From the words of the statutes, it is clear that operating with the load in excess of the limit as fixed in the application is made criminal. As no specific penalty is provided for that crime, it is clear that the provisions of Burns 47-2908 does apply.

Therefore, it is my opinion that when the State Police apprehend a truck in violation of the Section in question, they have the duty of, first, to impound the truck, and, second, to swear out affidavits for the violation of the act under Section 74.

The State Police department has no duty in regard to the collection of additional fees.

OFFICIAL OPINION NO. 15

March 13, 1950.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter requesting an official opinion upon the following questions:

“1. Can the proper officers of a city or town and a township enter into a contract for fire protection pursuant to Chap. 229, Acts of 1927 which would be binding over a period of years stated in the contract; for example, 10, 15 or 20 years;

“2. If your answer to question number one is in the affirmative, is it mandatory that the township advisory board make annual appropriations to pay the city or town whatever annual payment is agreed upon in the contract?”

From the remainder of your letter and from discussions with your office, we understand the underlying facts to be that the City of Greencastle is considering obtaining certain
fire equipment and it has been proposed that Greencastle
township enter into a contract with the City of Greencastle for
the furnishing of fire protection to the township by that City.

Before discussing the legal time limit of this type of con-
tract, I wish to call your attention to Burns’ 1933 Replacement,
Section 65-501 which provides in part as follows:

“For the purpose of extinguishing fires which may
occur in any township in this state within the limits of
which any city or town or any part thereof is located,
or in any township contiguous to the township in which
such city or town or any part thereof is located, the trustee of any such township is hereby authorized to
contract with any city or town, that has and maintains
adequate fire fighting equipment, for fire protection
* * *” (Our emphasis).

This Act was originally a 1927 Act but was amended by
Chap. 260 of the Acts of 1937 to expressly authorize a contract
for “furnishing fire protection.” This statute then is the
authority for a township to enter into this type of contract.
However, in examining this statute, I find no mention of any
specific length of time for which any such contract may be
made.

In the case of Moon v. School City, 50 Ind. 251, where the
court had before it the interpretation of a statute, authorizing
School Trustees to employ a Superintendent for their Schools,
it was said:

“* * * the term of the employment is left to the sound
discretion of the school trustees, and, in the absence of
a showing of fraud or an abuse of such discretion, a
contract employing a superintendent of city schools for
a term of three years was valid, although it extended
beyond the term of any member of the board as com-
posed at the time the contract was made.

“Courts cannot arbitrarily declare a contract void as
against public policy, and, where the power to make the
contract is given by statute, the reasons for declaring
it void should clearly appear before the court is war-
ranted in so deciding.”
It has been said that Boards have two (2) classes of powers—governmental or Legislative and proprietary or business. In the exercise of the governmental or legislative powers, a board, in the absence of statutory provisions, can not make a contract extend beyond its own term. But in the exercise of business or proprietary powers, a board may contract as an individual unless restrained by statutory provisions to the contrary.

City of Vincennes v. The Citizens Gas-Light Company, 132 Ind. 114, 126;
70 ALR Ann. 794;
149 ALR Ann. 336.

In the case of Illinois Power and Light Corporation v. Centralia, 89 Fed. 2nd, 985, the court said:

"A city may in its governmental capacity, do nothing which limits the legislative powers of the successors of the existing official body but in its contracts for public utilities, so far as private affairs are involved, rather than legislative or governmental powers, the city may bind itself beyond the term of office of the officials making the contract * * *"

"The City may not contract to pay a certain rate throughout the term of years, regardless of reasonableness for such is a surrender of its governmental powers. It may, however, make a valid agreement to buy current and pay statutory ‘adequate’ rates, thereby, over a long period”.

In the case of Commonwealth ex rel. Forney v. Bartel (1941), 342 Pa. 172, 20 A. 2nd, 313, Township Commissioners entered into a contract with the volunteer fire department of the township to enact an ordinance making an appropriation of $3000 to the fire department “for each year thereafter.” In holding the contract invalid, the court said:

"The service of a fire department is governmental in character * * *. In the performance of sovereign or governmental, as distinguished from business or proprietary program functions, no legislative body, or
municipal body having legislative authority, can take
action which will bind its successors."

"The County Reform Act" of 1899 Sec. 65-301 Burns et
seq., must also be considered in arriving at an answer to your
question. This act attempts to provide generally for the con-
duct of township business and for the manner in which money
can be raised and spent in county and township affairs. By
this Act, the trustee is required to submit a detailed and
itemized statement of his estimated expenditures for which
appropriations are asked, to the annual meeting of the town-
ship advisory Board, which is held for the purposes of the
adoption of the annual budget. The Act charges the advisory
board with the duty to consider all proposed estimates for ex-
penditures and to concur in or reject any proposed items and
thus determine the annual budget for the township and fix
the tax rates necessary for the same.

The Act further provides that:

"A contract made in violation of this Act shall be
null and void."

The statutes pertaining to county and township business
have been construed on many occasions, and in the case of
State ex rel. Claude v. Parrish, 180 Ind. 63 at page 69, the
court stated:

"It has been the uniform holding of this court and the
Appellate court that a contract made without an ap-
propriation to pay the debts thereby incurred, is void."

Later on page 70 the court stated as follows:

"The purpose of the statute seems to have been to
put the burden upon those dealing with these particular
officers, of seeing to it that the necessary authority and
the record of it, and an appropriation and the record
of it have been made; failing in these, the statutes
declares the contract void."

In view of the present tendency on the part of courts to hold
that the fighting of fires is to be treated as a direct govern-
mental control, and, in further view of the fact that the courts
reserve the right to review the contract to see whether or not same is reasonable, necessary and within the sound discretion of the Board or Officer making same, it is my opinion that it may be unwise to enter into this type of contract for a period beyond the term of office of the trustee. A contract of this type is always subject to court review. What is reasonable and what is necessary will depend upon the facts in each case. There is no yardstick or set rule. Each case must stand or fall on the facts in issue. See Moon v. School City, supra. And, it is further my opinion that the contract should not be entered into until after an appropriation has been made, otherwise, same is invalid. See Miller v. Jackson Township, 178 Ind. 503.

OFFICIAL OPINION NO. 16

March 13, 1950.

Mr. Robert B. Hougham,
Executive Secretary,
Indiana State Teachers,
Retirement Fund,
336 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of November 28, 1949, has been received, requesting an official opinion on the following question:

"If a member has transferred to the 1945, 1947 or 1949 laws, does the limitation, as to interest charge, apply to all his arrearages, including those accruing under the 1921 and 1939 laws; or does it apply only to charges arising under the laws containing the limitation?"

Supplementing your request, your letter furnishes the following information:

"The state teachers' retirement fund law, Acts of 1921, page 761, provided, as to arrearages, that 'deferred payment or adjusted accounts must bear interest