intended to apply to only those children whose father died in active service.

It is my opinion, therefore, that since the above named Austin L. Fear was discharged November 27, 1918 and did not die until July 16, 1919, his daughter is not entitled to claim the benefits of the Act.

It is my further opinion that having paid the matriculation fees without an effort to claim the benefit of this statutory provision, remission of such fees would be entirely optional with the university authorities, even if the claimant was otherwise entitled thereto.

ACCOUNTS, STATE BOARD OF: County Health Officer—May have expense for mileage on privately owned vehicle used in discharge of his duties—Rate not to exceed 6c per mile and to be paid out of a fund appropriated for said purpose.

January 12, 1938.

Hon. W. F. Cosgrove,
State Examiner,
Department of Inspection and Supervision of Public Offices of Indiana,
Indianapolis, Indiana.

Dear Sir:

Receipt is acknowledged of your request dated January 10, 1938, on the following questions, to-wit:

"Are the county health officers appointed pursuant to the provisions of chapter 217, Acts of 1935, entitled to charge and receive for mileage necessarily traveled in the performance of their duty as health officers?"

"If the answer to your question is in the affirmative, at what rate per mile should this mileage be computed?"

Portions of the sections of chapter 217, Acts of 1935 (Burns' Indiana Statutes Annotated 1933, sections 35-118 to 35-129 inclusive) applicable in the answer to your questions are as follows:

Section 1. (35-118) "* * * The salary and the actual necessary operating expenses of the county
health officer shall be paid out of the treasury of the county. * * *"

Section 4. (35-121) "* * * The salary and actual necessary operating expenses of the city health officer shall be paid out of the treasury of the city. * * *"

Section 8. (35-125) "* * * Whenever such counties shall decide so to do, all expenses incurred shall be apportioned between or among the counties in proportion to the population of such counties as determined by the last federal census. * * *"

You will note from the language used by the Legislature in portions of the Act above suggested that the salary is designated and is specific., The portions of the statute quoted above follow immediately the portion specifically fixing the salary of the health officials. In other words, the word "salary" is used and in addition thereto are used the words "actual necessary operating expenses." By the language used in the Act there is a clear statutory authority for claiming an additional sum of money on the part of the official for "actual necessary operating expenses" and county health officers appointed pursuant to the provisions of this chapter are entitled to charge and receive for mileage necessarily traveled in the performance of their duties as health officers. This item of additional claim of mileage can not, of course, be classed as an additional salary but rather as an expense reimbursement and can not be charged by the health official except when he furnishes his own means of conveyance. In other words, it is clear that a claim for mileage on the part of the health officer certainly could not be presented to the board when the automobile used belongs to the county and when the county furnishes the necessary and requisite gas and oil for the operating of such vehicle. This claim for mileage can only be presented when the vehicle is furnished solely by the health official. It is further observed that no salary of operating expense can be paid in the absence of an appropriation therefor by the county council or other appropriating body.

II.

Your second question, "If the answer to our question is in the affirmative at what rate per mile should this mileage be computed?" is before me.
In the Acts of 1933, chapter 27, section 1, pertaining to mileage: The Legislature fixed the sum of five cents for each mile necessarily traveled in the discharge of duties as supervisor of highways. In section 8, chapter 114 of the Acts of 1937, page 596 of the volume, is found the following significant language:

"* * * It shall be unlawful for any officer or employee to receive or for any officer, department, board or commission to allow any sum in excess of six cents per mile payable out of any funds, for the use or operation of any motor vehicle, owned or operated by any state officer or employee, and used in the discharge of state business within the boundaries of the State of Indiana. * * *

It is my opinion, based on the above Acts of the Legislature, that a rate of not to exceed six cents per mile should be charged.

HIGHPWAY COMMISSION, STATE: Right-of-way in streets —Cities of over 3,500 population, whether commission may purchase same.

January 13, 1938.

Hon. Earl Crawford,
Chairman, State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following question:

"Does the commission have the power to buy rights-of-way for state highways in cities of more than thirty-five hundred population?"

The determination of the above question requires a consideration of the provisions of section 2 of chapter 256 of the Acts of 1937 (Acts of 1937, page 1199). The same section appears as section 36-2902 of the December, 1937 cumulative pocket supplement of Burns’ Indiana Statutes Annotated, 1933. The section is quite lengthy. However, it will not be necessary to quote it in its entirety. It provides in part as follows: