

beauty culturist must renew her apprentice license every three months or every six months or annually.

Section 63-1813, Burns 1943 Replacement same being Section 13, Chapter 72, Acts 1935, provides in part as follows:

“Every registered beauty culturist and every registered apprentice and registered manicurist and registered electrologist, who continues in active practice or service shall annually, on or within (30) days before the first day of August of each year, renew her certificate of registration and pay the required fee. * * *”

Under the clear provisions of the above statute a registered apprentice beauty culturist is only required to renew her license on or within thirty days before the first day of August of each year. Therefore, such license is considered an annual license and would not have to be renewed except at the time stated in the statute.

OFFICIAL OPINION NO. 30

May 3, 1950.

Mr. Arthur M. Thurston,
Superintendent of Indiana
State Police,
Stout Field,
Indianapolis 21, Indiana.

Dear Mr. Thurston:

Your letter of March 14, 1950, has been received in which you desire to know whether or not the phrase “State Director of Public Safety” as used in the State School Bus Safety statutes is synonymous with “Superintendent of Indiana State Police” for the purpose of enforcing the provisions of said statutes.

The Indiana State School Bus Safety Statutes are Sections 29-3905, *et seq.* Burns 1948 Replacement, same being Chapter 303, Acts of 1935. Section 7 of said act, same being Section 28-3911, Burns 1943 Replacement provides as follows:

“The state director of public safety or one (1) or more representatives designated by him shall have the authority to inspect any school-bus or vehicle used for

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the transportation of children to or from school and determine the fitness of such vehicle for such transportation purposes. If such inspection reveals any defect in such vehicle as to stability, construction, ventilation, or sanitation or any noncompliance with the provisions of this act, or the rules and regulations of the committee created by section nine (§ 28-3913) of this act, safety or health of the pupils transported therein, then, upon the direction of the inspecting officer, such vehicle shall not be used again for the transportation of school children until such necessary repairs have been made or conditions have been fulfilled as will fit such vehicle to conform to the requirements of this act and of the state safety director. If such order is made by any deputy or assistant to the state safety director, the owner or operator of such vehicle aggrieved by such order may, within five (5) days, appeal to the state safety director, who shall, within ten (10) days thereafter, review such order and file his decision thereon, and unless by his authority the order is revoked or modified, it shall remain in full force.”

Section 9 of said Act, same being Section 28-3913, Burns 1943 Replacement, provides as follows:

“A committee consisting of the state superintendent of public instruction, the secretary of the state board of health, the chief of the motor vehicle regulation division of the public service commission, the state director of safety and the administrative officer of the department of commerce and industry shall, by proper rules and regulations, prescribe standards of construction and equipment of school-busses, in conformity with the provisions of this act, and shall inspect any and all busses which may be offered for sale or lease to school authorities, and if such busses so inspected and the construction thereof are found to be satisfactory and in compliance with the provisions of this act, and the rules and regulations of the committee, such busses shall be placed on an approved list and any school authority shall thereafter be permitted to buy, lease or contract for the use of any such bus.”

Section 10 of said Act, same being Section 28-3914, Burns 1943 Replacement reads as follows:

“Any person who shall violate any of the provisions of this act, or any rule or regulation of the committee, as provided in section nine (§ 28-3913) of this act; or any order issued by the state director of public safety pursuant to this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), to which may be added imprisonment for a period of not to exceed ten (10) days, and each and every day during which such violation shall continue shall be deemed to constitute a separate and distinct offense.”

As was said in an unofficial opinion on August 4, 1948: Section 1 of Chapter 127 of the Acts of 1937, Section 47-1701 of Burns 1940 Replacement is as follows:

“A committee is hereby created which shall be known as the state committee on safety and which shall consist, ex officio, of one (1) member of the public service commission and one (1) member of the state highway commission, each of whom shall be designated by the governor, the state director of safety, the commissioner of motor vehicles, and the secretary of the state board of health. The state director of safety shall be the chairman of the committee.”

