Honorable Arthur M. Thurston,
Superintendent,
Indiana State Police Headquarters,
Stout Field,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

"We are desirous of obtaining your opinion clarifying our authority to hold the cargo of an overweight truck.

"The law, as amended by the 1951 General Assembly, appears to make it mandatory that the vehicles be impounded until all fines and costs are satisfied, however, it makes no mention of the cargo."

The 1951 Act to which you refer is Chapter 266 of the Acts of 1951. The applicable portion of that statute is found in Section 2 and reads as follows:

"When a person is apprehended operating or causing to be operated a vehicle or combination of vehicles on any public highway in the State of Indiana with a weight in excess of the limitations set out in Section 8, said vehicle or combination of vehicles shall be impounded and kept within the custody of the officer apprehending such vehicle or combination of vehicles and to be moved only as directed by said officer; and such officer shall cause said truck to be kept impounded until its weight is so reduced as to comply with the limitations expressed in section 8 and until all fines and costs levied on the basis of such excess weight are paid or stayed, and any person so apprehended who shall move said vehicle or combination of vehicles or cause the same to be moved, after the same is impounded by said officer, other than as expressly directed by said officer, shall be subject to be charged with a felony and upon conviction shall be subject to a fine of not less than $500 nor more than
$1,000 to which may be added imprisonment in the Indiana State Reformatory or State Prison for a period of not less than one nor more than five years."

It seems a well settled rule in Indiana that, although criminal statutes should not be wantonly narrowed, limited or emasculated (see Morris v. State (1949), 227 Ind. 630, 88 N. E. 2d 328), they must be strictly construed to avoid a penalty, rather than to create one where an ambiguity exists and they may not be extended by inference.

Gingerich v. State (1950), — Ind. —, 93 N. E. 2d 180;
City of Ft. Wayne v. Bishop (1950), — Ind. —, 92 N. E. 2d 544;
Manners v. State (1936), 210 Ind. 640, 5 N. E. 2d 300.

In the above quoted portion of the statute there is no mention of the cargo except that trucks shall not be released until the weight is reduced. In view of the rules of statutory construction just stated, it is my opinion that it would be improper to impound or hold the cargo with an over-weight truck except as it is necessary to the holding of the truck. Thus, a truck may be impounded and moved as necessary. However, permission to remove the cargo from the truck after it is impounded may not be refused.

OFFICIAL OPINION NO. 83
October 24, 1951.

Honorable Noble W. Hollar,
Chairman,
State Board of Tax Commissioners,
Room 301, State House,
Indianapolis, Indiana.

Dear Mr. Hollar:

I have your request for an official opinion which reads as follows:

"In connection with the review of all budgets of the State, a question has arisen as to the proper con-