OPINION 47

(Webster’s New International Dictionary, 2nd Ed., page 1227.)

The word “vehicle” is itself defined elsewhere in the same act and that definition is as follows:

“(a) Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.” Acts of 1939, Ch. 48, Sec. 2, page 289, Burns’ (1952 Repl.), Section 47-1802(a).

The act goes on to define various types of vehicles including motor vehicles, motorcycles and others. It is my opinion that the section about which you inquire when read in conjunction with the definition section of the 1939 Act means that the speed regulation with which you are concerned applies to any vehicle loaded or empty which is designed or intended to be used for freight carrying and which comes within the weight limitation in the act.

OFFICIAL OPINION NO. 47
September 11, 1958

Hon. Adolph L. Fossler
Treasurer of State
State House
Indianapolis, Indiana

Dear Sir:

You have requested my Official Opinion in respect to the following questions:

“1. Are the duties of the Treasurer of State of Indiana as Treasurer of the State Office Building Commission separate and independent from his sovereign duties as Treasurer of the State of Indiana?

“2. If the answer to one is yes, would the bond of the Treasurer of State which covers his official duties include those acts and duties of the Treasurer which
he performs as Treasurer of the State Office Building Commission?"

I also have your letter of September 9, 1958, in which you request that if my Official Opinion to the above questions has not been issued by September 23rd, I advise you as to whether or not you should accept custody of the proceeds from the sale of the securities.

Upon my examination of the resolution which has been proposed to provide for the issuance of State Office Building Revenue Debentures it appears that you will be requested to perform the following duties, in part:

A. To act as Registrar, keeping complete registration of the names of owners of the revenue debentures, such registration being changed from time to time as the debentures are transferred. In this respect you would also have certain acts to perform in respect to the clipping of coupons and remitting interest to the registered owners by mail.

B. To receive the proceeds of all debentures, including accrued interest, and to hold the same as a special trust account, and disburse the same, on orders of the Commission, to pay the cost of the building, including the cost of all land to the extent that such land is not already owned by the State of Indiana.

C. To transfer, on the order of the Commission, a portion of the proceeds of the debentures to the "State Office Building Revenue Debentures Fund," sufficient in amount to equal the amount of interest to become due on same debentures prior to the use and occupancy of the building.

D. To invest and reinvest portions of such proceeds upon the request of the Commission, and to sell such investments upon order of the Commission when the proceeds are found by the Commission to be currently required in connection with the construction or equipment of the state office building.

E. To transfer the balance of the proceeds into the "State Office Building Revenue Debentures Fund" when the building is constructed and equipped.
F. To receive all payments of rent and income as paid under the several use and occupancy agreements of the several state departments and agencies occupying the building, and to disburse the same on order of the Commission for expenses of administration, operation, repair, and insurance.

G. To deposit in the said "State Office Building Revenue Debentures Fund," on or before the fifteenth day of September, December, March and June of each year, all of the balance of the income and revenues received during the preceding three calendar months, with a certain minimum amount determined by the Commission as the amount required to pay the interest on the revenue debentures and accomplish the retirement of the same at or before maturity.

H. To withdraw and make available out of said Fund a sufficient amount to pay the interest and principal becoming due, not less than fifteen days prior to each interest payment date; and, upon the order of the Commission, to withdraw and make available sufficient funds for the redemption or purchase of revenue debentures by the Commission.

I. To invest and reinvest portions of said Fund in excess of the amount of principal and interest becoming due within six months, upon the request of the Commission; and to sell such investments when and to the extent the proceeds are necessary to pay when due the interest on or principal of said debentures, and to sell any such investments when so directed by the Commission.

I am unable to find statutory authority for any such duties on your part as Treasurer of State. It should be noted however that the Supreme Court of Indiana has further stated in Book v. State Office Building Comm. et al. (1958), — Ind. —, 149 N. E. (2d) 273, 292, 293, as follows:

"While it is true, as appellant asserts, that the Commission cannot, by resolution, impose additional duties upon the Treasurer of State, we find nothing in the State Constitution which would prohibit him from serv-
ing as Treasurer of the Commission so long as it is not a lucrative office.

"The Treasurer of State now serves as Treasurer and Custodian of other funds which are not subject to appropriation by the Legislature.

"The State Office Building Act makes no specific provision for the appointment of a Treasurer of the Commission, nor does it designate the Treasurer of State as such.

* * *

"Since a Treasurer and Custodian of the funds of the Commission is necessary to carry out the provisions of the Act, this section is sufficient to authorize and empower the Commission to appoint the Treasurer of State, with his consent, or any other person, as Treasurer of the Commission with such duties as are necessary to carry out the relevant provisions of the Act."

The function of the Treasurer of State as Custodian of the other funds to which the Court refers, to-wit: the Indiana State Teachers' Retirement Fund and the Indiana Judges' Retirement Fund, are provided by statute in which a specific reference is made and duty imposed upon you as Treasurer of State.

Acts of 1915, Ch. 182, Secs. 10 and 11, as amended, and as found in Burns' (1948 Repl., 1957 Supp.), Sections 28-4507 and 28-4508;

Acts of 1953, Ch. 157, Sec. 9, as found in Burns' (1946 Repl., 1957 Supp.), Section 4-3252.

It should also be noted that you cannot accept the position of Treasurer of the Commission if it is a lucrative office, i.e. if there is any compensation received or agreed upon between yourself and the Commission.


Therefore, your acceptance of the position could not constitute the execution of a contract for any term whatsoever, and your status at any given time will be that of a gratuitous bailee.

Dart v. Lowe and Another (1854), 5 Ind. 131.
Likewise your future acts as Treasurer of the Commission could not be assured or provided for by contract between other persons and legal entities, since your actions and the actions of your successors in office will continue only so long as you or they wish to perform.

In the absence of statutory provision, and in view of the specific statements of the Supreme Court of Indiana, as Treasurer of State you would and could have no duties in regard to the Indiana State Office Building Commission; but as designated Treasurer of that Commission you could voluntarily assume the several above-described duties, or others. The fact that the position of Treasurer of the Commission is designated by it in terms of the office of Treasurer of State is neither unlawful nor of any effect upon the duties of such office.

Since you have no duty, as the Treasurer of State, to the Commission, clearly your duties as Treasurer of the Commission would and must be separate and independent from your sovereign duties as Treasurer of the State of Indiana, and your first question must therefore be answered "yes."

The engagement of the surety on an official bond extends only to the failure of duty in respect to official acts to be performed by virtue of the trust reposed in the officer. Your official acts as Treasurer of the State of Indiana are those imposed by statute.

*State ex rel. Abdiehl v. Sriver (1936), 210 Ind. 129, 1 N. E. (2d) 579;*


Although the officer of course is personally liable, even as a gratuitous bailee, for the loss of funds held by him under certain circumstances, it has been repeatedly held that the surety is not liable for moneys received outside the official duties of such an officer, for such are necessarily received as an individual and not as an officer. Your actions in respect to funds and accounting in behalf of the State Office Building Commission would be the actions of the Treasurer of that Commission and not as the Treasurer of the State of Indiana, and any bond to protect the Commission against negligence or wrongful acts
on your part or the acts of any persons under your direction, control and responsibility, must be separate and apart from your official bond as Treasurer of the State of Indiana.

Therefore, in answer to your second question, your bond as Treasurer of State does not cover or include the acts and "duties" which you may voluntarily perform as Treasurer of the State Office Building Commission.

My answer to your first two questions this date has in most respects made a response to your third question unnecessary. However, it should be emphasized that your acceptance of custody of the funds of the State Office Building Commission at the request of that Commission is entirely a matter for your own decision.

OFFICIAL OPINION NO. 48

September 25, 1958

Hon. Richard E. Wright
State Representative
544 N. Main Street
Winchester, Indiana

Dear Representative Wright:

I am in receipt of your recent letter requesting an Official Opinion as to whether the City of Winchester, Indiana, a fifth class city, may use funds collected from parking meters to pay for garbage and refuse collection in said city.

The act prescribing the disposition and use of fees collected from parking meters in cities of the fifth class is Acts of 1949, Ch. 23, Sec. 3, as found in Burns' (1950 Repl.), Section 48-513. Said statute reads as follows:

"Said several cities and towns shall provide, by ordinance, that all license fees, when collected from such mechanical parking devices, shall be deposited with its clerk-treasurer, to the credit of such city or town but in a special fund, which said special fund shall be disbursed and paid out only under the orders and directions of the board of public works and safety or common council of said city or board of trustees of said town..."