In order to answer your question it is necessary to consider the statutory history of the “Director of Safety.” In 1933, the Legislature adopted what was known as the State Executive Administrative Act, which was Chapter 4 of the Acts of 1933. This Act created and established eight divisions of the executive and administrative department of government. One of these divisions was designated as the “Executive Department”. This act authorized and empowered the Governor to assign and transfer any administrative power, duty or function to one or more of said departments. Prior to 1933 there had been no department or separate organization of state police, but prior thereto there were deputies of the Secre-

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tary of State with police power, which operated as our state police.

By Chapter 71 of the Acts of 1933 there was created under the executive department of the state the Indiana State Police. Section 1 of this act contained the following sentence:

“The director of safety of the department of safety of the executive department of the state of Indiana shall be the superintendent of said Indiana state police.”

This is the first reference which we have been able to find in the statutes to a “Director of Safety” or a Department of Safety of the Executive Department. A “Department of Safety” is referred to in Chapter 189 of the Acts of 1933, which act provided for the compilation of certain statistics and reports relative to motor vehicle accidents.

Under date of April 15, 1933, by an executive order, there was set up a Division of Public Safety in the Executive Department and all powers, functions and duties relative to the Indiana State Police were transferred to that division.

Chapter 179 of the Acts of 1931 was the original Financial Responsibility Law, the enforcement of which had been placed with the Secretary of State. As nearly as we can learn, the Secretary of State had set up a division in his office for the enforcement and operation of this law which was called a division or department of public safety. The functions of the Secretary of State under this act by said executive order were transferred to the said Division of Public Safety of the Executive Department as a part of the duties of the Indiana State Police.

We have made an examination of the yearbooks and the first reference we find therein to a Division of Public Safety appears in the yearbook for 1934. Reference there apparently was to the Division of Safety as established by the executive order above referred to. So far as I have been able to find no such office as Director of Safety was ever formally created by statute, but such a title came into existence as the name of the administrative officer of the Division of Public Safety created by the executive order of the Governor.

In this connection I also call attention to the fact that the 1937 act, above quoted, creating the committee on safety,

referred to one of its members as the Commissioner of Motor Vehicles. I have been unable to find where any such office as a Commissioner of Motor Vehicles had ever been created by the Legislature prior thereto. The term had been used in the Motor Vehicle Law as the title of the Secretary of State when performing the duties imposed upon him by certain of the Motor Vehicle Laws.

When the Legislature by Chapter 71, of the Acts of 1933, above referred to, mentioned the Director of Safety of the Department of Safety of the Executive Department reference must have been to the administrative officer of the Division of Safety of the Executive Department above referred to.

In 1935 this section was amended by Chapter 299 of the acts of that year and under the section as amended it was provided "The superintendent (of State Police) shall also be the director of safety of the division of public safety" and the section provided that the Superintendent should be appointed by the Governor and should be the executive officer of the Department of State Police under the Executive Department of the State of Indiana. This act made the Superintendent of State Police the administrative head of the Division of Safety in the Executive Department.

In 1941 the act creating the Executive Department of state government was repealed and such department abolished. Chapter 134 of the Acts of 1941 created a new department designated as "State Police Department". Under this act a new State Police Department was created. Provision was made for a Superintendent of State Police to be appointed by the Governor and who should be the executive officer and have charge of the work of the department. This act also created for the purpose of the act a Division of Public Safety and the Superintendent of State Police was placed in charge as Director of Safety. Said division was placed in charge of the enforcement of the Motor Vehicle Theft provisions contained in Chapter 265 of the Acts of 1941.

In 1943 a new Financial Responsibility Act for owners and operators of motor vehicles was adopted and it defined the word "Commissioner" as used in the act to be the officer in charge of the Division of Public Safety. At that time, as above pointed out, this was the title under which the Superintendent of the State Police enforced the Motor Vehicle Theft Laws under the terms of the 1941 Act.

Chapter 344 of the Acts of 1945 is now referred to as the State Police Code. This act created the State Police Department as it now exists. It provided for a State Police Board and Superintendent of State Police who is appointed by the Governor. This act specifically repealed Chapter 71 of the Acts of 1933 and Chapter 299 of the Acts of 1935 which had amended the Act of 1933. Chapter 355 of the Acts of 1945 was an amendment of the 1943 Financial Responsibility Act and by Section 1 of that act there was created in the State Police Department a Division of Public Safety which was placed under the charge of a Commissioner of Public Safety who was the Superintendent of State Police by virtue of his office as such superintendent.

