

**ACCOUNTS, STATE BOARD OF: County commissioners,
right to contract for supplies to be furnished on next
year's appropriation.**

December 9, 1937.

Hon. W. P. Cosgrove,
State Examiner,
Division of Accounting and
Statistics,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of December 1 in which you submitted the following questions:

“Can a board of county commissioners legally let contracts for highway materials and supplies to be used and paid for in 1938, before January 1, 1938?”

“Chapter 145, of the Acts of 1935, provides that notice shall be given of the fact that the board of county commissioners will receive sealed proposals at the *next regular* meeting for furnishing tools, materials, etc.

“If a requisition is prepared by the county highway supervisor too late to give a notice for the regular meeting of the board of county commissioners on the first Monday of a given month, must the date for receiving of bids be fixed for the regular meeting the following month?”

In reply to your first question, your attention is directed to section 26-525, Burns Indiana Statutes, 1933 Revision, which reads as follows:

“No board of county commissioners, officer, agent or employee of any county shall have power to bind the county by any contract or agreement, or in any other way, to any extent beyond the amount of money at the time, already appropriated by ordinance for the purpose of the obligation attempted to be incurred, and all contracts and agreements, express or implied, and all obligations of any and every sort beyond such existing appropriation are declared to be absolutely void. (Acts 1899, Ch. 154, Sec. 25, p. 343.)”

It will be seen from a reading of the above statute that an appropriation is necessary before a contract can be entered into.

Section 26-522, Burns Indiana Statutes, 1933 Revision, contains a further provision that no warrant shall be drawn upon or money paid out of the county treasury unless an appropriation by the county council therefor has been made for the calendar year in which the payment is made and which appropriation remains unexhausted. As to whether or not contracts may be made in December of 1937 involving the expenditure of money in the calendar year of 1938, it is my opinion that if the conditions of the above statutes are followed, such contracts are valid. The fact that such contract might extend beyond the term of the commissioners entering into such contract would not invalidate them. As was said in the case of *Jessup v. Hinchman*, 77 Ind. App. 460, "It may be said that as a general rule contracts extending beyond the term of office of the members of a board of county commissioners are valid if made in good faith."

Your second question deals with chapter 145 of the Acts of 1935, which reads in part as follows:

"Be it enacted by the General Assembly of the State of Indiana, 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 that is needed. Such requisition shall be on form prescribed by the State Board of Accounts. The county auditor shall cause the requisition to be kept available for public inspection and shall cause to be published in two newspapers of opposite political faith in the county, the fact that the board of county commissioners will receive sealed proposals at the *next regular meeting* for furnishing the tools, implements, machinery, supplies, materials or equipment requisitioned by the official in charge of the repair and maintenance of county highways. This legal notice shall show the estimated quantity of any article to be purchased, the time that delivery will be required, and time and place bids will be received and considered. Such notice shall be published at least ten

days previous to the *regular meeting* of the board of county commissioners when such bids will be considered.”

It will be noted from a reading of the above section that the term “regular meeting” appears twice in said section and continues with detailed requirements as to the publication of notice and the purchase of such supplies. The Act further provides that supplies, tools and materials not to exceed \$350.00 in any one month may be purchased without receiving bids therefor.

It is my opinion, therefore, that the provisions of the Act contemplate the purchase of these supplies at regular meetings and not at special meetings of the board of county commissioners; that the right to purchase up to \$350.00 worth of supplies in any one month without notice was designed for the meeting of emergencies or small items needed that might have been overlooked at the time the requisition was filled.

It is my opinion, therefore, that your second and third questions should be answered in the affirmative.

HIGHWAY COMMISSION, STATE: Contracts for new construction. Manner of letting.

December 13, 1937.

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

Dear Sir:

This will acknowledge receipt of your letter of December 8 in which you refer to my letter of November 13. Your question now submitted has to do with the proper method of procedure where new construction of county highways is contemplated to be paid for by gasoline tax funds.

In reply to this question your attention is directed to subsection (c), section 6, chapter 135, Acts of the Indiana General Assembly of 1937, which reads as follows:

“(c) All construction of county highways from the funds provided by this Act shall be undertaken by the board of commissioners of the county in the manner