HIGHWAY COMMISSION, STATE: Authority of Commission to acquire certain land.

January 2, 1936.

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

Dear Sir:

This is in answer to your request of this date for an official opinion. The state of facts submitted in your letter are as follows:

"Heretofore, the City of South Bend, Indiana, has instituted a proceeding to open a Street for the purpose of acquiring the right of way for the State Highway Commission of Indiana to construct a road and bridge. Said projects have been approved by the United States of America and are to be constructed by the State Highway Commission in cooperation with the Government and with the use of Government Funds and State Funds.

"Such proceedings were had that the benefits and damages were assessed and on appeal to the St. Joseph Circuit Court, the court fixed and determined the damages of one of the property owners at $13,650.00. As a part of the plan of said projects a retaining wall is designed to be built at the rear of said property, the contract cost of which is estimated to be $28,312.00.

"It is proposed, that the State Highway Commission of Indiana purchased this property acquiring a fee simple title thereto at a cost to the State of $15,000.00. If the State Highway Commission purchases the said property the construction of said retaining wall would be eliminated, and the cost of construction across the real estate thus acquired would be done for approximately $540.00, resulting in a savings for the State of approximately $12,772.00. The buildings could be
sold by the State and the sale price thereof would thus be saved, thus adding to the above savings.”

Your question is: Has the State Highway Commission power and authority to acquire by purchase the property above mentioned which lies within the limits of the city of South Bend and expending state funds therefor?

The facts above give the details of the manner in which the proposed purchase of land is to be made. It amounts to this. May the state purchase land which it finds to be necessary for a state highway within the city of South Bend? The State Highway Commission has found it necessary and to the public interest that such highway be built. The project is one approved by the United States Government under the Acts of Congress and Federal money will be used for the highway work. The authority of the Indiana Highway Commission to purchase property must be found, of course, in the Indiana Statutes.

In the case of Hammond, etc. Ry. Co. v. State Highway Commission, 198 Ind. 456, the question arose as to whether or not the Commission had authority to improve a street in the city of Hammond as a part of the highway system. The court ruled that the authority existed, and the Federal Act, as well as the State Highway law, was referred to as conferring power on the Commission.

In 1935 the State Highway law was further amended by providing for cooperation with the Federal Government. Section 10 of Chapter 88 of the Acts of 1935 amends Section 27 of the Highway Commission law and authorizes the State Highway Commission to enter into contracts with the United States Government relative to the construction and maintenance of roads and pledges the good faith of the state to make available funds sufficient to equal the sum apportioned to the state by the United States Government. The Commission is further authorized to cooperate with the United States Government under any Federal law in any manner necessary to secure for the state the proportion of Federal appropriation.

In my opinion the proposed purchase will be legal and your question is answered in the affirmative.