In 1945 the State Police Code, as above stated, repealed prior laws relative to the creation of the office of the Superintendent of State Police. It put all of the provisions of the laws of the state for the regulation and use of motor vehicles under the State Police Department created by that act and Chapter 355 of the acts of that year created a new Division of Public Safety, the sole duty of which was to administer the provisions of the Financial Responsibility Act.

Chapter 159 of the Acts of 1947 created a department of state government known as the Bureau of Motor Vehicles and Division of Safety Responsibility and Driver Improvement. This division was placed under the charge of the Commissioner of Motor Vehicles, which was an office created by the Motor Vehicle Licensing Law of 1945. This act expressly repealed Chapter 175 of the Acts of 1943 relative to financial responsibility and also Chapter 355 of the Acts of 1945 which had amended said 1943 Act. This repealed and abolished the Division of Public Safety of the State Police Department which had been created by the Acts of 1945.

The 1945 State Police Code, above referred to, is Chapter 344 of the Acts of 1945. Section 10 of said Act, same being Section 47-855, Burns 1949 Supplement in part reads as follows:

“The officers and police employees of the department are hereby vested with all necessary police powers to enforce the provisions of the laws of the state of Indiana for the regulation and use of automobiles, motor vehicles and other vehicles, and the laws for the safe-

guarding and protection of the surface or other physical portion of the highways of the state of Indiana, and without writ or warrant for violation thereof when committed in their presence * * *."

Your attention is directed to Section 1 of Chapter 14 of the Acts of 1945 same being Section 1-203, Burns 1945 Replacement which provides as follows:

"Whenever in any act of the general assembly of the state of Indiana, any board, bureau, commission, division, department, officer, agency, authority, or instrumentality of state government, or any political subdivision thereof, shall be designated by name, which name is incorrectly stated, or at the time of the effective date of such act, or subsequently thereto, the rights, powers, duties, or liabilities placed with such board, bureau, commission, division, department, officer, agency, authority or instrumentality were transferred to a different board, bureau, commission, division, department, officer, agency, authority or instrumentality, that such named board, commission, division, department, officer, agency, authority, or instrumentality, whether correctly named in said act at the time of its effective date or not, shall mean and be construed to mean the properly or correctly named or designated board, bureau, commission, division, department, officer, agency, authority or instrumentality, or the one to which such rights, powers, duties and liabilities were transferred."

Under the provisions of the last referred to statute I am of the opinion the Superintendent of Indiana State Police is authorized to carry out all the duties required of the State Director of Public Safety by the provisions of the State School Bus Safety Committee Statute, *supra*. This is true because at the time of the enactment of said 1935 statute relating to the State School Bus Safety Committee and the duties of the State Director of Public Safety, there was such an officer. His duties have now been transferred, as far as applicable to the instant question, to the Superintendent of Indiana State Police by the provisions of the 1945 State Police Code, *supra*. This

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brings into operations the provisions of Section 1, Chapter 14 of the Acts of 1945, aforesaid, which would authorize the Superintendent of the Indiana State Police to exercise all those functions of office prescribed for the State Director of Public Safety under the provisions of said State School Bus Safety Committee Statute. However, under the provisions of Chapter 14, Acts of 1945, *supra*, such official acts are to be performed under the present proper name of your office and such act should be taken by you under the title of Superintendent of Indiana State Police.

OFFICIAL OPINION NO. 31

April 26, 1950.

Mr. Charles F. Fleming,
Secretary of State,
State House,
Indianapolis 4, Indiana.

Dear Sir:

I have received your letter of April 21st, which reads as follows:

“Your official opinion is respectfully requested on the following: BRS 1933, Section 47-2801, Pocket Supplement, being Acts of 1949, Chapter 258, Section 3, Page 927, provides that all owners of busses operated for hire shall pay such fees for the use of the public highways on a declared gross weight basis, and such busses are divided into eleven classifications.

“The same section of the statutes provides that busses operating in any local transportation system shall pay a fee according to their weight in an amount equal to twenty per cent required for busses for hire.

“Sub-section D provides for the licensing of church busses and school busses on a flat fee basis. The statute does not make any provision for the registration and licensing of busses not for hire. There are cases where a bus is owned and operated by the owner for the trans-