

STATE EXAMINER: Whether the County Council may appropriate money from the General Fund for the construction or the repair of bridges.

November 12, 1941.

Mr. Otto K. Jensen,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have your letter containing the following questions:

"1. Is the county council authorized by law to appropriate money from the general fund of the county for the construction or repair of bridges upon the county's highways?"

"2. In the event your answer to the first question is in the affirmative: Is a separate appropriation required for each bridge to be constructed or repaired?"

The answer to your first question depends, as suggested in your letter, upon whether or not the provisions of Chapter 168, Acts of 1941, which includes the expense for the construction and repair of bridges as payable from the funds allocated to the several counties from the motor vehicle highway account, supersedes the provisions of the statutes authorizing the construction or repair of bridges from an appropriation from the general fund of the county.

The latter provisions are to be found in Secs. 36-1901 and 26-519, cls. 2 and 3, subject to requirements contained in Secs. 36-1903, 26-2001 and 36-1102, Burns' Ind. St. Ann. 1933.

Sec. 4 of Ch. 168, Acts 1941 (Secs. 36-2818, Burns' Supp. 1941), in providing for the allocation of funds derived from the motor vehicle highway account to the various counties, defines the term "highway" to include bridges and the substructure and superstructure of bridges and approaches thereto, and from said Act it is apparent that a county is authorized to use funds derived from the motor vehicle highway account in the construction, reconstruction and maintenance of bridges. A similar definition was given the word "highways" in the 1937 Motor Vehicle Highway Account Act (Acts 1937, Ch. 135, A 776) which the 1941 Act repeals.

There would be no question but that such authority is only supplementary to, and not in lieu of the authority to expend

money appropriated from the general fund for construction and repair of bridges were it not for the following language of Secs. 36-905, Burns, etc., *supra*, 1933:

“Hereafter, all expenses incurred in the maintenance, repair and preservation of county highways, including all township highways which are transferred to the counties and incorporated in the county highway system, as hereinbefore provided, shall be paid out of such funds as may be derived from the gasoline tax and paid to the several counties by the state, as provided by law, and no tax shall be levied hereafter by any county in this state for the repair, maintenance or preservation of county highways, except by unanimous vote of the county council in a case of extraordinary emergency or indispensable public necessity.” (Acts 1932, SS. Ch. 16, Sec. 5, p. 28.)

The same session of the General Assembly enacted Ch. 34, Sec. 3 of which prohibited the levy of a tax for the maintenance and repair of county highways. By virtue of its being approved five days later, it was held to impliedly repeal the emergency provision contained in Sec. 36-905, *supra* (Acts 1932, Ch. 16, Sec. 5) but in all other respects Sec. 3 of Ch. 34 and Sec. 5 of Ch. 16 were in harmony. Ch. 34 was repealed by Ch. 19, Acts 1933, but Ch. 16 was not affected.

While the foregoing statutory language only prohibits the levy of a tax by a county to repair, maintain or preserve “county highways,” this would also be applicable to bridges if the word “highways” as used in Sec. 36-905 is subject to the definition given the word “highway” by the General Assembly in the enactment of Ch. 135, Acts 1937, and Ch. 168, Acts 1941.

However, an examination of the acts involved discloses no such legislative intent.

Sec. 36-905 was contained in Ch. 16, Acts 1932, an act transferring the jurisdiction of township highways to the boards of county commissioners.

Ch. 34, Acts 1932, was an act amending Sec. 3 of a 1913 act concerning the maintenance and repair of free gravel or macadam roads, the title to which latter act was amended by Acts 1921, Ch. 95, to “An Act concerning the maintenance and repair of free gravel, macadam, earth or other improved highways.”

None of these acts defines “roads” or “highways” to include

"bridges" but bridges are expressly designated along with highways in the 1913 act.

Also, it is known that the General Assembly, between 1913 and 1932, when the prohibition was placed upon the levy of a county tax for highway repair and maintenance, enacted other legislation in which specific mention of bridges was made. (Sec. 36-1901, amended in 1929.)

While the power of the General Assembly to include "bridges" within the meaning of "highways" may be conceded, in the absence of evidence of such intent in the enactment of Sec. 36-905, *supra*, its language must be read literally and there is no authority to so construe the term "highway" as used therein.

"One who contends that a section of an act must not be read literally must be able to show one of two things: either that there is some other section which cuts down or expands its meaning, or else that the section itself is repugnant to the general purview."

Lewis' Sutherland Statutory Construction, 2nd Ed., Sec. 367.

"The context is not allowed to change the effect of a section or word where it appears to be the intention that it should be literally construed; in other words, if the true meaning of a word or phrase is apparent from the section in which it occurs, it is not admissible to go outside of it for an interpretation."

Lewis' Sutherland Stat. Const., *supra*, Sec. 376.

To attach to the term "highway" as used in Sec. 36-905, enacted in 1932, a meaning not ordinarily ascribed to the word, but which only has been given it by express statutory definition in the 1937 and 1941 motor vehicle highway account, as used in those acts, would be clearly contrary to the principles of statutory construction above quoted.

It follows that construction and repair of bridges may be made with appropriations from the county general fund.

Your second question can be answered by reference to Sec. 26-519, clauses 2 and 3.

Payment for building bridges from funds raised by county taxation may only be made if an appropriation has been made wherein an itemization has been "set out by giving location and amount of each bridge." The amount provided from county

taxation for repair shall also be itemized, but the statute (Sec. 26-519, cl. 3) does not require that the location and amount for each bridge shall be stated; therefore a less detailed itemization of such appropriation may be used.

TAX BOARD: Right of county tax adjustment board to review contracts executed with teachers by the Indianapolis School Board.

Whether a township, part of which is within an incorporated city may levy a township-wide tax to pay for the cost of fire-fighting apparatus.

November 12, 1941.

Hon. Edw. D. Koenemann,
Secretary, Indiana Tax Board,
State House,
Indianapolis, Indiana.

Dear Mr. Koenemann:

I have before me your request for an official opinion in answer to the following questions:

"1. Does the Marion County Tax Adjustment Board have the legal power to review the contracts executed on or prior to May 1, 1941, by and between the Board of School Commissioners and the teachers employed by said Board?

"2. When a part of a township lies within an incorporated city which maintains by general taxation an adequate fire fighting system, may the township trustee thereof levy a tax upon all the property in the township including that property inside the city limits, for the purpose of purchasing or maintaining township fire-fighting equipment?"

As I understand it your first question involves simply the question as to whether the Marion County Tax Adjustment Board and the Indiana Tax Board have the legal power to diminish the wages to be paid to teachers as provided in contracts executed on or prior to May 1, 1941, between the school board and the teachers employed by the board, referring to the School Board of Indianapolis.