teachers concerning whom you inquire are teachers of the school city of Bloomington, or are teachers of the university. It is very definitely stated that the teachers are to be paid by the university, and, presumably the contract is to be between the teachers and the university. At any rate, the school city of Bloomington, under the plan proposed, apparently has no contract with such teachers and has no jurisdiction over them. Upon that basis, it seems to me that the teachers employed in the University Laboratory School are teachers of the university. If that is true, then they would come under the retirement system applicable to other teachers in the university and not under the general Indiana Retirement Fund Act.

HIGHWAY COMMISSION, STATE: Cities and Towns—Duty to maintain streets over which a state highway passes.

February 11, 1938.

Hon. Earl Crawford,

Chairman, State Highway Commission

Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of February 7, in which you submit the following question:

"Since the Legislature has relieved all cities and towns of the responsibility for the construction or maintenance of the roads marked as state highways through their municipalities, did it not, therefore, relieve them of any liability that might result from an accident due to the condition of the surface of that portion of the streets which has been made the responsibility of the state highway commission for construction and maintenance?"

In reply to this question, your attention is directed to section 2, chapter 256 of the Acts of Indiana General Assembly, 1937, which reads in part as follows:

"*** From and after the 1st day of January, 1938, said commission, to the extent of the funds available for the purpose, shall maintain and (,) as it determines necessary and the funds required are available, to
(shall) construct and reconstruct the roadway of the streets in all incorporated cities and towns in the state, excepting in cities of the first class, over which highways in the state highway system are routed: * * *"

The same section further provides that:

"* * * Upon the completion of any such street, it shall be the duty of said commission to maintain the roadway of said street so constructed by said commission, and it shall be the duty of such city or town to maintain the drainage of such street and the curbs, sidewalks and grass plats thereof. Whenever by this section the state highway commission is charged with the maintenance of any such street, said commission may regulate and control parking on such street and may remove all hazards to traffic therein. * * *"

It is apparent, therefore, from a reading of the above sections that the state highway commission is charged with the duty to maintain the roadway of the street over which such state highways pass. Since this authority is given, it is evident that the city or town has no further duty to maintain such streets. The Appellate Court, in passing upon this question recently, uses the following language:

"* * * Section 22, as amended in 1923, gives the state highway commission the absolute power to take over certain streets inside of cities and towns, and improve the same without consulting the authorities of the city or town. The local municipal corporation has nothing to say as to the character of the improvement to be made, and having no control over the improvement of streets which are taken over by the commission and made a part of the state highway system, and the exclusive control over the improvement of such streets being given to the commission, it is but reasonable to conclude that the legislature, when it relieved the cities and towns of the duty of maintaining such streets, and placed such duty on the commission, intended that the authority of the state highway commission should be exclusive of the city or town. It is quite apparent that the Legislature did not intend that two different governmental organizations should have control over the
same highway and be responsible for its safety. * * *"

It is my opinion, therefore, that where the state has taken over a street as a part of its highway system, the municipality has no further duty to maintain the same, except in cities of the first class.

HEALTH, STATE BOARD OF: County Health Officer has jurisdiction in rural sections and towns. Expense for treatment and other incidental expense from towns as well as rural sections paid by county.

February 11, 1938.

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

Dear Sir:

Receipt is acknowledged of your request for an official opinion dated February 9, 1938. This request is as follows:

"Section 11, chapter 217, Acts of 1935, same being section 35-128, Burns’ Indiana Statutes Annotated 1933, provides in part as follows:

"Beginning with the first day of January, 1938, there shall be a part time health officer in every county, and beginning with the first day of January, 1939, there shall be a part time health officer in every city of this state who shall be appointed and shall possess the powers hereinafter prescribed in this Act. As soon as a part time county health officer is appointed under the provisions of this Act, such officer shall have jurisdiction in all towns of such county and the office of town health officer shall thereupon be abolished, but until a part time county health officer is appointed, the health officer of each town within such county shall continue in office and shall perform his duties as such under the laws now in force. * * *"