HIGHWAYS: Costs of Rights of Ways of State Highways on State property.

October 25, 1940.

Mr. M. R. Keefe, Chief Engineer,
State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have your letter of October 14, 1940, in which you ask for an official opinion upon the following statement of facts:

"Each of the institutions of the State, correctional and charitable, the Conservation Department and the Educational Institutions, all hold and occupy real estate which is owned by the State of Indiana, and which real estate has buildings, structures, fences and the like thereon.

"In the construction or reconstruction of state highways under the jurisdiction of the State Highway Commission of Indiana, it very frequently happens that such highways will take a part of the real estate thus owned by such institutions, and in numerous cases requires the removal of buildings, structures, fences and the like.

"Two questions have arisen, one is as to whether or not the State Highway Commission of Indiana should pay for the lands thus appropriated, and second, whether or not the State Highway Commission of Indiana should pay for the removal of buildings, structures, fences and the like."

The two questions presented are both of such a category that there are no judicial decisions in Indiana which might be authority for their determination. There being no statutes covering the situation it is my opinion that the questions are ones of administrative policy of the executive branch of the State government rather than legal ones. The nominal party on both sides of any such question is the State of Indiana. Without seeking to transgress upon the Governor's authority in such matters, I have the following observations to make upon the above questions.
The State Highway Commission has the right to appropriate state land for right-of-way purposes, even though the land is that now utilized by a State institution.

The State as owner of that land can, by its executive branch, decide in what manner the real estate will be used. It has been held by the Courts of various jurisdictions that municipal corporations or other subdivisions of government do not have such a proprietary interest in real estate devoted to highway purposes but that the State may take and devote such real estate to another public use. This change in use has been permitted without any compensation to the other unit of government. By analogy, it appears to me that a determination by the State to occupy and use its land in a new and different manner by a different department of state would be as acceptable as a change of usage between the State government and its subdivisions. Likewise, in this instance, as between the State and its subdivisions, no compensation need be paid by one department to another for a new use of such real property.

In view of the foregoing it is my opinion that the State Highway Commission will not have to pay compensation to the various State institutions for the real property converted to highway rights-of-way.

The answer to your second question is likewise one of policy. The procedure to be followed in such instances is not covered by statute, nor can the question be determined by judicial recourse due to the singularity of parties. In such instances the determination of the question is one for executive authority. As a matter of economy the State Highway Commission is best prepared financially and technically to make such alterations to buildings, structures, or fences as may be required. The Commission has appropriations to cover the cost of the removal, alteration and replacement of structures which may interfere with new highways. The State institutions have no funds appropriated for such purposes, and are likewise unprepared technically to execute the task. Therefore, in the interest of efficiency and the equities of the parties, it is my opinion that the Commission must stand the expense of removing, changing, altering and replacing of all structures, buildings, fences, and the like disturbed by the construction of a highway over a right-of-way appropriated from a State institution.