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.'
“In reading chapter 328 of the Acts of 1959 the new distribution law, and chapter 114 of the Acts of 1959 the appropriation law, we find no reference to Supplemental Aid for transfer tuition.

“Your official opinion is requested on the following question:

“1. Can a distribution for Supplemental Aid for transfer tuition be legally made pursuant to this board rule?”

Prior to July 1, 1959, the general statute for distribution of state support to the common schools of this state was Acts of 1949, Ch. 247, as found in Burns’ (1959 Supp.), Section 28-1021 et seq. The stated purpose of said Act is found in Section 1 thereof, being Burns’ (1959 Supp.), Section 28-1021.

For a number of years the provisions of said statute were supplemented by particular provisions contained in the various General Appropriation Acts, the last being Acts of 1957, Ch. 285, p. 711, Sec. 2e, which specifically provided that part of the general appropriation therein made to schools was for supplemental transfer tuition, under rules and regulations concerning such additional allowances for such purposes as may be adopted by the General Commission of the State Board of Education, pursuant to Acts of 1949, Ch. 247, Sec. 6, and limiting such amount so dispensed for such purposes to the sum of $150,000 for each year of the 1957-1959 biennium.

By Acts of 1959, Ch. 328, as found in Burns’ (1959 Supp.), Section 28-1029 et seq., a new statute for distribution of such funds was provided containing a new formula and new factors to be used in making such distribution. The purposes of said Act are declared in Section 1 thereof, being Burns’ (1959 Supp.), Section 28-1029, and the stated purposes therein are identical with the stated purposes of the 1949 statute, supra, except that the program is referred to in the 1959 statute as the “foundation program,” while in the 1949 Act it is referred to as the “minimum foundation program.” Section 1 of the 1959 statute further, in part, provides:

“The foundation program of education as provided for in this act shall include the following parts
“(a) necessary instructional salaries for licensed instructional personnel computed as herein-after provided;

“(b) any current expenditures for maintaining and operating the school program, which shall include all expenditures other than those for transportation, direct capital outlay for the construction of buildings or the purchase of grounds, debt service, and moneys devoted directly or indirectly to the construction of buildings and school facilities.” (Our emphasis)

An examination of the 1959 statute reveals that no provision is made for supplemental aid for transfer tuition. Section 6 of said Act, as found in the footnotes to Burns’ (1959 Supp.), Section 28-1033, repealed all laws and parts of laws in conflict therewith.

An examination of the General Appropriation Act for the 1959-1961 biennium, as found in Acts of 1959, Ch. 114, p. 293, makes no specific appropriation for, or reference to, supplemental aid for transfer tuition as it has done in the past several years in conjunction with the 1949 Distribution Act.

The 1959 Distribution Statute, aforesaid, does not specifically repeal the 1949 Distribution Statute, and it is not necessary to decide such question of repeal in this opinion, except to say, by its provisions the 1959 statute supersedes the provisions of the 1949 statute as to supplemental aid for tuition transfer as contained in Acts of 1949, Ch. 247, Sec. 6, as found in Burns’ (1959 Supp.), Section 28-1026, which latter section on this question was construed in 1949 O. A. G., p. 57, No. 13, particularly at pages 65 and 66 of the Opinion. That such prior statute is superseded to this extent is clear for the reason the 1959 Statute leaves no appropriated money available for making such a supplemental distribution for transfer tuition. This is clear due to the fact Acts of 1959, Ch. 328, Sec. 3, as found in Burns’ (1959 Supp.), Section 28-1031, in part, provides:

“For the purpose of carrying out the provisions of this act, the commission on general education of the state board of education, on the basis of available data
1959 O. A. G.

on enrollments and assessed valuations, shall make estimates on or before July 1 of each year and whenever appropriations will be insufficient or greater than sufficient to make a distribution for the following school year approximately as herein provided, the said commission on general education of the state board of education shall make adjustments as follows:

"After the amounts to be distributed to each school corporation shall have been computed, then such amounts shall be increased or reduced by deducting or adding equal dollars and cents per pupil from the instructional program amounts and simultaneously deducting or adding one-fourth of such dollar and cents amounts per pupil from the allowable amount for other current expenditures until one or both shall be reduced the necessary amount or shall be completely exhausted so as to adjust to the approximate amounts appropriated and/or made available by action of law for the ensuing school year."

Therefore, all appropriated moneys are exhausted by distribution under the formula set out in the 1959 Distribution Statute.

As shown by the above quotations from the 1959 Distribution Statute its provisions cover the entire matter of distribution of state support to the common schools in that area in which would be included supplemental aid for transfer tuition. The Legislature having made no provisions for such supplemental aid for transfer tuition in the Distribution Statute, and having repealed all laws in conflict therewith; and, there being no appropriation for, or reference made to, supplemental aid for transfer tuition in the aforesaid General Appropriation Act of 1959, I am of the opinion there is neither authority for, nor an appropriation for, a distribution to the common schools by the state of any funds for supplemental aid for transfer tuition.

In this connection it is to be observed that the foregoing rule of the commission, quoted in your letter, is applicable only when the foundation program makes provision for such distribution.
An appropriation by the Legislature is necessary, as shown by the following authorities:

The Indiana Constitution, Art. 10, Sec. 3, provides:

"No money shall be drawn from the Treasury, but in pursuance of appropriations made by law."

In the case of Joseph Ristine, Auditor of State v. The State of Indiana ex rel. The Board of Commissioners of the Sinking Fund (1863), 20 Ind. 328, at page 338 the Court said:

"Appropriation, as applicable to the general fund in the treasury, may, perhaps, be defined to be an authority from the Legislature given at the proper time, and in legal form, to the proper officers to apply sums of money out of that which may be in the treasury, in a given year, to specified objects or demands against the State."

It is true an appropriation may be authorized by the particular provisions of an administrative statute, clearly contemplating such payment of funds.

Carr, Auditor et al. v. The State ex rel. Coetlosquet (1890), 127 Ind. 204, 209, 26 N. E. 778;

Henderson, Auditor v. The Board of Commissioners of The State Soldiers’ & Sailors’ Monument (1891), 129 Ind. 92, 28 N. E. 127;


However, I fail to find any provisions of the present distribution statute authorizing such payment of supplemental aid for transfer tuition.

From the foregoing, I am of the opinion a distribution for supplemental aid for tuition transfer cannot be legally made.