another thing. The attendant may, in fact, be practicing medicine, which must be determined upon the basis of what actually takes place, but I do not think the use of the circular referred to by you as an advertisement of the so-called "Beauty Baths" in and of itself is a violation of the statute.

The circular designed for mailing to physicians does not, in my opinion, change the situation. It is an invitation to physicians to make use of the equipment and staff of the advertiser to administer treatments prescribed by such physicians in much the same way as a nurse might be called upon to administer them. The statute expressly provides that it "shall not be construed to apply * * * to professional or other nurses."

HIGHWAY COMMISSION: Right of county boards of commissioners to acquire land by eminent domain for widening county roads.

December 6, 1933.

Hon. M. R. Keefe, Chief Engineer,
State Highway Commission of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an opinion as to the right of the boards of commissioners of the several counties of the state to acquire land by eminent domain with which to widen county roads. The reason for this request is revealed by the following statement of facts as set out in your letter, viz.:

"The state highway commission have attempted to improve certain county roads under the authority granted in the state highway law enacted in 1933 permitting them to enter into agreements with the federal authorities to receive federal grants. The federal grant with which this work is being done comes under the National Recovery Act and the funds were allotted to the department of agriculture to be supervised by the bureau of public roads, and the projects are termed 'NRA Projects' under the rules and regulations of the department of agriculture. According to the rules and regulations of the department of agriculture, these
funds are not available for acquiring rights of way and, as we understand it, the state highway funds are not available for securing rights of way on these county road projects. The state highway commission has asked the counties in which these projects are located to furnish the necessary right of way for the construction of the projects. The county officials are willing to co-operate with the highway commission in this work—in the first place, to get the benefit of the improvement, and, in the second place, to furnish employment to the unemployed. In some instances, county officials have been unable to buy the right of way necessary at a reasonable amount from the property owners and are desirous of instituting condemnation proceedings."

Section 8313 of Burns Annotated Indiana Statutes of 1926 expressly authorizes boards of county commissioners "to locate, establish, widen, change, construct, reconstruct and improve, maintain and repair all public highways, bridges and culverts in the county." (Our italics.)

The above section is section 1 of chapter 112 of the Acts of 1919. Section 3 of the same act provides as follows:

"The board of commissioners of the respective counties of the state shall have the power, as hereinafter provided, to construct public highways by laying out and improving a new public highway or the improving, reconstructing or repairing of any existing public highway or part thereof by grading, draining, paving, resurfacing or improving with gravel, stone, brick, concrete, bitumen or other road paving material. They shall have the power to establish, lay out, alter, widen, vacate, straighten or change a public highway in connection with the proceedings for such improvement, and they shall also have power to build all necessary bridges, culverts or approaches in the improvement of highways." (Our italics.)

Burns Annotated Indiana Statutes of 1926, section 8314.

Sections 8316 et seq. of Burns Annotated Indiana Statutes of 1926, provide the procedure for laying out, altering, widen-
ing and improving such highways. You are referred to the above sections for special limitations upon the power of such boards in such matters.

Upon the laying out or widening of a highway pursuant to the above sections, the statute expressly gives to the board of commissioners the right to acquire the necessary land and, if necessary, to exercise the power of eminent domain in doing so. Note the language of section 8315 of Burns Annotated Indiana Statutes of 1926, as follows:

"In all cases of a highway constructed under the provisions of this act, the right of way therefor, or any required drainage courses, or approaches, or any land necessary for the opening, widening, or changing of a highway, or land necessary to build a bridge or a culvert, shall be acquired by the county, either by donation by the owners of the land through which such highway shall pass or by agreement between such owner or owners and the board of commissioners of such county, or through the exercise by such board of commissioners of the power of eminent domain, or the public may acquire such property as is necessary in the same manner as is now provided by law for the establishment, opening and widening of public highways, and, in any event, the entire cost of such right of way shall be paid for by the county." (Our italics.)

It, perhaps, should be noted that the authority to issue bonds for such an improvement as provided in section 14 of chapter 112, of the Acts of 1919, (Burns Annotated Indiana Statutes of 1926, section 8326), has been suspended until September 1, 1937.


However, if no bonds are to be issued, I do not think the above Act of 1932 would limit boards of commissioners in the exercise of the power of eminent domain as provided in section 8315, supra.