Honorable Robert D. Schuttler  
Indiana State Representative  
18 North West 4th Street  
Evansville, Indiana  

Dear Representative Schuttler:

This is in reply to your letter in which you request an Official Opinion as to the legal effect of House Bill 296, now Acts of 1959, Ch. 141, as found in Burns’ (1959 Supp.), Section 47-2005.

Your letter states, in part, as follows:

“A companion bill, House Bill 82, fixing the County Speed limit at 45 miles per hour was a companion bill to House Bill 296. House Bill 296 permitted the County Commissioners to raise or lower the speed limit as fixed in House Bill 82.

"* * * the Governor vetoed House Bill 82 but signed House Bill 296.

"* * * May the County Commissioners set various speed limits in the County in the manner as prescribed in House Bill 296? In the event of violation of the speed limits as set by the Commissioners, what would be the penalty? How can the provisions of House Bill 296 be implemental so as to be legally effective and make it possible for the Commissioners to put into effect the intent of the law?”

This statute, Acts of 1959, Ch. 141, amended the Acts of 1939, Ch. 48, Sec. 56, as found in Burns’ (1952 Repl.), Section 47-2005, inserting the phrase “including the county commissioners of any county” immediately following the term “local authorities” where it appears in both subsections (a) and (b). The amendment also broadened the power of the local authorities to lower the prima facie speed limits, their authority in such regard having been previously limited in application to intersections, but now to include all roads, streets and highways under their jurisdiction.
It should be noted that the term "local authorities" was already defined in the same act as follows:

Acts of 1939, Ch. 48, Sec. 13, as found in Burns' (1952 Repl.), Section 47-1813:

"Local authorities.—Every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state."

The board of county commissioners has long had such authority to adopt local police regulations, including the following:

Acts of 1919, Ch. 112, Sec. 40, as found in Burns' (1949 Repl.), Section 36-706:

"The board of commissioners for the several counties may make suitable rules and regulations covering traffic upon any highway in the county, and if the highway is upon a county line, the joint board of commissioners of the respective counties may make such traffic rules and regulations as shall be suitable, and the board of commissioners shall be authorized to take such steps and do such things as are necessary to enforce the rules when made."

Therefore by my answers to your questions I do not intend to infer that the boards of county commissioners were not included within the term "local authorities" prior to the enactment of Chapter 141. The amendment in this regard was apparently made merely to eliminate any question that they were so included.

Any speed violation on the county roads is an offense against the state (the resolution or ordinance of the board of county commissioners merely make a change in the prima facie reasonable speed limit) and it is a misdemeanor punishable pursuant to the provisions of the same act which Chapter 141 amended—Acts of '1939, Ch. 48, Sec. 160, as found in Burns’ (1952 Repl.), Section 47-2304. By the terms and provisions of this section, the penalty is as follows:

1st conviction: fine of not more than $100, or imprisonment in the county jail for not more than 10 days;
2nd conviction within 1 year: fine of not more than $200, or imprisonment in the county jail for not more than 20 days, or both;

3rd or subsequent conviction within 1 year: fine of not more than $500, or imprisonment on the state farm for not more than 6 months, or both.

House Enrolled Act No. 82 to which you refer in your letter as the companion bill of House Bill 296 could have had no legal effect if it had not been vetoed by the Governor, because the section of the Acts of 1939 which it attempted to amend had already been amended by House Enrolled Act No. 51, which contained an emergency clause. The new prima facie speed limit which House Enrolled Act No. 82 provided was for "county roads." This was not a new class of public highways that had previously been free from speed control under the statute amended, but rather it was merely a new classification of roads already under such control. Therefore, the fact that House Enrolled Act No. 82 did not become law had no adverse effect on the power of local authorities to make changes in existing prima facie speed limits as presently classified.

In conclusion, it is my opinion that the board of county commissioners may lower or raise the prima facie reasonable speed limits on the roads in the county system (not including state highways) in the manner provided in the Acts of 1939, Ch. 48, Sec. 56, as amended by the Acts of 1959, Ch. 141, including the posting of signs giving notice thereof on the roads, that any speed violation is a misdemeanor, with the penalty provided in Acts of 1939, Ch. 48, Sec. 160; and that the board of county commissioners may determine and fix the prima facie reasonable speed limits as follows: (1) By resolution, upon an engineering and traffic investigation, such board may determine that the prima facie speed limit in effect is greater than is reasonable or safe under the conditions found to exist, and such board may then determine and declare a lower prima facie speed limit that is reasonable and safe; (2) by ordinance, within the discretion of the board, it may authorize a prima facie speed limit higher than that otherwise in effect, subject to certain limitations stated in the act.