poration, company, association or joint stock association and the legal successors thereof."

The Committee of Public Health, to which said bill was assigned, recommended that the words "state or local governmental agency" be stricken from said subsection. The Indiana Senate Journal, 1963 Regular Session, page 436, shows that "Report adopted." This action was indicative of a legislative intent not to include a "state or local governmental agency" in the usual concept of said definition solely as contained in said Burns' 42-1450(c), supra.

However, it is emphasized that when the definition in Burns' 42-1450(c), supra, is considered in connection with the context of the proviso for municipal corporations, contained in Burns' 42-1450(a), supra, the term "person" may properly include a municipal corporation such as a county, and it is apparent that it was the legislative intent so to do.

Therefore, in answer to your second question, it is my opinion that the definition of the term "person" contained in Burns' 42-1450(c), supra, does not include a county in the State of Indiana unless said county has exercised an option for licensure as provided for in the proviso of Burns' 42-1450(a), supra, and when such option is exercised and a license obtained, the term "person" then does apply to a county.

OFFICIAL OPINION NO. 40

July 28, 1964

Mr. George E. Goodwin
Executive Director
Indiana State Highway Commission
1101 State Office Building
Indianapolis, Indiana

Dear Mr. Goodwin:

You have requested my Official Opinion on the following questions:

"1. Does the Lake County Plan Commission qualify as a 'public agency' as defined under Sec. 3 of the 'Interlocal Cooperation Act of 1957'?"
"2. Is the Lake County Plan Commission, or any 'public agency' as defined in Section 3 of the 'Interlocal Cooperation Act of 1957' eligible to receive and administer Federal Funds?"

The Interlocal Cooperation Act, being the Acts of 1957, Ch. 118, sets forth the purpose of the act in Section 1 thereof as found in Burns' (1964 Supp.), Section 53-1101, as follows:

"It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities."

Said act further defines a "public agency" in Section 3 thereof as found in Burns' (1964 Supp.), Section 53-1103, as follows:

"For the purposes of this act, the term 'public agency' shall mean any city, town, county or other political subdivision of this state; any agency of the state of Indiana or of the United States; and any political subdivision of another state."

This act is applicable solely to "public agencies" and upon examination of the above definition it is apparent that the Lake County Plan Commission must fall within the phrase "political subdivision of this state" or be excluded from the application of the act.

In my 1960 O. A. G., page 204, No. 34, I answered questions concerning a public library district and decided that such a district was a political subdivision of the state. In arriving at such conclusion I quoted from 72 C. J. S. Political, page 223, which reads in part as follows:

"Political subdivision. The term is broad and comprehensive and denotes any division of a state made by
the proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out those functions of the state which by long usage and inherent necessities of government have always been regarded as public; a division of a parent entity for some governmental purpose. The term may be used in more than one sense, and it may designate a true governmental subdivision such as a county, township, etc., or it may have a broader meaning, denoting any subdivision of the state created for a public purpose although authorized to exercise a portion of the sovereign power of the state only to a limited degree.

"Broadly speaking, a political subdivision of a state is a subdivision thereof to which has been delegated certain functions of local government.

"Municipalities are political subdivisions of the state and the term 'political subdivision' is applied to cities, towns, and villages * * * and also to counties * * * to drainage districts * * * to election districts * * * to sanitary districts * * * to levee districts * * * and to school districts * * *.

This term has not been defined by the Indiana courts but has been defined in other legislative acts.

In the Old Age and Survivors Insurance Act being the Acts of 1951, Ch. 313, Sec. 2, as amended and found in Burns' (1961 Repl.), Section 60-1902 (f) is found the following definition:

"(f) The term 'political subdivision' shall mean a county, city, town, township, any political body corporate, any body politic and corporate, any political entity, any local housing authority, any school corporation, a public library or public utility of any county, city, town or township, said public utility to be included whether operated by the city or town or under the terms of a trusteeship for the benefit of such city or town, or a participating unit as defined in the public employees' retirement act, the same being chapter 340 of the Acts of 1945 as such act has been
amended: Provided, That a state agency shall not be considered to be a political subdivision* * *"

Also in the Acts of 1947, Ch. 178, Sec. 5, as found in Burns' (1961 Repl.), Section 61-1305 (c) is found another definition:

“(c) The term 'political subdivision' shall mean and include any county of Indiana, any civil township of Indiana, any civil incorporated, city or town of Indiana, any school corporation of any township, city or town of Indiana, or any other territorial subdivision of the state recognized or designated in any law, any public utility entity not privately owned, any public sewage disposal entity, any public flood control or levee district or entity, any public drainage district, or entity, any public sanitary district or entity and any public improvement district authority or entity authorized to levy taxes or assessments.”

Although such definitions are not controlling, they are entitled to consideration as shown in Adkins et al. v. Indiana Employment Security Division et al. (1946), 117 Ind. App. 132, 137, 70 N. E. (2d) 31:

“In construing the meaning of certain words contained in a statute, the legislative definition of the same words in another act (although not conclusive) is entitled to consideration in construing the same words when used in another statute upon the same, or related, subject. Ralston v. Ryan (1940), 217 Ind. 482, 484, 29 N. E. (2d) 202; State, ex rel. v. Grange (1929), 200 Ind. 506, 509, 165 N. E. 239; Dreves v. Oslo School Twp. of Elkhart (1940), 217 Ind. 388, 28 N. E. (2d) 252.”

