HIGHWAY COMMISSION: Whether commission may advance money to cities to acquire rights-of-way in such cities.

October 23, 1933.

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

Dear Sir:

I have before me your letter, requesting an opinion as to whether the state highway commission may advance money to the city of ________ to be used by said city in the purchase of a right-of-way for the relocation of an important federal route through said city. The city referred to has a population of more than thirty-five hundred. It is represented further that such city will enter into a contract for the repayment of the loan.

Replying, I desire to say that I do not find any authority in the state highway commission to make such a loan; nor do I find any authority in such city to make the contemplated contract to borrow the necessary money from said commission.

It is true that the state highway commission has the authority to purchase or otherwise acquire lands and rights necessary for the construction, repair and maintenance of state highways or for the purpose of relocating, widening or straightening the same and to clear and remove obstructions to the vision at highway crossings and curves and for such other like purposes as are contemplated by the highway commission act. It is likewise true that the commission may in its discretion improve an unimproved street in a city with a population exceeding thirty-five hundred where such unimproved street connects at the corporate limits of the city with a state highway. But I do not think such authority would authorize the commission to condemn or otherwise secure the right-of-way for a street and then relying upon the above authority, improve such street. I think the authority of the commission to improve such an unimproved street presupposes the existence of the street by virtue of prior municipal action either in opening and establishing it or by dedication and acceptance by said city.

In my opinion, the proposed procedure concerning which you inquire in your letter is not authorized by law.