

prescribed by this Act, and so far as applicable in the manner authorized and permitted by the county unit highway Act, being chapter 112 of the Acts of the General Assembly of 1919 and any and all Acts amendatory thereof and supplemental thereto, except that the county commissioners shall not receive or act upon any petitions which might otherwise be received and acted upon by virtue of that Act and shall not make or issue any bonds under the terms of that Act for highway construction purposes, so long as any law of this state prohibits the making and issuance of bonds under said Act."

It will be noted from this section that the term "construction" contemplates new structure, including locating, surveying, plans, acquiring rights of way, actual building, etc. As to this type of work, the board of commissioners are directed to follow insofar as applicable the proceedings authorized and permitted by the County Unit Highway Act. This Act is found in sections 36-301 to 36-331, Burns Indiana Statutes, 1933 Revision. This Act requires that contracts be awarded for this type of work.

**AUDITOR OF STATE: Motor vehicle highway account—
proper fund against which December, 1937, bills shall be
paid.**

December 14, 1937.

Hon. Laurence F. Sullivan,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of December 14, 1937 with reference to the manner of paying the salaries of Indiana State Police officers and of the operating expenses of the Bureau of Accident Prevention. You submit the following questions:

"You will please determine for this office if salaries payable January 1, 1938 for services rendered in De-

ember, 1937 and other operating expenses incurred previous to December 31, 1937 and to be paid at a later date, should be paid from the general fund or from the motor vehicle highway account.

"If the disbursements made in January, 1938 are charged to the State General Fund shall the Auditor of State credit the general fund with receipts of December, 1937 paid into the department after January 1, 1938?"

In answer to this inquiry your attention is directed to the provision of the Biennial Appropriation Act which appears on page 525 of the Acts of the Indiana General Assembly of 1937 which deals with the appropriation for the Indiana State Police and reads as follows:

"Provided that the amounts expended from the appropriation herein made for the Indiana State Police shall be paid and deducted from the motor vehicle highway account, as provided in the Act creating such account, on and after January 1, 1938."

Your attention is further directed to a further provision with reference to the operating expenses of the Bureau of Accident Prevention, which reads as follows:

"Provided, That the amounts expended from the appropriations herein made for the bureau of accident prevention, shall be paid from the motor vehicle highway account, as provided in the Act creating such account, on and after January 1, 1938.

It will be noted that the above quoted provisions apply to expenses incurred on and after January 1, 1938.

Your further attention is directed to chapter 135 of the Acts of the Indiana General Assembly, which creates the motor vehicle highway account. The term "motor vehicle highway account" is defined in said Act as follows:

"(a) The term "motor vehicle highway account" means the account of the general fund of the state known as the "motor vehicle highway account" to which is credited collections from motor vehicle fuel license fees, registration fees, transfer fees, drivers' and chauffeurs' license fees, weight taxes, certificate of title

fees designated auto theft fund and any other taxes or fees placed in said account by law, which are imposed on or on account of motor vehicles or motor vehicle transportation."

Section 3 of this Act defines the term "net amount" and reads as follows:

"Sec. 3. The money collected for the motor vehicle highway fund and remaining after the payment of all expenses incurred in the collection thereof, and after the deduction of any amount appropriated by the General Assembly for the division of public safety, for policing the highways of the state, is herein referred to as the net amount in the motor vehicle highway account, and shall be allocated to and distributed among the commission and political subdivisions herein designated as follows:"

It is noted from a reading of the above Act that from the motor vehicle highway account there is to be deducted the amounts appropriated by the General Assembly for the Division of Public Safety which in my opinion includes the Indiana State Police and the Bureau of Accident Prevention.

You will note further that the Act setting up the motor vehicle highway account provides in section 15 thereof that "this Act shall take effect on the 31st day of December, 1937."

Section 11 of the Act contains this further provision:

"Sec. 11. All license and other fees and taxes imposed for the year 1938 which are payable into the motor vehicle highway account by any provision of law, although collected during the year 1937, and all license fees and taxes imposed and collected thereafter, which are payable into the motor vehicle highway account by any provision of law, shall be allocated and distributed in the manner provided in this Act."

It is my opinion, therefore, that all salaries and operating expenses of the Indiana State Police and the Bureau of Accident and Prevention incurred previous to December 31, 1937, should be paid from the general fund.

It is my further opinion that under the provisions of section 11 all license and other fees and taxes imposed by the

Motor Vehicle Laws and included in the definition of the motor vehicle highway account, even though collected in 1937 should be set up and should constitute the motor vehicle highway account from which account the various expenditures above named should be paid for services rendered on and after January 1, 1938.

HEALTH, STATE BOARD OF: Rules and regulations governing restaurants.

December 14, 1937.

Verne K. Harvey, M. D.,
 Director,
 Indiana State Board of Health,
 Indianapolis, Indiana.

Dear Doctor Harvey:

Receipt is acknowledged of your request for an official opinion dated November 8, 1937. This request is as follows:

“The Food and Drug Bureau has in mind the promulgation of rules and regulations for the sanitary control of public eating establishments. A copy of said proposed rule is herewith submitted for your further information. The proposed rule and regulation sets out the general scope of the proposal.

“Section 35-1207, Burns Indiana Statutes Annotated, 1933, provides in part as follows: ‘* * * The State Board of Health shall adopt such rules as may be necessary to enforce this Act and shall adopt rules and regulations regulating the minimum standards for food and drugs, * * *.’ As you note from the proposed rule and regulation, it seeks to grade restaurants and similar establishments by giving to the particular restaurant a grade, such as ‘A,’ ‘B,’ or ‘C.’ It further proposes that the owner or operator of the restaurant shall keep posted in a conspicuous place where the same is displayed to the general public, the certificate of such grade.

“Does the Indiana State Board of Health act within its right by adopting such a rule or regulation and does it have the authority, under the Act, to punish any owner or operator for failure to keep posted in a conspicuous place such a certificate of grade?

“It is observed that a restaurant or other similar establishment falling below the minimum grade may be charged