STATE HIGHWAY COMMISSION: Whether advertisement for bids for all purchases is required.

May 2, 1941.

Hon. Samuel C. Hadden, Member,
State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of April 28, 1941, as follows:

"To enable the State Highway Commission to adopt procedure necessary to comply with the provisions of House Bill No. 11, 1941 Session, which becomes effective May 1, 1941, your interpretation of the following paragraph of Section 11 of that Act, which has reference to legal advertisements, is respectfully requested:

'It is further directed that all road, bridge, culvert and purchase contracts shall be advertised twice in all daily papers of general circulation published in the capital city of the State of Indiana and that notice of each project shall be separate in itself.'

"This paragraph gives rise to three questions, namely: (1) What is a purchase contract? (2) What is general circulation? (3) In the case of construction projects receiving federal aid, two advertisements spaced by a period of one week are required. Will publication on two consecutive days comply with the intent of the law? Also should advertisement for maintenance materials be handled in the same manner as those for construction?"

Your first question is as to the legal meaning of the phrase "purchase contracts."

Webster defines the word "purchase" to mean, "to get by paying money or its equivalent; buy. To get by outlay, as of labor, * * *. Acquisition for a price; buy." Therefore, I would say that a purchase contract is a contract which involves the purchase of some article.
In relation to the work of the State Highway Commission of Indiana, I would say that "purchase contract" would include the acquisition of tools, implements, materials or supplies that are used or useful in the work of the State Highway Commission of Indiana.

The next question in your letter is, "what is general circulation." This, of course, applies as is shown by the context of your letter to newspaper advertisement.

The Legislature of Indiana has defined "legal advertisements" in Section 2-4706, Burns' Indiana Statutes Annotated of 1933, as follows:

"Publications of legal and other official matters printed in the English language shall be lawful if published in any newspaper of general circulation published in the county."

Our Supreme Court in the case of Lynn v. Allen, 145 Indiana 584, defines what is meant by that statute when it uses the term "general circulation." The particular reference is found on page 587 of the report and is as follows:

"By a 'newspaper of general circulation' the Legislature certainly did not intend a newspaper read by all of the people of the county. As a matter of fact every newspaper is, in greater or less degree, devoted to some special interest. No one, however, would claim that because a newspaper should, for example, be the organ of a certain political party, and especially devoted to the interests of such party, it would not, therefore, be a newspaper of general circulation. Yet such a newspaper is, to a large extent, read only by the members of the political party whose doctrines are advocated and expounded in its columns.

"There is no doubt that where a publication is devoted purely to a special purpose it would be an unfit medium to reach the general public. A medical, literary, religious, scientific or legal journal is professedly but for one class, and that class but a comparatively small part of the whole population; and it would be manifestly unjust, as well as against the letter and spirit of the Statute to use such a journal for the publication of a notice affecting the property or personal rights of citizens in general."
The Appellate Court in the case of Ruth v. Ruth, 1939 App., page 290, discusses this question. The Court on page 293 of the report uses this language:

"A newspaper, in the popular acceptation of the word, is a publication issued at regular intervals, containing among other things, the current news, * * *

"The general circulation of a newspaper is necessarily comparative, but no fixed number of subscribers is required to constitute 'general circulation.' A newspaper's circulation does not necessarily mean that it is read by all the people of the county or township. As a matter of fact, county newspapers are devoted to local interest, and are of limited circulation."

In my opinion it is the law of this State that any newspaper that is not devoted to any special interest and has a general circulation in the territory that it serves and disseminates the news of general interest to that community, is a newspaper of general circulation.

Your third question and the remaining part of your letter presents a more difficult question and requires the construction of House Bill No. 11 of the Acts of the General Assembly of 1941, especially with respect to Section 11 thereof, which provides what notices shall be given by the State Highway Commission of Indiana in relation to contracts of that body. Section 11, supra, is as follows:

