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operation from such Commanding Officers as may be expected in the light of the congressional consent evidenced by the Federal statute.

OFFICIAL OPINION NO. 2

January 6, 1961

Mr. John R. Peters, Chairman
State Highway Department
11th Floor, State Office Building
Indianapolis, Indiana

Dear Mr. Peters:

This is in response to your request for my Opinion concerning highway signalization and the revision of the State Manual for uniform system of traffic control devices. The facts and the request are set out in your letter as follows:

“For many years it has been the practice to place a ‘Stop’ sign with the words ‘When Light Is Out’ on it in small letters at all signalized intersections on State Routes. The Federal Manual on Uniform Traffic Control Devices was revised in 1954. One of the changes was to prohibit the use of any other message on a ‘STOP’ sign except the word ‘STOP’. This requirement was not included in the Indiana State Manual and has been ignored during the last few years even though the State Law requires the State Manual to conform with the Federal Manual so far as possible (Burns’ 47-1901).

“The Federal Manual is now being revised again. One of the proposals is as follows:

“‘Stop signs should not be erected at intersections where traffic control signals are present. The conflicting commands of two types of control devices are confusing.’

“In view of the fact that we would be conflicting with the Federal Manual on two counts, we believe the sign should be eliminated if we can do so legally. We

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desire an opinion from the Attorney General as to whether the sign is required by law.”

As indicated in your letter, the applicable statutory material is found in the Acts of 1939, Ch. 48, as amended, as found in Burns' (1952 Repl.), Section 47-1901 *et seq.*, and Burns' (1959 Supp.), Section 47-2118. There is nothing in this statutory material which indicates that “Stop” signs should or should not be erected at intersections where automatic traffic control signals are present, nor that the words “When Light Is Out” may not be used thereon. Rather it appears that said statutory material leaves to the sound discretion of the State Highway Department the determination of when and under what circumstances traffic control devices, including the “Stop” signs referred to in your letter, may be used, e.g., Burns' 47-1902, *supra*, expresses the following:

“(a) The state highway commission shall place and, except as otherwise provided in this section maintain such traffic control devices conforming to its manual and specifications upon all state highways, including the state maintained routes thereof through any incorporated city or town, *as it shall deem necessary to indicate and to carry out the provisions of this act, or to regulate, warn, or guide traffic.*” (Our emphasis)

Burns' 47-1901, *supra*, simply indicates that, insofar as possible, signalization should conform to the system current as approved by the American Association of State Highway Officials. It should be noted that this is not mandatory, but rather lies within the sound discretion of your Department.

It is therefore my opinion, subject to any agreement that might exist between your Department and the Bureau of Public Roads in regard thereto, that the use of the “Stop” signs indicated in your letter lies within the sound discretion of your Department, is not specifically required by law, and could, upon your determination, be eliminated.