vising, inspecting, actual building and matters incidental to the construction of a highway, including, but not in limitation of the foregoing, locating, surveying, planning, acquiring rights-of-way and the cost thereof.”

It will be noted from the above definition of the term that the money may be spent for the actual building of highways and matters incidental to the construction thereof. It is my opinion, therefore, that such surplus funds may be expended in part in the purchase of such machinery as is absolutely necessary for and in the use of the construction of a county highway.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Banks and banking. National bank in foreign state not required to obtain permit to do business in this State.

August 30, 1938.

Hon. E. H. DeHority,
Bank Supervisor,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Mr. DeHority:

This will acknowledge receipt of your letter of August 24, in which you inquire as to the necessity that national banks domiciled outside the State of Indiana secure permission to transact business in this state before proceeding so to do.

In reply to this inquiry, your attention is directed to section 324 of the Financial Institutions Act which reads as follows:

"Any bank, trust company or building and loan association organized under the laws of any other state, hereinafter referred to as a corporation or foreign corporation, shall, before transacting business in this state, procure a certificate of admission to this state from the department and the secretary of state, in the manner hereinafter provided, and shall otherwise comply with the provisions and be subject to the regulations prescribed in part VII of this Act."

It will be noted from a reading of this section that language used is "any bank, trust company or building and loan associa-
tion organized under the laws of any other state, * * *, shall, etc." The question therefore arises as to whether a national bank domiciled in a foreign state is such a corporation as comes within the provision of the above designated Act.

Needless to say, national banks are not organized under the laws of a state, but are organizations governed and chartered by Federal statutes. This proposition has been discussed in the case of Stewart v. Atlantic Nat. Bank of Boston, 27 F. (2d) 224, wherein the following language appears (on page 228):

"However important may be the general question, to what extent a state may have authority to impose regulations upon the right of a national bank seeking to carry on or transact business in a state other than that named in its charter, that question is not here involved, for the reason that a national bank is not a foreign corporation within the terms of the constitutional and statutory provisions of Arizona referred to; nor is it an association incorporated under the laws of any other state or territory. We find nothing in the phraseology of the statute (paragraph 2226, supra), which indicates an intention to classify national banks created by national law as foreign corporations."

It is my opinion, therefore, that a national bank is not required under the laws governing financial institutions in the State of Indiana to procure a certificate of admission to do business in the State of Indiana before transacting business in this state.

It will be noted that the general law governing foreign corporations for profit expressly excepts the business of banking from its provisions. (Sec. 25-301, Burns' Indiana Statutes, 1933 Revision.)