Mr. John R. Peters, Chairman  
State Highway Department  
State House Annex  
Indianapolis, Indiana

Dear Mr. Peters:

You have requested my Opinion as to whether the State Highway Department is legally obligated to pay for right of way required across lands owned by the Trustees of Purdue University.

The specific land to which you refer was conveyed to the Trustees of Purdue University as a body corporate, organized and existing under and by virtue of the laws of the State of Indiana, and this Opinion is expressly limited to a consideration of land which is owned and held by such Trustees in their own name and right.

The Trustees of Purdue University are authorized by statute to accept real property by gift, bequest or devise, and to sell, convey or otherwise dispose of such real property to the benefit of the institution, in the judgment of the Board of Trustees, except to the extent that such disposition is prevented by the terms and conditions of the gift, bequest or devise.

Acts of 1931, Ch. 139, Sec. 1, as found in Burns’ (1948 Repl.), Section 28-5712;

Acts of 1925, Ch. 147, Sec. 1, as found in Burns’ (1948 Repl.), Section 28-5708;

Acts of 1947, Ch. 283, Sec. 1, as found in Burns’ (1948 Repl.), Section 28-5738.

However, both statutes dealing with the conveyance or other disposition of real property by state educational institutions provide that no such conveyance may be made for less than the appraised value, as determined by three (3) disinterested appraisers appointed by the Governor.

Acts of 1925, Ch. 147, Sec. 3, as found in Burns’ (1948 Repl.), Section 28-5710;
Acts of 1947, Ch. 283, Sec. 2, as found in Burns' (1948 Repl.), Section 28-5739.

There is no authority granted by law to the State Highway Department to appropriate and make use of property held by Purdue University without the consent of the Board of Trustees and without a judicial determination in condemnation proceedings as authorized by the Acts of 1959, Ch. 180, Sec. 1, as found in Burns' (1959 Supp.), Section 36-2958. This latter statute also authorized the State Highway Department to receive, in the name of the State of Indiana, voluntary grants from school corporations, public corporations and agencies supported in whole or part by taxation, and these legal entities are likewise authorized therein to convey and grant to the State of Indiana for the use and benefit of the State Highway Department, by voluntary conveyance or grant, with or without consideration, any lands or rights in or to lands needed or reasonably necessary for any state highway. However, we have seen that the former statutes dealing specifically with the powers of the Trustees of educational institutions, including Purdue University, prohibit any conveyance of land for less than the appraised value thereof. Where a particular intention is expressed in an act, which conflicts with a general intention expressed in a later one, the particular intention shall be given effect, leaving the latter act to operate only outside the scope of the former.

State of Indiana et al. v. LaRue's, Inc., et al. (1958), — Ind. ——, 154 N. E. (2d) 708, 710.

As a matter of common law a Trustee had no authority to grant and give away the property which he held in trust. The property which is received by the Trustees of Purdue University is held by them as a part of a public charitable trust, and the several statutes dealing with the powers of those Trustees have incorporated this provision of common law as a matter of policy. Although the General Assembly could effectively provide that property conveyed to the Trustees in the future would be subject to gratuitous conveyance to anyone and for any purpose that the Trustees should in their discretion determine, property presently held by them has been received in trust in the absence of such a statutory provision, and cannot be so diverted.
1959 O. A. G.

See State v. Springfield Twp. (1854), 6 Ind. 83;

Todd v. Citizens Gas Co. of Indianapolis (1931), 46 F. 2d 855;

General Board v. Robertson (1913), 115 Va. 527, 79 S. E. 1064;

Malone et al. v. Peay et al. (1929), 159 Tenn. 321, 17 S. W. (2d) 901.

It is therefore my conclusion that the State Highway Department is legally obligated to pay for right of way required across lands owned by the Trustees of Purdue University, whether such right of way is acquired by voluntary conveyance from the Trustees or by condemnation proceedings authorized by Burns' 36-2958, supra.

OFFICIAL OPINION NO. 48
August 28, 1959

Mr. Edwin Steers, Sr.
Member, State Election Board
108 E. Washington Street
Indianapolis, Indiana

Dear Mr. Steers:

This is in reply to your letter of August 19, 1959, concerning the establishment of a utility service board pursuant to Chapter 326 of the Acts of 1959, and the applicability of said chapter to "towns" in the State of Indiana. Your letter states:

"The people of the Town of Greendale would like to know whether or not it would be legal under this statute to submit the matter to a vote at the Town Election this fall or whether it will be necessary under the statute for them to wait until the next general election which will be in 1960, which necessarily would be a special election for the town since towns do not hold regular elections in 1960. Further, after reading the Act, there is a question as to whether or not this Act applies to towns."