"Provided, That where such copies are certified by the clerk, a fee for certificate, otherwise provided herein, shall be charged in addition to the fees for such copying, which certificate fee when collected shall belong to and be the property of the county, and not the property of the clerk: * * *.”

Since the term transcript, therefore, requires an official copy of a record, it is apparent that the clerk’s certificate thereon is necessarily a part of such transcript. Since, therefore, the law recognizes the necessity of the clerk’s certificate to transcripts and since the last expression of the legislature provides that all fees for preparing the transcript shall be retained by the clerk, it is my opinion that the clerk is entitled to this fee as his own.

It is my further opinion that the clerk is entitled to charge and retain as his own fees for transcripts on appeal in cases venued to his county under the provisions of the last sentence of section 7 above quoted and under the former opinion of the Attorney General issued to you under date of January 27, 1934.

LABOR, DIVISION OF: Labor Board has no jurisdiction over Government employees; employees of Government not under jurisdiction of Labor Board:

January 17, 1938.

Hon. Thomas R. Hutson,
Commissioner of Labor,
Indianapolis, Ind.

Dear Mr. Hutson:

I have before me your letter as follows:

“It is requested that you give this department an official opinion as to whether or not the Division of Labor has jurisdiction in attempting to conciliate alleged disputes between the St. Joseph County Indiana Employees, Local Union No. 135 of the American Federation of State, County and Municipal Employees and the St. Joseph County Commissioners of St. Joseph County, Indiana.”
While the powers and authority of the labor division appear to be very broad in matters of employers and employees, there is no exemption in this act as to employees of municipalities or government agencies; considering the act as a whole, it shows clearly the intention of the Legislature to not extend the jurisdiction of the division of labor to the extent of giving jurisdiction to municipal employees, because the Act throughout makes reference to employers and employees and places of employment that are now under the jurisdiction of the Industrial Board, Bureau of Mines, Bureau of Boiler Inspection, Bureau of Factory Inspection, Bureau of Women and Children, and laws relating thereto. Therefore, it clearly indicates the type of employment to which your department has jurisdiction.

It is my opinion that your Division of Labor has no authority or jurisdiction over employers and employees where they are a part of any government agency or municipality.

TAX COMMISSION, STATE BOARD OF: Appropriation by county councils of surplus in motor vehicle highway account distributed to counties—necessity for notice. Notice of appropriation of county’s share of motor vehicle highway accounts—whether necessary.

January 18, 1938.

Honorable Philip Zoercher,
Chairman, State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Mr. Zoercher:

I have before me your letter in part as follows:

"Under the provisions of chapter 135 of the Acts of 1937, the surplus existing in the county highway maintenance fund at the end of any year shall thereafter be used for construction and re-construction of highways by the respective counties."

You submit the following questions:

(1) "Will it be necessary for the county council to appropriate this money?"
(2) "Must notice of such appropriation be given taxpayers so that they may appear and be heard thereon?"

(3) "Must such appropriation, if it is made at a time other than when the general budget is prepared, be referred to this board for approval?"

Section 4(b) of chapter 135 of the Acts of 1937 provides as follows:

"(b) All funds allocated or distributed to the respective counties which are not used for maintenance shall be used for construction and reconstruction of the highways of the respective counties. Any surplus existing in the maintenance fund at the end of any year shall thereafter be used for construction and reconstruction of such highways by the respective counties."


It is my understanding from your letter that all of the above questions relate to the surplus existing in the maintenance fund at the end of any year which the statute provides "shall thereafter be used for construction and re-construction of such highways by the respective counties."

In an opinion dated November 18, 1937, addressed to yourself as chairman of the State Board of Tax Commissioners I held that this surplus should be appropriated by the proper appropriating body before expenditure. I adhere to that opinion and your first question is therefore answered in the affirmative. See also Acts of 1935, page 837, which provides, among other things, that before any money received by the several counties from the state, including the gasoline fund and the motor vehicle fund, shall be expended, it must be appropriated by the proper officers authorized by law to make appropriations. I do not think that this provision of the 1935 Act, *supra*, has been repealed. The only question which could arise is as to whether the language of section 4(b), *supra*, is sufficient in and of itself to constitute an appropriation. I doubt whether it is sufficient. I think the better view is to hold that an appropriation of this fund by the county council is necessary before it can be spent.

