HIGHWAY COMMISSION, STATE: Appropriation of funds to Purdue University for joint road study disapproved.

March 31, 1936.

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

Dear Sir:

This is in answer to your letter of March 19, 1936, asking an opinion as to the legality of your Commission in turning over to Purdue University twenty-five thousand ($25,000.00) dollars annually to be used in a joint effort in ascertaining and studying the best methods of improving county and light traffic highways:

Your letter is as follows:

"The State Highway Commission is considering a plan to co-operate with Purdue University in an effort to ascertain the best method of improving and maintaining county and light traffic State highways. This will require an extensive study of methods and results and much experimenting. The State Highway Commission is not equipped with either sufficient expert personnel or proper instrumentalities to make the necessary investigations, study and experiments. While we have men qualified to do such work, their time is fully taken up with other duties. To employ additional men and to purchase the necessary equipment would involve the expenditure of more money than the Highway Commission feels justified in expending, in view of the fact that the several counties of the State might feel that they were not a party to the study. What is said above, applies with equal force to other experimental studies that should be made in order to obtain better constructed highways and better maintenance of them, both county and state.

"Purdue University has offered to make these studies and experiments for the State Highway Commission and the counties, and to bear part of the expense of the same if the State Highway Commission out of its funds will contribute annually to such work."
"This Commission is of the opinion that under the circumstances it would be justified in expending for such purpose annually at least the sum of twenty-five thousand dollars, and that such expenditure would result in much benefit to the counties and the state.

"The fund would be turned over to Purdue University in quarterly instalments, and would be expended only to pay the cost of research and experimental work for the Highway Commission. The work would be under the control of a joint committee of six, composed of three members appointed by this Commission and three members appointed by the School of Engineering of Purdue University.

"This Commission would therefore like to have your official opinion as to the legality of such an expenditure by it out of its highway funds for the purposes above outlined and in the manner above specified. If you conclude that such an expenditure is authorized, out of what particular appropriation made for the Commission should it be paid. We desire to call your attention particularly to Section 26 of the State Highway Act of 1933."

The section, to which you refer in the last sentence of your letter, is as follows:

"The state highway commission may cooperate with and assist Purdue university engineering school and the several counties of the state in developing the best methods of improving and maintaining the highways of the respective counties. For the purpose of disseminating knowledge of highway maintenance methods best suited to various sections of the state, the county and state highways officials may hold joint road meetings in these various sections."

Section 26, Acts of 1933 (Chapter 18), page 85.

There is no other provision in the State Highway Law which gives any indication of authority for the Commission to make the expenditure. The State Highway Commission of Indiana is a statutory agency and of course can only act and spend money as authorized by some act of the legislature.
In a former opinion from this office, the question was considered, Whether your Commission could purchase small tracts of land along highways and expend state funds to beautify these tracts as a resting place for travelers on the highway where they might stop? This office said that no such authority was given by any statute, and therefore the expenditure could not be made. (Opinions Attorney General, 1934, page 78.)

The real question that I am called on to determine is, Whether or not the legislature, in enacting Section 26 of the State Highway Act of 1933, intended to authorize your Commission to make the expenditure you suggest in your letter? Section 26 contains no direct authorization for the Highway Commission to make any expenditure of money. Can the language of Section 26 be interpreted as an implied authority for the disbursement?

It may be assumed that the language, "may cooperate with and assist", contemplates that some expenses would be incurred by the Commission in the cooperation and assistance in road study. It seems to me that is all that Section 26 means, so far as the expenditure of money is involved.

If the legislature had intended that any considerable sum of money from the state highway funds should be turned over to Purdue University by the Commission, I believe such an intention would have been expressed in more certain and apt language by the lawmaker body. The money could have been appropriated directly to the University to be used in cooperation with the Highway Commission, or, the legislature could have indicated in Section 26 an approximate sum to be used in the cooperation work.

Moreover, there is nothing in either the 1933 or the 1935 Biennial Appropriation Acts to show that the legislature had in mind a grant of any sum to the University by the Highway Commission.

The 1935 Act appropriates a definite sum for each of the fiscal years beginning July 1, 1935, and July 1, 1936, and provides in part as follows:

"Provided, further, That from funds herein appropriated expenditures made for the specific purpose of providing miscellaneous services which shall consist of (a) payments for general repairs, motor ve-
vehicle repairs, light, heat, power and water, transportation, communication, printing other than office supplies, other operating expense, office supplies, laboratory supplies, motor vehicle supplies and all other supplies; (b) wages for employees repairing equipment; (c) special payments for personal service; (d) payments for office equipment, laboratory equipment, motorless equipment, motor equipment and other equipment; (e) payments for the rent, purchases or construction of office and other working quarters for the commission and the work of the highway department; (f) payments for land for the construction of office or other working quarters; (g) payments for minor improvements to buildings shall not exceed one million nine hundred thousand dollars ($1,900,000), during the fiscal year beginning July 1, 1935; and one million nine hundred thousand dollars ($1,900,000), during the fiscal year beginning July 1, 1936; and

"Provided, further, That from funds herein appropriated expenditures made for the specific purposes of maintaining highways and detours, which includes the preservation and repair of surfaces, road beds, rights of way and structures, and the development of surfaces, road beds, and roadsides, and of means to facilitate and promote safety of traffic on such highways—which shall consist of: (a) wages; (b) payments for materials; and (c) payments to contractors shall not exceed the sum of three million four hundred thousand dollars ($3,400,000), during the fiscal year beginning July 1, 1935; and three million four hundred thousand dollars ($3,400,000), during the fiscal year beginning July 1, 1936; and

"Provided, further, That from funds herein appropriated expenditures made for the specific purpose of constructing and improving highways—which shall consist of: (a) wages; (b) materials purchased and used by the state highway commission forces; (c) materials purchased and furnished to contractors; (d) payments to contractors; (e) payments for judgments and interest thereon and for making of settlements by way of compromise; and (f) payments for rights of way—may equal the sum of four million six hun-
dred thousand dollars ($4,600,000) during the fiscal year beginning July 1, 1935; and four million nine hundred thousand dollars ($4,900,000) during the fiscal year beginning July 1, 1936; and

"Provided, further, That from funds herein appropriated expenditures made for the specific purpose of providing for administration and supervisory service—which shall consist of: (a) salaries and per diem; (b) traveling expenses—may equal the sum of one million dollars ($1,000,000) during the fiscal year beginning July 1, 1935, and one million dollars ($1,000,000) during the fiscal year beginning July 1, 1936; and”.

Section 1, Chapter 109, Acts of 1935, pp. 385 and 386.

These specific provisions in the Act as to how the highway funds are to be expended by the Commission, without a reference to any grant to Purdue University, lead to the conclusion that the legislature did not intend to authorize the expenditure referred to in your letter.

I am of the opinion that the expenditure would not be authorized.

WELFARE, DEPARTMENT OF PUBLIC: County department of public welfare must be organized and prepared to assume duties assigned to it as an entirety before certification may issue.

April 6, 1936.

Hon. Wayne Coy,
Administrator of State
Department of Public Welfare,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to Section 120 of Chapter 3 of the Acts of the Special Session of the General Assembly of 1936 entitled “An Act concerning public welfare.” The section in its entirety is as follows:

“Section 120. Continuation of powers. Notwithstanding the taking effect of this act, the several offi-