The Honorable David Rogers  
Indiana State Senator  
Workingmen’s Federal Savings Building  
Bloomington, Indiana

Dear Senator Rogers:

This will acknowledge receipt of your recent letter requesting an Official Opinion as to the authority of county commissioners to construct sidewalks adjacent to a county road. The question which you have presented reads as follows:

"Do the County Commissioners have the legal authority to construct sidewalks adjacent to a county road for the protection and safety of those who by necessity must walk the road, and to make the expenditures necessary therefor?"

From the facts presented in your letter, it seems that at present, school children attending certain county schools are compelled to walk to and from school along county roads heavily congested by industrial and residential traffic.

The county commissioners’ authority over highways within their jurisdiction is set forth in Acts of 1919, Ch. 112, Sections 1 and 3, as found in Burns’ (1949 Repl.), Sections 36-301 and 36-302.

Since the above statutes give the county commissioners authority to locate, establish, widen, change, construct, reconstruct, improve, maintain and repair all public highways, bridges and culverts in the county, it becomes necessary to define the meaning of the term “highway.” In this connection, I call your attention to Acts of 1939, Ch. 48, Sec. 1, as found in Burns’ (1952 Repl.), Section 47-1814, which contains the following definitions:

"(a) Street or Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel."
"(d) Sidewalk. That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians."

In addition to these statutory definitions, there are several cases in Indiana which have held that sidewalks are included within the meaning of the term "highways." In the case of City of Frankfort v. Coleman (1898), 19 Ind. App. 368, 49 N. E. 474, the Court held that a sidewalk was, in fact, a part of a street or highway and in so holding cited several other Indiana cases, at page 372 of the opinion, which also support that conclusion. In Murphy v. Inter-Ocean Casualty Company (1933), 98 Ind. App. 668, 186 N. E. 902, the Court stated that the term "highway" was a generic term embracing all kinds of public ways and that generally the term is "understood to mean a way open to the use of all persons who may desire to travel thereover."

See also: City of Indianapolis v. Higgins (1894), 141 Ind. 1, 40 N. E. 671.

In view of the authorities above cited, it is my opinion that the term "highways" also includes sidewalks and that the general power given county commissioners to construct, establish, change and improve highways within their jurisdiction, would also include the power and authority to construct or establish sidewalks as a part of said highways.

Your question also raises a problem of the authority of the commissioners to expend funds necessary for the construction of the sidewalk or sidewalks contemplated. It is my opinion that the portion of the motor vehicle highway account allocated to the various counties by Acts of 1941, Ch. 168, Sections 3 and 4, as found in Burns' (1949 Repl.), Sections 36-2817 and 36-2818, may be used for this purpose. The funds so allocated under the above act are to constitute a special fund under the exclusive supervision of the board of county commissioners for the construction, etc., of county highways and this fund should be used, rather than any money from the general fund.

You will note that these funds are subject to the normal budgeting procedures established by Acts of 1899, Ch. 154, Sec. 16, as found in Burns' (1948 Repl.), Section 25-516. If it is found that the money already appropriated from the county highway fund is insufficient for the construction of the sidewalk or sidewalks herein under consideration, it is possible that the circumstances warrant an additional appropriation from said funds in accordance with the procedure set forth in Acts of 1899, Ch. 154, Sec. 21, as amended, as found in Burns' (1959 Supp.), Section 26-521.