Examination of the few decisions in other states disclosed no factual situation similar to those in the question presented and for individual reasons none of these cases are of significant value. However, in these cases, as in Burns' 61-1305 (c), supra, similar references are made concerning the elements of a political subdivision such as encompassing a geographical area, or having a separate and distinct entity, or having the power to tax.
See: Commissioner of Internal Revenue v. Shamberg's Estate (1944), 144 F. 2d 998;
Wolf v. City of Columbus et al. (1954), 98 Ohio App. 333, 129 N. E. (2d) 309;
Bolen v. Board of Firemen (1958), 308 S. W. 2d 904 (Texas);
Arkansas State Highway Comm. v. Clayton, Treas., et al. (1956), 226 Ark. 712, 292 S. W. 2d 77;
Lloyd v. Twin Falls Housing Auth. (1941), 62 Idaho 592, 113 P. 2d 1102;

Likewise, in my 1960 O. A. G., supra, page 210, there is found the following statement:

"* * * A library district is a public corporation constituting a separate and independent taxing district * * *"

Planning commissions are created and derive their duties and power from the provisions of the Acts of 1947, Ch. 174, as amended and found in Burns’ (1951 Repl. and 1964 Supp.), Section 53-701 et seq.

Burns’ 53-701, supra, reads, in part, as follows:

"Each city council, each town board of trustees and each board of county commissioners in the state may by ordinance create a plan commission in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, educational, and recreational facilities; that the needs of agriculture, industry and business be recognized in future growth;
that residential areas provide healthy surroundings for family life; and that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

"In accomplishing this objective, it is the intent of this legislation that the plan commission shall serve in an advisory capacity to presently established boards and officials, and in addition, that certain regulatory powers be created over developments affecting the public welfare and not now otherwise controlled, and that additional powers be granted legislative bodies of cities, towns and counties to carry out the purposes of this act." (Our emphasis)

Burns' 53-728, supra, specifically sets forth the powers and duties and the following subsections are pertinent to the solution of the question presented.

"9. Sue and be sued collectively by its legal name, styled according to the city or county, ‘City or County Plan Commission,’ service of process being had on the president of the commission; but no costs shall be taxed against the commission or any of its members in any action.

* * *

"11. Prepare and submit an annual budget in the same manner as other departments of city and county government and shall be limited in all expenditures to the provisions made therefor by the city council of such city or the county council of such county."

Based upon consideration of the above authorities, it is my opinion, that a county plan commission does not have the characteristics of such an entity as to constitute a political subdivision as used in the definition of a "public agency" in the Interlocal Cooperation Act.

Your second question is, in fact, two questions and consideration will first be given to the question as it concerns the Lake County Plan Commission.
The Acts of 1947, Ch. 174, Secs. 30 and 31, as found in Burns’ (1951 Repl.), Sections 53-730 and 53-731, read as follows:

53-730 “The plan commission shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this act.”

53-731 “A city or county may accept gifts and donations for plan commission purposes. Any moneys so accepted shall be deposited with the city or county in a special nonreverting plan commission fund to be available for expenditures by the plan commission for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the plan commission.”

It is apparent that the Lake County Plan Commission has no authority to receive and administer federal funds.

The second part of this question concerns a “public agency” as defined in the Interlocal Cooperation Act, Burns’ 53-1103, supra. Because of the number of varied entities that fall within such definition, it would be imprudent to offer an all inclusive answer but certain guide lines can be set forth. This act, being the Acts of 1957, Ch. 118, states in part in Section 4, as found in Burns’ (1964 Supp.), Section 53-1104, as follows:

“(a) Any power or powers, privileges or authority exercised or capable of being exercised by a public agency of this state may be exercised and employed jointly with any other public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state of Indiana when acting jointly with any other public agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.”
This section contemplates joint action with an agency of the United States generally by a public agency but such general grant of power must always be reconciled with specific grants or limitations of power in statutes relating to a particular agency when an individual problem presents itself. The following special statute on the general subject of cooperation with the federal government is found in the Acts of 1947, Ch. 178, being Burns' (1961 Repl.), Section 61-1301 et seq.

Burns' 61-1301, supra, reads as follows:

"The state, or any political subdivision thereof, are each hereby authorized and empowered to the full extent authorized by the Constitution of Indiana and not prohibited by law, to accept the provisions of any law of the Congress of the United States of America, or any rule, regulation, order or finding made pursuant thereto, now or hereafter in force, which, upon acceptance, authorizes the state, or any political subdivision thereof, to cooperate with the federal government, or to receive benefits for itself or any of its citizens; and the state, or any political subdivision thereof, is hereby authorized and empowered to do any and all acts, and to make any rule, regulation, order, or finding, that may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law."

In summary hereof it is my opinion:

1. That the Lake County Plan Commission does not qualify as a "public agency" as defined under Section 3 of the "Interlocal Cooperation Act of 1957."

2. That the Lake County Plan Commission may not receive and administer federal funds but that, generally speaking, other "public agencies" may.