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 hereinbefore 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 jurisdic-
tion 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. * * *"
If, under this statute, a part time county health officer authorizes treatment for syphilis or other communicable disease, does the county pay for this expense or is it chargeable against the town?

Who pays for any other expenses attendant as a result of quarantine, such as care for indigents when the breadwinner is quarantined? Is it the county or the town?

Both of the above questions arise in the treatment and care of persons living within the town.

A portion of section 35-112, Burns' Indiana Statutes Annotated 1933 (sec. 8, ch. 144, Acts of 1909 as amended), reads as follows:

"* * * And the expenses legally incurred for the protection of the public health inside the corporation of cities and towns shall be paid out of the treasuries of the cities and towns in which the work is done; * * *"

Later an Act concerning health, sanitation and inspection was passed by the Legislature. See: Acts of 1935, chapter 217. In section 9 of chapter 217 of the 1935 Acts (section 35-126, Burns' Indiana Statutes Annotated 1933), we find a portion of said section pertaining to expenses, which reads as follows:

"* * * All expenses so incurred shall be a charge against the respective counties or cities. * * *"

No provision is found charging expenses against the towns. Section 11, a portion of which you quote in your request for an opinion, gives to the part time county health officer jurisdiction in towns, by abolishing the office of town health officer. The conclusion to that portion of section 11 which you have quoted is that there is no such official as town health officer; that the duties heretofore performed by a town health officer under a previous law are how to be performed by the county health officer. A further conclusion is that chapter 217 of the Acts of 1935 (section 35-129, Burns' Indiana Statutes Annotated 1933) repeals that portion of section 35-112, Burns' Indiana Statutes Annotated 1933, pertaining to the payment of expenses legally incurred by towns.
"* * * All laws and parts of laws in conflict with any of the provisions of this Act are hereby repealed. * * *"

It further follows that a town budget or appropriation for the payment of expenses of a health department of said town could not be approved since by chapter 217 of the Acts of 1935 a town health officer is abolished and the duties heretofore performed by said town health officer become the duties of the county health officer. Therefore, answering your first question, if a part time county health officer authorizes treatment for syphilis or other communicable disease the county pays the expenses thereof, whether the person lives in a rural section or within the boundary of a town.

Your second question, namely: "Who pays for other expenses attendant as a result of quarantine, such as care of indigents when the breadwinner is quarantined?" presents a similar question. It is presumed that this inquiry is directed toward the payment of groceries and fuel, etc., when the breadwinner is quarantined.

This question is fully answered in the case of Board of Commissioners of County of Pike v. Hime, 66 Ind. App. page 620. Quoting from page 626 and page 627 of said decision we find the following significant language:

"It is not the purpose of the law to pay for the care and treatment of afflicted persons who are amply able to pay such expenses for themselves, but it is the humane purpose of the health laws of this state to draw no fine distinctions which may prevent prompt action and delay efficient means designed to stamp out dangerous diseases and safeguard the public health. Where persons are so afflicted and so situated as in the case at bar, and are indigent and unable to pay for their necessary care and treatment, and the health commissioner has taken cognizance of the situation, appointed a competent physician to care for and treat the persons so isolated, maintain the quarantine and protect the public health, the jurisdiction and control of the health commissioners is complete, and the county may be held liable for all expense reasonably necessary to the protection of the public health. The decision of the health commissioner with reference to the necessity for action and the means to be employed, in the absence
of connivance or fraud, is conclusive and final. Morgan County v. Seaton (1890), 122 Ind. 521, 525, 24 N. E. 213; Board, etc. v. Osburn (1892), 4 Ind. App. 590, 594, 31 N. E. 541.”

My conclusion to your second question is that if the quarantine is executed by the county health officer the county pays for other expenses attendant as a result of the quarantine, whether the person quarantined lives in a rural section or in the town.

ACCOUNTS, STATE BOARD OF: Cities, Towns and Townships — Liability in tort of municipal corporations and their rights to insure against such liability.

February 14, 1938.

Hon. W. P. Cosgrove,
State Examiner, State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of February 5, wherein you request an opinion upon the following questions:

“1. Can a civil city or civil town purchase public liability and property damage insurance to cover police cars, fire trucks and other motor vehicles and legally pay the premiums for such insurance out of public funds?

“2. Can a township trustee purchase public liability and property damage insurance to cover township-owned school buses and injury on school premises, and legally pay the premium for such insurance out of public funds?

“3. Can a school city, or school town, purchase public liability insurance covering damages for negligence and pay the premium for such insurance out of public funds? Can the premium for such insurance be paid from athletic funds or other activities funds?”

The answer to your first question must be in the alternative due to the phrase “other motor vehicles” as from the facts contained in your letter I am unable to ascertain in what