Your first question, as already stated, is answered in the affirmative.
As pointed out in my opinion of November 18, 1937, above referred to, I think that ordinarily the unexpended balance or surplus existing in the maintenance fund at the end of any year should be considered as an estimated receipt for the following year and as such included in the annual budget and appropriated at the same time as the other regular appropriations are made, provided, of course, there exists a proper use to be made of such fund in the construction or reconstruction of highways. Of course, this fund is ear-marked for construction and reconstruction purposes and may be permitted to accumulate. If, however, the county has a construction or reconstruction program requiring the use of this fund it should ordinarily be appropriated at the regular time for making the annual appropriations, although, as pointed out in the former opinion, I do not think that the appropriation of such fund is limited necessarily to the regular annual appropriation.

This statement is made preliminary to the consideration of your second question. In answering that question it is apparent that if the appropriation is made at the regular time for making annual appropriations, notice would, of course, be given as in the case of other regular annual appropriations and budgets. The provisions of the 1935 Act (Acts of 1935, page 837) providing that in the formulation of a budget by the proper legal officers of any county, the same shall show the estimated amount to be received from the state, from the gasoline fund and the motor vehicle fund, as well as other funds, in my opinion is in full force and effect and upon that basis if the appropriation is made at the regular annual time for the making of budgets and the making of appropriations, notice as provided by law as applied to other budgets would apply to the highway, maintenance and construction budgets.

A more difficult question arises with respect to additional appropriations. Prior to the enactment of the tax limitation law of 1937 (Acts of 1937, page 646) the applicable statute was chapter 150 of the Acts of 1935. This statute (Acts of 1935, special reference being made to the language on page 534) in authorizing additional appropriations provided and now provides for a ten-day notice by publication as provided with reference to the publication of the budget and the proposed tax levy. This provision I think was intended to apply to the budget for highway purposes in the same manner as
it applied to any other portion of the budget. With the enactment of the tax limitation law of 1937 (Acts of 1937, page 646), however, this provision of the 1935 Act, last above referred to, was materially modified as to budgets and appropriations affecting property and to that extent the 1937 Act would supersede the 1935 Act, thereby repealing by implication the provisions of the 1935 Act which are in conflict with the 1937 Act. This would especially be true as to additional appropriations which are greatly limited by the 1937 Act. Implied repeals, however, are not favored and I think in this particular case such a repeal would not extend beyond the actual points of conflict. In considering additional appropriations of funds budgeted for highway purposes there does not seem to be the same conflict between the 1935 Act, last above referred to, and the 1937 Act, and for that reason I think the 1935 Act would control and would still be effective as governing additional appropriations of the county highway funds. If that is true, then notice of additional appropriations of the fund to which your questions apply would be necessary. Your second question, in my opinion, should be answered in the affirmative.

If my conclusion is right as to your second question, then your third question must also be answered in the affirmative, since the 1935 Act last above referred to provides in terms that "no such proposed additional amount shall be appropriated or expended unless and until such appropriation and expenditure shall have been approved by the State Board of Tax Commissioners as hereinafter provided."

All of the above questions, therefore, are answered in the affirmative.

ACCOUNTS, STATE BOARD OF: Fireman Pension Funds—
Cities of fourth class, pension fund. Firemen's.

January 18, 1938.

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

Dear Sir:

In your letter of January 10, you ask for an official opinion on the interpretation of chapter 31 of the Acts of the General
Assembly of Indiana of 1937 with reference as to whether or not this statute would compel the city of Bloomington, having an approximate population of 18,000, to establish a fireman’s pension fund, or whether the establishment of such a fund is optional with the city. Since the city of Bloomington has a population of 18,000 or less, it would be classified as a fourth class city.

Section 1 of chapter 31 of the Acts of 1937 deals with the applicability of the act. This section reads as follows:

“That a firemen’s pension fund and a board of trustees of the firemen’s pension fund are hereby created in every city in this state having a population of 114,500 or more according to the last preceding United States census and which maintains a regularly organized and paid fire department. The provisions of this act in relation to such fund shall likewise apply to all cities having a population of less than 114,500 which maintains a regularly organized and paid fire department, in case the common council of any such city shall elect to establish such board of trustees and firemen’s pension fund, and if any such city elects to establish such board and fund its common council shall adopt an ordinance to that effect, and upon the adoption of such ordinance, the provisions of this act in relation to such fund and such board of trustees shall apply to and govern such city.”

You will notice in reading the above section, particularly those portions in italics, that the section says this act shall apply to cities having a population of less than 114,500 in case the common council shall elect to establish a board of trustees and a firemen’s pension fund. It is my opinion that the language of this section is clear and provides that this act shall apply to cities having a population of less than 114,500 only in the event that the common council shall elect to establish a board of trustees and a firemen’s pension fund. Thus, then, in the case of the city of Bloomington, there is nothing in this Act that would compel them to establish such board of trustees and firemen’s pension fund unless the council so elected.