

It is therefore apparent that such bonds of such State universities and schools could not be construed to be general obligation bonds of the State of Indiana or of any political sub-division thereof.

I am therefore of the opinion that under the above statute the trustees of the Public Employes' Retirement Fund are not authorized by Chapter 340, Acts of 1945, to invest their surplus money in the bonds of said State universities and schools issued under the foregoing statutes.

TLW:vb

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OFFICIAL OPINION NO. 17

April 7, 1949.

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

Dear Sir:

I have your letter of March 18 in which you request an opinion which will analyze and construe the provisions of Senate Bill No. 138, Chap. 269 as passed by the last Legislature as they apply to the Indiana State Police Department in its effort to enforce laws relative to maximum truck weights. You state that you are interested in the extent to which former law *in re.* truck weights has been changed and/or superseded by Senate Bill No. 138 and in the application of the penalty provisions as provided in Section 3 of said bill, more specifically as follows:

"1. Does Sec. 3 of said bill allow a tolerance of 1,000 pounds when excess load is 2,000 pounds or less, and if so, does the general penalty in Sec. 4 apply to the first 1,000 pounds of excess load?

"2. If a 1,000 pound tolerance is allowed under one (1) above, does the same tolerance apply to trucks which are more than 2,000 pounds overweight, under the provisions of Sec. 3?

"3. Due to the fact a Justice of the Peace and

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magistrate are limited in jurisdiction, what is the extent of their jurisdiction under Sec. 3 of this bill?

"4. Can separate affidavits be filed charging an overweight wheel, an overweight axle, etc., after the truck has been weighed, or has the truck operator committed one violation of law only, regardless of the number of overweight wheels and/or axles present, as determined by weighing procedure during one visit to the scales?

"5. Assuming an axle is 20,000 pounds overweight, may the affidavit charge less overweight in order to confer jurisdiction on a Justice of Peace or a Magistrate under Sec. 3?

"6. In summary, we shall be obliged if you will construe and interpret Senate Bill No. 138 as it concerns police officers and the jurisdiction of courts, especially those of Justices of the Peace and Magistrates."

1. Section 4 of Senate Bill No. 138, (1949), amends Section 20 of Chapter 83 of the Acts of 1931.

The 1931 Act is an Act concerning highways, regulating and restricting the use thereof, same being Section 47-548, Burns 1940 Replacement.

Section 3 of the Act of 1949 is a new section, same to be known as Section 8 (a). Section 2 of the Act of 1949 amends Section 2 of Chapter 219 of the Acts of 1941, same being Section 47-536, Burns 1940 Replacement.

Section 1 of the Act of 1949 amends Section 1 of Chapter 205 of the Acts of 1947, same being Section 47-530 Burns 1940 Replacement.

There have been several amendments to the original Act of 1931, to-wit:

Section 2 is now Section 1 of the Act of 1949.

Section 7 is now Section 1 of the Acts of 1937, Burns Section 47-535.

Section 8 is now Section 3 of the Act of 1949.

A new section has been added by the Act of 1949, known as Section 8 (a).

Section 10 is now Section 3 of the Acts of 1937,  
Burns Section 47-538.  
Section 20 is now Section 4 of the Act of 1949.

2. Section 3 of the Act of 1949 reads as follows:

“That the first above entitled act be amended by inserting therein a new section to be numbered section 8A and to read as follows: Sec. 8A. Any person who violates the provisions of section 8 of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in an amount equal to two cents per pound for each pound of excess load over one thousand pounds when the excess is two thousand pounds or less; four cents per pound for each pound of excess load when the excess exceeds two thousand pounds and is three thousand pounds or less; six cents per pound for each pound of excess load when the excess exceeds three thousand pounds and is four thousand pounds or less; eight cents per pound for each pound of excess load when the excess exceeds four thousand pounds and is five thousand pounds or less; ten cents per pound for each pound of excess load when the excess is five thousand pounds or more.”

It was said in *Tucker v. Muesing* (1942), 219 Ind. 527, 531, 39 N. E. 738:

“\* \* \* In case of ambiguity in statutes, there are certain rules of construction to which the court resorts in arriving at the intention of the Legislature, but such rules have no application to a statute that is free from ambiguity. \* \* \*”

It is clear under Section 3 that upon conviction one shall be fined in an amount equal to two cents per pound for each pound of excess load over one thousand pounds when the excess is two thousand pounds or less. The answer to your first question, therefore, is that there is allowed a tolerance of one thousand pounds.

You further ask whether or not the general penalty in Section 4 applies to this tolerance of one thousand pounds. Section 3 of the Act purports to provide a penalty for all

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violations of the provisions of Section 8 of said Act (same being Section 2 of the 1949 Act). Section 4 is the penalty provision to be applied to all violations of the Act for which a penalty is not specifically provided. The original 1931 Act consists of twenty-one sections. Section 4 is applicable to all of the sections except Section 8 (same being Section 3 of the 1949 Act). Section 3 of the Act provides for a penalty of four cents per pound for each pound of excess load when the excess exceeds two thousand pounds and is three thousand pounds or less. In my opinion the tolerance of one thousand pounds is allowed only when the excess is two thousand pounds or less. My answer, therefore, to your question number two is "no".

3. In answer to your third question it is to be noted that Section 9-715 Burns 1942 Replacement, Acts of 1905, Chapter 169, Section 75, page 584, provides:

"The jurisdiction of justices of the peace in criminal cases shall be coextensive with their respective counties, and they shall have exclusive original jurisdiction in all cases where the fine assessed can not exceed three dollars (\$3.00), and concurrent jurisdiction with the criminal court and circuit court to try and determine all cases of misdemeanor punishable by fine only; and in trials before justices, fines to the extent of twenty-five dollars (\$25.00), with costs, may be assessed; and they shall have jurisdiction to make examination in all cases; but they shall have no power to adjudge imprisonment as a part of their sentence, except in the manner specially provided in this act."

Section 4-2402, Acts of 1905, Chapter 129, Section 216, page 219; 1921, Chapter 70, Section 1, page 153; 1939, