained and its general intent, a key is found to all its intricacies; general words may be restrained to it, and those of narrower import may be expanded to embrace it to effectuate that intent. When the intention can be collected from the statute, words may be modified, altered or supplied so as to obviate any repugnancy or inconsistency with such intention. ** *" 

Thereafter the author gives several illustrations. Later under Section 400, the author considers numerous words and phrases, the meaning of some of which are expanded to arrive at the true intent and in other cases they are restricted. For ex-
ample, in a statute providing, that when a road or portion of
it shall have been used, worked and kept in repair as a public
highway for six years, it shall be deemed to have been dedi-
cated to the public as a highway, is held to include a city street.
In another case telephone is held to be comprehended in the
term "telegraph." Numerous other cases are referred to in
the text having more or less application.

The important question here, however, is as to what is a
ferry in relation to the term highway or bridge. Although
the question apparently has not been passed upon in a similar
connection to that which we are now considering, it has been
considered in other connections with an almost uniform re-
sult. I will call attention to three cases only. First, the case
of People v. Mago, 23 N. Y. Supp. 938, in which case the
definitions in the main are taken from other cases. Referring
to the case of Mayor, etc. v. Starin, 106 N. Y. 11, the Court
quotes with approval the following:

"'In a general sense it (a ferry) is a highway over
narrow waters.'

"And further: 'A ferry is a continuation of the
highway from one side of the water over which it
passes to the other, and is for the transportation of
passengers or of travelers with their teams and ve-
hicles and such property as they may have with them.'"

Note next, quoting from American and English Encyclopedia
of Law, a ferry is defined to be,

"'A public highway of special description, and its
termini must be in places where the public have rights,
as towns or vills, or highways leading to towns or
vills.'"

Later, quoting from the same text, note the following:

"'A ferry is nothing more than the continuation of
a road, and, as far as regards the authority of the
state and general governments, does not differ from a
toll bridge.'"

Next, note the case of United States v. Puget Sound Nav. Co.,
24 Fed. Supp. 431, at page 432, where the Court quotes with
approval from the case of People v. San Francisco & A. R. Co., 35 Cal. 606 at 619:

"'A ferry, in its ordinary sense, is but a substitute for a bridge where a bridge is impracticable, and its end and use are the same.'"

Again, note this language from 24 Fed. Supp., supra, page 432.

"'A ferry is a continuation of the highway from one side of the water over which it passes to the other, and is for transportation of passengers or of travelers with their teams and vehicles and such other property as they may carry or have with them.' St. Clair County v. Interstate Sand & Car Transfer Co., 192 U. S. 454, 466, 24 S. Ct. 300, 304, 48 L. Ed. 518."

Note also the case of State v. Weithaupt (Mo.), 133 S. W. 329, at page 333, where, the Court after referring to some of the definitions to which I have already referred, has this to say:

"'Legally considered, a ferry is nothing more than the continuation of a road; and, as far as regards the authority of a state, it does not differ from a toll bridge.'" (Citing authorities.) "'With regard to the authority of the state, "a bridge" and "a ferry" are equivalent terms. Express power to establish a ferry necessarily implies power to establish a toll bridge.'"

Note also the following from the same case:

"The idea of a ferry presupposes a road traveled by the public which is bisected by the water course, the ferry serving in a different way, the same purpose that is served by a bridge. As the bridge is made for the road, not the road for the bridge, so is the ferry made for the road, not the road for the ferry; the ferry is the incident, the road is the principal."

In my opinion, under the circumstances stated by you in your letter, a ferry is comprehended within the language, "county highways and/or bridges." Your first question should
be answered that the expense of the repairs is payable out of the county highway fund.

You next ask as to whether the cost of the purchase of a new ferry would be payable out of the general fund. The statute authorizes the highway fund to be used for construction as well as repair. I, therefore, think such an expense should be paid out of the county highway fund.

BOARD OF INDUSTRIAL AID FOR THE BLIND: Whether Board may purchase coal in quantities to be shipped direct to the home of an employee and paid for by deductions from salary. 

June 10, 1943.

Miss Goldie Lutes,
Assistant Executive Secretary,
Board of Industrial Aid for the Blind,
536 West 30th Street,
Indianapolis, Indiana.

Dear Miss Lutes:

This is in response to your request for an opinion as to the legality of a certain practice which the Board of Industrial Aid for the Blind has followed in aiding the blind employees of its institution. You say:

"In the past five or six years the Board of Industrial Aid for the Blind has taken competitive bids and purchased coal for the blind employees of this institution. This coal is delivered by the coal company direct to the home of the employee and billed to the institution. We re-bill the coal to the employee at the price charged by the coal company, and the employee pays for the coal in payments out of his earnings each pay day. They are paid twice each month, and at the end of four months, their bill is paid complete. This is done in order to allow the employee to put in his winter's supply of coal on a basis whereby he can pay for it, as they seldom have the necessary funds on hand to pay cash for the coal when delivered. We secured each year the permission of the Central Purchasing Agent to purchase the coal in this way."