HIGHWAY, STATE COMMISSION: Resolution adopted by legislature does not authorize payment of claims from State Treasury.

May 18, 1940.

Hon. T. A. Dicus, Chairman,
State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Dicus:

I have before me your letter in part as follows:

> "The 81st Session of the General Assembly of Indiana adopted a House Concurrent Resolution 4 (Chapter 167, Acts of 1939). The Committee appointed pursuant to the Resolution submitted a report recommending, among other things, that the Committee and the Highway Commission select a certified public accounting firm of national reputation to make an audit of the O. F. Schlensker account and report it to the Governor and also provided that the expense of such audit should be paid by the State Highway Commission. * * *"

You state that the report of the Committee was adopted and approved by the General Assembly and that the firm of Ernst & Ernst, which made the audit of the above account, has presented a bill to the Highway Commission in the amount of $3,550.00. You submit the following questions:

> "1. Can the State Highway Commission now legally pay Ernst & Ernst?
>
> "2. If your answer to the first question is in the affirmative, out of what appropriation will the money come?"

Quite aside from the other considerations to which your attention will presently be directed, upon the limited facts set out in your letter I think your first question should be answered in the negative.

However, I think the same answer is required for fundamental reasons growing out of the well settled legal effect of

such a resolution as you have described. The resolution referred to is found on page 782 of the Acts of 1939. Omitting the preamble the resolution referred to is as follows:

> "Section 1. BE IT RESOLVED THAT WE, THE GENERAL ASSEMBLY, Recommend and pray a non-partisan committee consisting of two (2) members be named by the speaker of the House, and two (2) by the president of the Senate for the purpose of ascertaining through their deliberations and investigations the merits of the controversy that has arisen and we, as members of our General Assembly, extend to said committee such power and authority as may be necessary in ascertaining the facts under and by virtue of our statutes and it shall be the duty of the committee to set out, in full, their findings, typewritten, with definite instructions to our representative bodies recommending the action they deem necessary to clarify the records and rectify any misunderstanding, mistake or error."
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> Acts of 1939, p. 782.

It will be noted from said resolution, as above quoted, that the Committee is "to set out, in full, their findings, typewritten, with definite instructions to our representative bodies recommending the action they deem necessary to clarify the records and rectify any misunderstanding, mistake or error." Pursuant to that mandate, the Committee brought in a report which was concurred in by the House on March 6, 1939, and adopted by the Senate on the same day.

> House Journal, p. 1054 (1939);
> Senate Journal, p. 1279 (1939).

In their report the Committee made the following recommendations, which were the recommendations concurred in by the House and adopted by the Senate:

> " '1st. That your committee and the state highway commission select a Certified Public Accounting firm of national reputation to go into all the records concerning said transaction whereby they may determine all the facts and when said accounting is completed

they shall report same forthwith to the Governor, as to any sum or sums of money they may find now due said state from the said Otto F. Schlensker. We recommend that said attorney general shall at once institute proceedings to recover any sum due the state. The expense of such audit shall be borne by the state highway commission.

" '2nd. If said audit shall show that any sum is owing to said Otto F. Schlensker by the said state highway commission, the said commission shall promptly cause to be issued to the said Schlensker a warrant for the amount so found to be due him.' "

House Journal, p. 1054 (1939);
Senate Journal, p. 1279 (1939).

In an official opinion under date of January 18, 1940, addressed to the Governor I discussed at some length the effect of the resolution which resulted in the above recommendation. In that opinion, I said:

"The law is quite clear that this resolution does not have the dignity or force of a law. The Constitution is specific upon this subject providing, as it does in Section 1 of Article 4, among other things, that: 'The style of every law shall be: 'Be it enacted by the General Assembly of the State of Indiana;' and no law shall be enacted except by bill.'

"Other sections of the Constitution make it very clear that the Constitution makers distinguished between bills and joint resolutions. Moreover, if there were any room for doubt upon the question, our Supreme Court has definitely settled the matter in the decision of the case of May v. Rice, 91 Ind. 546, where, among other things, that identical question was before the court. After discussing the question quite elaborately on pages 548, 549 and 550, the court concludes, quoting from pages 550 and 551, as follows:

" 'By such resolution, the two houses may adjourn for more than three days. Article 4, Section 10. Certain officers may be removed by such resolution.

Article 6, Section 7. Possibly, under Section 17, of Article 5, the powers granted to grant pardons, etc., may be exercised by such resolution. Besides the authority thus expressly granted, a joint resolution doubtless may be the means of expressing the legislative will in reference to the discharge of an administrative duty if such expression falls short of the enactment of a law. The general and most common use of resolutions is in the adoption of rules and orders relative to the proceedings of the legislative body. Cushing, *supra,* Section 779; May's Par. Prac., pp. 440, 447, 450. Our conclusion upon this branch of the case is, that a joint resolution under our Constitution is not a bill, and that laws for the appropriation of money for public purposes, or the payment of private claims, such as Mrs. May's, cannot be enacted by joint resolution.'

"This last statement 'that laws for the appropriation of money for public purposes, or the payment of private claims * * * cannot be enacted by joint resolution' arose out of another express provision of the Constitution which provides that 'no money shall be drawn from the Treasury but in pursuance of appropriations made by law.' Constitution of Indiana, Article 10, Section 3.

"If Chapter 167, *supra,* does not have either the dignity or force of a law, and this is quite clear, much less will the action referred to in your letter be so considered.

"In addition to what has already been said it must be clear that no one treated this resolution as an Act because it was treated to be in effect from the time it was passed, although no emergency was stated either 'in the preamble, or in the body, of the law.' The action referred to in your letter was taken pursuant to its provisions without a prior publication, as is required by the Constitution to put an Act into effect except in case of emergency declared in the preamble, or in the body of the law. Moreover, the particular action referred to in your letter, never has had any

publication or circulation as required by the Constitution to put an Act into effect."

I adhere to the opinion heretofore expressed in the above quoted language and adopt the same as a part of this opinion. I wish further to emphasize the statement contained in the last sentence of the above quoted language. Clearly, I think, the resolution, standing alone, would not authorize the highway commission to pay the bill submitted; and when we come to a consideration of the recommendations of the Committee, the action of the Legislature approving them, of course, did not give them the effect of law, if for no other reason, for the simple reason that they were never published and no emergency was stated which would put them into effect without publication. I think it is very clear that your first question must be answered in the negative.

Your first question having been answered in the negative, your second question requires no answer. I will say, however, in passing, that the recommendation of the Legislative Committee approved by both houses of the Legislature is not sufficient to constitute an appropriation, which can only be accomplished through legislative enactment of a law. Moreover, I have been unable to find any other appropriation which, I think, is available to pay such a bill.

TEACHERS COLLEGE, INDIANA STATE: Pupils of Soldiers and Sailors Childrens home and residents over 16 years of age and under 21 who are children of deceased soldiers or sailors are eligible for free tuition at state universities.

May 20, 1940.

Mr. Grover VanDuyn,
Business Manager,
Indiana State Teachers College,
Terre Haute, Indiana.

Dear Sir:

I have your request for an opinion upon certain questions which you raise concerning Acts of 1935, p. 173, ch. 69. The title and act read as follows: