Mr. Richard L. Worley
State Board of Accounts
912 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Worley:

This is in answer to your recent request for an Official Opinion concerning the legality of using Motor Vehicle Highway Funds in cities and towns for the construction of sidewalks. Your letter requesting the Opinion reads, in part, as follows:

"1. The Acts of 1941, Ch. 168, Sec. 1, Burns' 36-2815, in defining the term 'highway', does not include within such definition the term 'sidewalk'.

"2. The Acts of 1941, Ch. 168, Sec. 5, as amended, Burns' 36-2819, specifies the approved uses of Motor Vehicle Highway Funds allocated to cities and towns. Briefly, this section authorizes the use of such funds for the construction, reconstruction, repair and maintenance of streets and also includes any curbs. No mention is made in this section of a 'sidewalk'.

* * *

"In view of the foregoing, we respectfully request your Official Opinion as to the legality of cities and towns using Motor Vehicle Highway Funds for the construction of sidewalks."

Acts of 1941, ch. 168, § 1, being Burns IND. STAT. ANN., § 36-2815, reads, in part, as follows:

"(c) The term 'highways' includes roadway, rights of way, bridges, drainage structures, signs, guard rails, protective structures in connection with highways, drains, culverts and bridges and the substructure and superstructure of bridges and approaches thereto and streets and alleys of cities or towns."

Acts of 1941, ch. 168, § 5, as amended, being Burns IND.
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STAT. ANN., (1965 Supp.), § 36-2819, reads as follows:

“All funds allocated to cities and towns from the motor vehicle highway account shall be used by the cities and towns for the construction, reconstruction, repair, maintenance, oiling, sprinkling, snow removal, weed and tree cutting and cleaning of their highways as herein defined, and including also any curbs, and the city’s or town’s share of the cost of the separation of the grades of crossing of public highways and railroads, the purchase or lease of highway construction and maintenance equipment, the purchase, erection, operation and maintenance of traffic signs and signals, and safety zones and devices, the cost of traffic policing and traffic safety, and the painting of structures, objects, surfaces in highways for purposes of safety and traffic regulations: Provided, That no city or town shall spend more than ten per cent [10%] of the funds allotted to it for the payment of the salaries of and purchase of equipment for policemen or town marshals. All of such funds shall be budgeted as provided by law.” (Emphasis added.)

That portion of the act which defines “highway,” Burns 36-2815, supra, makes no specific mention of the term “sidewalk” but does include fifteen (15) separate items within its purview. That portion of the act which specifies how the funds from the Motor Vehicle Highway Account shall be used by cities and towns would appear to add yet another with the words “. . . and including also any curbs.” Burns 36-2819, supra.

From the foregoing, it would appear that the maxim ex-pressio unius est exclusio alterius applies:

“As the maxim is applied to statutory interpretation, where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are affirmatively or negatively designated, there is an inference that all omissions were intended by the legislature.”

However, the maxim has limitations:

"... where an expanded interpretation will accomplish beneficial results, serve the purpose for which the statute was enacted, is a necessary incidental to a power or right, or is the established custom, usage or practice, the maxim will be refuted, and an expanded meaning given. . . ."


In order to determine whether an expanded or literal interpretation should prevail it is necessary to examine the intent and purpose of the Legislature in enacting the statutes in question. That intent appears in Section 2 of the statutes, Acts of 1941, ch. 168, § 2, as found in Burns IND. STAT. ANN., § 36-2816, which reads as follows:

"It is hereby declared to be the policy of the state of Indiana that the net amount in the motor vehicle highway account shall be budgeted for the construction, reconstruction, improvement, and maintenance of the highways of the state, policing, and for the division of safety, and a fair distribution thereof shall be made between the state highway commission and subordinate political subdivisions having jurisdiction of highways of the state, and the funds allotted shall be used in accordance with the policy herein declared and the provisions of this act, and that the funds allocated to counties, cities and towns from such motor vehicle highway account shall be budgeted as provided by law, and such county budgets shall be referred to the county council for approval, revision, or reduction."

It is to be noted that this declaration of intention and purpose does not qualify or limit the term "highway" except that they be "highways of the state." Thus we conclude that the maxim does not apply and that the term "highway" as used in the act includes sidewalks. In addition the definition section [Burns 36-2816 (c)] includes in the definition of highways "streets and alleys of cities or towns." As early as 1886,
the Supreme Court held that the word "street" embraces sidewalks.

"The word 'street' is a generic one, and embraces sidewalks. Under an authority to improve streets, a municipal corporation may improve sidewalks."

City of Kokomo v. Mahan, 100 Ind. 242 (1884); Taber v. Grafmiller et al., 109 Ind. 206, 209, 9 N.E. 721 (1887).

This case was cited favorably in 1932 by the Supreme Court and remains the law today:

"Nothing to the contrary appearing, the sidewalks in question must be considered to belong to and be a part of the streets along which they are built. 'The word "street" is a generic one and includes sidewalks.' Taber v. Grafmiller (1887), 109 Ind. 206, 209, 9 N.E. 721, 722. 'A public street is a public highway, and a sidewalk is a part of the street.' State v. Berdetta (1880), 73 Ind. 185, 38 Am. Rep. 117."

House-Wives League v. City of Indianapolis, 204 Ind. 685, 688, 185 N.E. 511 (1932).

It is well to note that one of the stated purposes for which Motor Vehicle Account Funds may be used is for "the cost of traffic policing and traffic safety. . . ." Burns § 36-2819, supra.

In addition, the Acts of 1939, ch. 48, as amended, as found in Burns IND. STAT. ANN., §§ 47-1801—47-2316, is by its title an act regulating traffic safety and which, in its scope applies not only to the use of motor powered equipment upon public highways, but also to the regulation of the activities of pedestrians walking along public highways. Specifically, the act requires that where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway, as provided by the Acts of 1939, ch. 48, § 86, as amended, as found in Burns IND. STAT. ANN., § 47-2035. The said Acts of 1939, ch. 48, by § 14 thereof, as amended, as found in Burns IND. STAT. ANN., (1964 Supp.), § 47-1814, defines the term "sidewalk" in express terms to be a part of a street:
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“(d) Sidewalk. That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.”

Thus, in the traffic safety act the Legislature has specifically included the sidewalk as a “portion of a street,” so as to provide state and local authorities with the power to regulate the activities of pedestrians.

Since the act concerning the use of Motor Vehicle Highway Funds by cities and towns for the construction, reconstruction, repair, maintenance, etc., of streets authorizes their use for the “cost of traffic policing and traffic safety,” by reference to the 1939 Act (Burns §§ 47-1801—47-2316), it is apparent that the use of such funds for the construction, reconstruction, repair and maintenance of sidewalks is includable in the cost of traffic policing and traffic safety.

Collaterally, the use of such funds as are allocated to a county have been construed to be available for the construction of sidewalks adjacent to highways by the county commissioners of a county. 1959 O.A.G., page 367, No. 70.

In conclusion, it is my opinion that the term “highways” as used in the acts cited herein includes the word “sidewalk,” and that funds distributed to cities and towns from the Motor Vehicle Highway Account may be used for the purposes set out in Burns 36-2819, supra, and specifically for the purposes of construction, reconstruction, repair and maintenance of sidewalks adjacent to streets in such cities and towns.

OFFICIAL OPINION NO. 65

November 23, 1965

Hon. William E. Wilson
Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your recent letter requesting an Official Opinion has been received and reads as follows: