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in the same sense in other places of the same Act when there is nothing to indicate the contrary. *Ryan v. State* (1910), 174 Ind. 468, 92 N. E. 340, Ann. Cas. 1912 D, 1341.

When the word "shall" is used in a statute, it is presumed to be used in its imperative sense. *Board of Finance of School of Aurora v. Peoples National Bank* (1909), 44 Ind. App. 573, 89 N. E. 904.

In view of the foregoing it is my opinion that your questions numbered 2 and 4 should be answered in the negative.

OFFICIAL OPINION NO. 60

July 22, 1953.

Mr. Willis K. Batchelet,
State Senator,
321 N. Martha Street,
Angola, Indiana.

Dear Mr. Batchelet:

I have before me your letter of June 23, 1953 which is as follows:

"The state traffic code provides for speed limits within incorporated towns, both on state highway and also the residential section.

"The question has arisen many times as to whether or not a city or town who has a traffic ordinance setting forth the same speed regulation as the state code both on state highway passing through the town and in the residential district, whether or not the violators of such ordinance can be prosecuted under the city ordinance on the state highway passing through the town. Also in the residential section for violation of the traffic code. These cases to be prosecuted under the city ordinance.

"Will you please furnish me, as State Senator, official opinion on this question."

The Acts of the General Assembly of 1939, Chapter 48, as found in *Burns' Indiana Statutes Annotated* (1952 Repl.),

Section 47-2004 as amended in 1953 by Chapter 163 provide in part as follows:

“Speed Regulations. (a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so restricted as may be necessary to avoid colliding with any person, or vehicle or other conveyance on or near, or entering the highway in compliance with legal requirements and with the duty of all persons to use due care.

“(b) Fixed or Absolute Speed Limits. No person shall drive a vehicle on a highway or other traffic way at a speed which is greater than the limit fixed by law.

“(1) Fifty-five Miles Per Hour. No person shall drive a bus, whether occupied by passengers or not, at a speed greater than fifty-five miles per hour.

“(2) Forty-five Miles Per Hour. No person shall drive a freight-carrying pneumatic-tired vehicle with a gross weight of over five thousand pounds at a speed greater than forty-five miles per hour.

“(3) Maximum Miles Per Hour Fixed by State Highway Commission—Establishment of State Speed Zones. No person shall drive a vehicle at a speed greater than the maximum number of miles per hour which shall have been determined and sign posted as a speed limit by the State Highway Commission. Whenever the State Highway Commission shall determine, upon the basis of an engineering and traffic investigation of the conditions existing at any intersection or other place or upon any part of any highway in the state highway system or the state maintained route thereof through any city or town, that a fixed speed limit should be established at such place or places, the commission shall establish a safe and reasonable speed limit for such place or places. It shall then erect or provide appropriate signs giving notice of such limit at such intersection or other place or part of the highway, whereupon such limit shall forthwith become effective.

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“(c) Prima Facie Speed Limits. Where no special hazard exists, the following speeds shall be lawful, but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

“(1) Twenty miles per hour in any business district.

“(2) Thirty miles per hour in any residence district.

“(3) Sixty-five miles per hour in other locations, unless otherwise zoned in accordance with subsection 3 of this section.”

Violation of the above quoted law is made a misdemeanor by Section 160 of the Acts of the General Assembly of 1939, Chapter 48, as found in Burns' Indiana Statutes Annotated (1952 Repl.), Section 47-2304, which provides in part as follows:

“(a) It is a misdemeanor for any person to violate any of the provisions of this act unless such violation is by this act or other law of this state declared to be a felony.”

The Acts of the General Assembly of 1905, Chapter 169, as found in Burns' Indiana Statutes Annotated (1942 Repl.), Section 9-2402 provide:

“Whenever any act is made a public offense against the state by any statute and the punishment prescribed therefor, such act shall not be made punishable by any ordinance of any incorporated city or town; and any ordinance to such effect shall be null and void, and all prosecutions for any such public offense as may be within the jurisdiction of the authorities of such incorporated cities or towns, by and before such authorities, shall be had under the state law only: Provided, That every city and town shall have exclusive power to pass and enforce ordinances to keep the streets and other public places of any such city or town free from all obstructions, and to prevent the riding or driving of any

vehicle or animal on any sidewalk therein except in the necessary act of crossing.”

It is seen that the Indiana General Assembly has provided speed regulations in towns and cities, and has also provided a penalty in the event of violation thereof. As such Burns' Indiana Statutes Annotated, Section 9-2402, *supra*, is controlling, and any ordinance in regard to state highways in contravention thereof is null and void. It is to be noted, however, that this has no effect on streets and roads which are not a part of the state highway system or the routes or extension thereof in any city or town. See Acts of 1939, Chapter 48, same being Burns' Indiana Statutes Annotated (1952 Repl.), Section 47-2005.

In 1951 the General Assembly of Indiana enacted a law which would have permitted cities and towns to enact ordinances in regard to speed regulations on streets and highways within the corporate limits by House Enrolled Act No. 31. This, however, was vetoed by the Honorable Henry F. Schricker, Governor.

It is therefore my opinion that cities and towns have no authority to enact a traffic ordinance which sets forth the same speed regulations as the State Code and that all violations of the speed regulations must be prosecuted as a violation of a state law rather than a city or town ordinance.

OFFICIAL OPINION NO. 61

July 24, 1953.

Mr. G. W. Starr, Director,
Gross Income Tax Division,
141 S. Meridian Street,
Indianapolis, Indiana.

Dear Sir:

This is in reply to your letter of May 15, 1953 in which you ask the following questions dealing with exemptions from Indiana gross income tax:

1. Exemption of the tolls which are to be collected from persons using the bridge.