I am of the opinion therefore, that the provisions requiring the financial statement to be "prepared and attested as correct by a certified public accountant," is a reasonable and valid enactment of the Legislature, and should be required by the State Highway Commission of Indiana, of each bidder.

Each of the two questions submitted are therefore answered in the negative.

TAX COMMISSION, STATE BOARD OF: Whether a county may issue bonds payable by a tax levy for road building purposes.

July 18, 1938.

Hon. C. R. Benjamin,
Member, State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Mr. Benjamin:

This will acknowledge receipt of your letter of July 11, in which you submit the following question:

"May a county issue bonds payable from property tax income for the purpose of purchasing right-of-way for feeder roads?"

The question of improvement of secondary or feeder roads is discussed in section 20, chapter 256 of the Acts of the Indiana General Assembly of 1937. This section authorizes the State Highway Commission to enter into agreements for the construction or maintenance of secondary or feeder roads with the various municipalities and board of county commissioners through which the same passes. The Act then provides that:

"Said boards of commissioners and said municipalities are hereby authorized by grant, donation, purchase or condemnation to procure the necessary right-of-way for such improvement and to pay for the same out of the funds of such county or municipality."

The question, therefore, arises as to the source from which the funds of such county can be obtained for such expenditure. The matter of acquiring right-of-way for feeder roads is a part of the program of construction of such roads.
Chapter 135 of the Acts of the Indiana General Assembly of 1937 defines the term "construction" when used in reference to cities, towns and counties as including "locating, surveying, planning, acquiring rights-of-way and the cost thereof."

Since acquiring rights-of-way is a part of construction costs, we are, therefore, brought face to face with the right of the county to now issue bonds to pay for the cost of construction of county highways. Attention is accordingly directed to chapter 136 of the Acts of the Indiana General Assembly of 1937, which provides that:

"* * * and any and all of the provisions of any law or any part of any law which authorizes the issuance of any bonds or other evidence of indebtedness, payable by taxation, for the construction or improvement of any free gravel or macadamized road, are hereby suspended, and shall continue to be suspended until this act is repealed, * * *"

While it may be contended that this is not an effort to construct a free gravel road, it is my opinion that the program is at least an effort to aid in the construction of a hard surfaced road, which is the meaning usually ascribed to the term "macadamize."

It is my opinion, therefore, that there is no authority for the issuance of bonds payable by a direct tax on property for such purpose. Neither do I think that bond issues may be authorized on the theory of reconstruction or repair of present existing highways. While the term "repair" might be broad enough to include a widening, yet section 36-905 Burns' Indiana Statutes, 1933 Revision, provides that:

"* * * no tax shall be levied hereafter by any county in this state for the repair, maintenance or preservation of county highways, except by unanimous vote of the county council in a case of extraordinary emergency or indispensable necessity."

Our court has had occasion to recently comment upon this section, in the case of Board of Commissioners v. Farmers State Bank of Eaton, 10 N. E. 769, wherein the court stated that the principal purpose of the section last quoted was to limit such expenditures of money to the gasoline tax funds received by the county.
I have been unable to find any statute which authorizes the issuance of bonds payable by tax levy for the construction or improvement of county highways. It is my opinion, therefore, that the county may not issue bonds for such purpose, except in case of extraordinary emergency or indispensable necessity.


July 19, 1938.

Mr. C. L. Williams, M.D.,
Superintendent, Logansport State Hospital,
Logansport, Indiana.

Dear Sir:

This will acknowledge receipt of your inquiry of July 15, 1938, as follows:

"I am writing to you in regard to an opinion upon a sterilization according to the Acts of 1935, chapter 312, page 1502.

"On May 18, 1938 there was a patient admitted to this hospital from St. Joseph County. The judge of the court, after hearing the evidence, committed the case to this hospital and authorized the sterilization of this case.

"Our study of the case and diagnosis confirms the decision of the judge that the case should be sterilized. When we notified the nearest relative that the procedure was to be performed, we received a letter from this relative objecting to the procedure.

"The question that comes to my mind in regard to proceeding with the sterilization of this case is: Can a letter containing an objection be sufficient evidence to prevent this sterilization? I feel that a letter containing an objection is not sufficient evidence to withhold the sterilization operation because section 2 of the above mentioned Act outlines the method of procedure which should be followed to stay the performance of such an operation, and the letter of objection is not according to the manner set forth in section 2 of the Act."