Mr. T. M. Hindman  
State Examiner  
State Board of Accounts  
304 State House  
Indianapolis, Indiana  

Dear Mr. Hindman:

This is in reply to your recent letter requesting an Official Opinion concerning the use of funds allocated to cities and towns from the motor vehicle highway account pursuant to the Acts of 1959, Ch. 278, Sec. 1.

The first question set out in your request is as follows:

“(1) Does the following proviso in Section 1, Chapter 278, Acts of 1959 include purchase of equipment?

"that at least seventy-five per cent (75%) of such fund shall be budgeted and spent for construction, reconstruction, repair, widening and/or grade separation; and all such funds so appropriated shall be budgeted as now provided by law: * * *”

The definition of words as used in the Acts of 1941, Ch. 168, as amended, and as found in Burns’ (1949 Repl.), Section 36-2815 et seq., to which Ch. 278 of the Acts of 1959 is amendatory, is found in Sec. 1 thereof, and is, in part, as follows:

“(d) The term ‘construction’ means the planning, supervising, inspecting, actual building, draining and all expenses incidental to the construction of a highway.

“(e) The term ‘reconstruction’ means a widening or a rebuilding of the highway or any portion thereof.

“(f) The term ‘maintenance’ when used in reference to cities, towns and counties as applied to that part of the highway other than bridges, means the constant making of needed repairs * * *; and such term also means and includes the acquisition and use, in any manner, of all needed equipment, fuel, materials and supplies essential and incident thereto.” (Our emphasis)
It is apparent that the definition of the word "construction" includes the purchase of equipment necessary for use in construction of a highway, as an expense incidental thereto. However, it should be noted that the General Assembly by amendment in 1945 deleted the word "maintenance" from between the words "reconstruction" and "repair" in the proviso to which you refer, indicating that it did not intend any of that portion of the fund (75%) to be used for the purchase of equipment other than that incidental to the construction of highways. Therefore, it is my opinion that the proviso as set out in your letter, question (1), includes purchase of equipment for construction of a highway, but does not include such purchase of street and highway equipment for maintenance.

Your second question is as follows:

"(2) Does the following quotation from Section 1, Chapter 278, Acts of 1959 apply to all purchases of street and highway equipment?

"The payment of not more than 25% of the cost of traffic policing and traffic safety; the painting of structures, objects and surfaces in highways for purposes of safety and traffic regulations; the oiling, sprinkling and cleaning of such highways; and the purchase, rental and repair of street and highway equipment; and all thereof shall be budgeted as provided by law:”"

In answering your question consideration must be given to the entire section and not the quoted portion alone. The entire section apportions the use of the fund derived from the motor vehicle highway account. Seventy-five per cent of it must be used for construction (including purchase of equipment for construction as heretofore noted), reconstruction, repair, widening and/or grade separation. The remaining portion of the fund is to be used for (1) the purchase, etc., of traffic signs and signals, safety zones and devices; (2) the payment of not more than 25% of the cost of traffic policing; (3) the painting of structures, etc.; (4) the oiling, etc. of highways; and (5) the purchase, rental and repair of street and highway equipment. Insofar as there are funds available, other than the 75% which must be budgeted and spent as set out in the proviso quoted heretofore, they may be spent for the purchase of
street and highway equipment whether it be for construction, reconstruction, repair or maintenance.

In summary, it is my opinion that the proviso clause of Sec. 1, Ch. 278 of the Acts of 1959, which requires that at least 75% of the funds derived from the motor vehicle highway account be budgeted and spent for construction, etc. includes the purchase of street and highway equipment incidental to the construction but not maintenance of highways. Equipment purchased for the purpose of maintenance is to be paid for from any funds available in the remaining 25% of the allocated funds.

OFFICIAL OPINION NO. 46
August 26, 1959

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

Dear Mr. Wilson:

Your letter of August 7, 1959, has been received and reads as follows:

“For several years a distribution of Supplemental Aid for transfer tuition has been made by the Department of Public Instruction pursuant to board rule and law. Rule T-2, Section 2-d of the Commission on General Education of the State Board of Education states:

‘Whenever the Minimum Foundation Program makes provision for a Supplemental Distribution for transfer tuition, a uniform rule will be established each year by the Commission on General Education considering such items as per capita costs, tax rates, wealth per pupil and other pertinent data which will economically finance the excessive transfer tuition costs charged to a school corporation which cannot reasonably finance such cost from local funds.’

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