"The chairman, as soon after appointment as practicable, and before any work is ordered, shall cause to be prepared and shall adopt and place on file in the office of the commission, standard specifications for three or more distinct types of modern highways, of which at least two shall be a hard surface type and one or more shall be of the non-rigid type of modern pavement, to be designated as the type of highways for which bids are to be received. Such specifications may be amended from time to time, or new specifications may be substituted therefor. When any part of such state highway is ordered to be constructed or improved, the state highway commission shall cause to be prepared profiles, plans and specifications and estimates for these state highways as they are designated for construction, and improvement, and it shall be the duty of the chairman,
when any part of such state highway is ordered to be constructed or improved, to advertise for proposals and he shall give notice by one publication in two newspapers representing the parties casting the highest and next highest vote in the county, of general circulation in the county, where the work is to be performed, that on a date to be named by the chairman, in such notice, sealed proposals will be received by the chairman, at the office of the state highway commission, or other designated place, for the construction, reconstruction or improvement of such state highway in accordance with the plans and specifications which have been adopted, and which are on file in the office of the state highway commission, and when such order provides for the construction of such highways, or any part thereof, such notice shall state that bids will be received on one of the types of highways approved by the Commission;

“PROVIDED, The commission when designating certain light traffic state highways for construction or improvement may advertise for and receive bids for one or more types of highways; and for which specifications have been adopted, as heretofore provided. If there should be more than one state highway, the notice shall relate to all. Each notice, as provided herein, shall be published at least ten days before the date named therein as the date for receiving sealed proposals. If the chairman deems it advisable, he may require the notice to be published in newspapers other than as herein provided.

“It is further directed that all road, bridge, culvert, and purchase contracts shall be advertised twice in all daily papers of general circulation published in the capital city of the State of Indiana and that notice of each project shall be separate in itself.”

I am convinced that the Legislature intended that the notice to be given by the State Highway Commission of Indiana in letting road contracts should be by one insertion in the papers published in the county or counties through which the road runs, the publication to be made in two papers of general circulation of the county or counties (if the road is in more than one county), representing the two political parties casting the highest and next highest vote in such county or counties, as the
case may be. And, in addition to the notice given in the local papers of the county or counties, publication must be made twice in all daily papers of general circulation published in the capital city of the State of Indiana.

There is a proviso dealing with the notice to be given in the construction of certain light traffic state highways which may be advertised by the Commission as above provided, and in that case all the roads of that character may be contained in one notice.

The particular part of Section 11 you refer to in your letter follows:

"It is further directed that all road, bridge, culvert and purchase contracts shall be advertised twice in all daily papers of general circulation published in the capital city of the State of Indiana and that notice of each project shall be separate in itself."

I am of the opinion that this provision applies to all contracts enumerated therein and that the notice must be given as provided for by that part of the Statute. As I said before, in all road contracts this notice must be given in addition to the local notice provided for in the other part of Section 11, supra.

Since bridges and culverts are made a part of the roads by Statute, then the entire road including bridges and culverts must be advertised in the same manner.

So long as the work to be performed for which notice is to be given constitutes no more than one project, the notice must be given in one notice. On the other hand if the work to be done for which notice is given constitutes more than one project, the notice must be separately given so as to include no more than one project in each notice.

There is a difference in the notice to be given in road, bridge and culvert contracts to that given in purchase contracts. In the former there is a provision for notice in local papers in the county or counties where the road is situated, while in purchase contracts the only notice required is to be given in all daily papers of general circulation published in the capital city of the State of Indiana.

I note you ask the further question as to whether notice given on two consecutive days would be a compliance with the Statute. And, also, suggest that the rule of the Federal Government requires that in all Federal Aid Projects the notice given must be spaced by a period of one week.
While I am of the opinion that the notice given on consecutive days would be a literal compliance with the Statute, providing the notice is given at least ten days before the date named therein as the date for receiving proposals, yet the rule of the Federal Government as to notice would not violate it if given for the required length of time. Therefore, as a practical suggestion I may say it would be well to follow the Federal Government rule.

I am of the opinion that the Statute applies to all departments of the State Highway Commission of Indiana and to all contracts enumerated in said Statute made by any of such departments.

STATE HIGHWAY COMMISSION: Whether Commission should make purchase through State Purchasing Agent.

May 8, 1941.

Hon. James D. Adams, Chairman,
State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Adams:

I have before me your letter in which you call attention to certain provisions of Section 8 of House Bill 11, as the same was enacted by the General Assembly of 1941, as follows:

"The state highway commission of Indiana, as hereby created, shall be entitled to all office rooms and other rooms now being occupied by said state highway commission; also to all books, records, papers, furniture, equipment, motor vehicles, and other matters now belonging to or in possession of said state highway commission.

"Said offices shall be kept open at such times as the business of the commission and the convenience and interest of the public shall require. Such office shall be the repository for all the records of the commission, and shall be furnished by the State with all necessary stationery, office supplies, fixtures, apparatus and engineering instruments. The commission shall have the authority to rent, purchase, acquire, or construct office