Hon. Stephen L. Ferguson  
State Representative  
121 ½ West Kirkwood Avenue  
Bloomington, Indiana 47401

Dear Representative Ferguson:

This is in response to your request for my Official Opinion relating to the authority of the Commissioners of a Department of Redevelopment of a city or town to make payments to public utilities for relocating their facilities as necessitated by an urban renewal project.

Your specific questions are as follows:

1. Whether public utilities which are required to relocate their facilities from public right-of-way, pursuant to an urban renewal project under Acts of 1953, Ch. 176, Sec. 11, as amended and found in Burns' (1963 Repl.), Section 48-8551, are entitled to reimbursement of the expense and costs incurred in such relocation under Burns' Section 48-8563(d), supra?

2. Whether the requirement that public utilities vacate the premises and relocate their facilities pursuant to an urban renewal project under Burns' Section 48-8551, supra, constitutes a taking requiring just compensation within the scope of Article 1, Section 21 of the Constitution of Indiana, and the 5th and 14th Amendments of the Constitution of the United States?

3. Whether the requirement by the city that a public utility vacate the premises and relocate its facilities pursuant to an urban renewal project under Burns' Section 48-8551, supra, where such facilities do not interfere with the normal use of streets and thoroughfares and where such facilities are located in the public right-of-way pursuant to a contract (franchise or indeterminate permit), constitutes the impairment of a contractual obligation contrary to Article 1, Section 10 of the United States Constitution as well as Article 1, Section 24 of the Constitution of Indiana?
In answer to your first question, the Commissioners of a Department of Redevelopment are authorized to make certain payments with respect to urban renewal projects, by Burns' Section 48-8563 (d), supra, which states in part:

"* * * The commissioners are authorized to make relocation payments to or with respect to persons (including families, business concerns, and others) displaced by an urban renewal project, for moving expenses and losses of property for which reimbursement or compensation is not otherwise made * * *"

In construing similar provisions of a Maryland statute, the Maryland Court of Appeals held that such payments were not only authorized, but required. Mayor and City Council of Baltimore v. Baltimore Gas and Electric Company (1959), 221 Md. 94, 156 A (2d) 447.

If such payments are indeed required to be made by the commissioners for relocation, then the only question remaining is whether utilities come under the above statute (Burns' Section 48-8563 (d), wherein it states as those required to be reimbursed, "persons (including families, business concerns, and others).") This question must be answered in the affirmative. A utility is certainly a "business concern" and furthermore, the statute specifically provides that redevelopment may include "utility services" (Burns' 48-8543) and "property already devoted to a public use" [Burns' 48-8557 (b)].

In answer to your second question, the requirement that public utilities vacate and relocate their facilities pursuant to Burns' 48-8551, supra, does not constitute a taking without just compensation so long as the facilities are actually used for urban renewal and compensation is made to the utility.

Your third question must be answered in the negative, since property purchased and utility relocation for urban renewal is within the state's power of eminent domain. All contracts, whether between the state and an individual or between private individuals only, are subject to the state's right of eminent domain. Southern Indiana Gas and Electric Company v. City of Boonville (1939), 20 N. E. (2d) 648, 215 Ind. 552.
CONCLUSION

It is, therefore, my opinion that public utilities must be reimbursed for expenses in relocating their facilities pursuant to urban renewal projects, and such relocation, if for a public purpose and just compensation is made, does not violate the constitutional provisions against “taking” and “impairment of contractual obligations.”