

HIGHWAY COMMISSION, STATE: Right of county commissioners to expend money for reconstruction and repair of highways.

November 13, 1937.

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

Dear Sir:

This will acknowledge receipt of your letter of November 8 in which you submit the following questions with reference to chapter 135 of the Acts of the Indiana General Assembly of 1937:

“First: Can the board of county commissioners of a county, in constructing or reconstructing county highways, carry out the work using the highway forces of the county, under the provisions of this Act or is it necessary that contracts be awarded therefor?”

“Second: Can a board of county commissioners of a county, in constructing or reconstructing county highways, under the provisions of said Act, furnish material and labor therefor or is it necessary that they advertise and receive closed bids for the materials?”

In answer to your first question your attention is directed to subsection (b) of section 6 of the above entitled Act which reads as follows:

“(b) Any county proposing to construct or reconstruct any highway shall submit to the commission project statements, setting forth the proposed construction or reconstruction and, if it shall be approved by the commission, the county shall furnish the commission with such surveys, plans, specifications and estimates therefor as it may require, and the same shall be subject to the approval or disapproval of the commission. Upon approval of the plans, specifications and estimates the board of commissioners of the county shall advertise for, receive and open bids for the construction or reconstruction proposed. The award of the contract therefor shall be subject to the

approval or disapproval of the commission and the highway construction or reconstruction shall have final approval from the commission before the final estimate is paid on the contract by the board of commissioners of the county. If the cost of any proposed construction or reconstruction does not exceed one thousand five hundred dollars per mile of highway it shall not be necessary for the board of commissioners of the county to furnish the commission with surveys, plans, specifications and estimates, but a summary statement thereof made in compliance with the rules of the commission promulgated hereunder shall be sufficient to require the commission to approve or disapprove the project."

It will be noted from the reading of the above section that counties proposing to construct or reconstruct any highway where the cost of any such construction or reconstruction exceeds one thousand five hundred dollars per mile, it is necessary that plans and specifications covering such construction or reconstruction be first approved by the State Highway Commission.

It is my opinion that the legislature inserted this provision for purposes of obtaining some degree of uniformity in the construction of county highways where the money expended per mile was in a substantial amount.

As to whether or not it is mandatory that a contract be let for such proposed construction or reconstruction, which contract covers total costs, your attention is directed to section 36-1114, Burns Indiana Statutes, 1933 revision, which provides that the official in charge of repair and maintenance of county highways shall file with the county auditor a requisition for all tools, implements, supplies, materials and equipment needed. The Act then provides for certain publication of notices for the receipt of bids on the articles or materials desired. The Act then provides:

"The board of county commissioners shall have the right to enter into a contract with the lowest and best bidder, for one (1) or more of the items for which bids are received, but under no circumstances shall the board of county commissioners be required to purchase from one bidder, all items for which bids are re-

ceived. The board of county commissioners may enter into a contract at the bid price for a quantity less than the quantity estimated in the requisition, but shall not enter into any contract for a larger quantity than was requisitioned. Requisitions for purchase of machinery, equipment and road materials shall have attached thereto detail specifications. Detail specifications shall be recognized standard specifications which will allow competitive bidding. All requisitions shall bear the file stamp of the county auditor showing date filed: Provided, That the officer in charge of repair and maintenance of county highways may expend with the approval of the board of county commissioners, for the purchase of supplies, tools and materials, not to exceed three hundred fifty dollars (\$350) in any one (1) month without the receiving of bids. The board of county commissioners shall record all bids received in a permanent record to be known as "Bidder's Record," said record to be preserved by the state board of accounts, and which record shall be open at all times to the inspection of the public and shall enter thereon orders for purchase, and reasons for selection, and the reasons for rejection if the low bid is not accepted. Each bidder shall accompany his sealed bid with a bidder's bond or certified check payable to the county treasurer whenever the total of such bid is in excess of five hundred dollars (\$500); said bond or check shall be not less than ten (10) per cent of the total bids; checks of unsuccessful bidders to be returned to them upon selection of successful bidders and check or bond of successful bidder to be held until delivery, or if contract, until completion of contract.

"The board of county commissioners shall employ or contract with such teams, trucks or truck, contractors, and men as may be necessary to assist in and carry on the repair work on the roads under the charge of the official in charge of repair and maintenance of county highways, and the board of commissioners shall designate and employ all such assistants and employes and shall determine the rate of wages to be paid for labor, trucks and teams. (Acts 1935, Ch. 145, Sec. 1, p. 496.)"

It will be noted from a reading of this Act that the county commissioners are specifically authorized to purchase materials and supplies for the repair and maintenance of county highways and are given specific authority to employ or contract with such teams, trucks and men as may be necessary to carry on the work of maintenance and repair of said highways.

It is my opinion, therefore, that the two Acts are not in conflict and that the county commissioners would have authority to use their highway forces to repair, reconstruct and maintain county highways subject only to the requirements of the Acts above quoted in the purchasing of materials, supplies and equipment and the approval of the state highway commission.

If the work undertaken is new construction of the type that is not included in the terms "reconstruction" and "repair," then certain statutory requirements governing the location, establishment and construction usually govern such proceedings. Since new construction is evidently not included in your question, this opinion will not be deemed to cover new construction.

As to your second question, it is my opinion that the board of county commissioners in the reconstruction and repair of county highways have authority to furnish the material and labor necessary under the above mentioned restrictions subject to the general requirements that all expenditures for the purchase of materials must first be advertised and subject to competitive bidding if the same exceeds an expenditure of three hundred fifty dollars in any one month.

GOVERNOR'S OFFICE: Construction contracts. Printing contracts. Printing contracts not governed by. Chapter 319 of Acts of 1935.

Hon. M. Clifford Townsend,
Governor of the State of Indiana,
State House,
Indianapolis, Indiana.

November 16, 1937.

My Dear Governor Townsend:

I have before me your letter of November 10, 1937, requesting an interpretation of the provisions of chapter 319 of the Acts of 1935 as to whether or not said Act would ap-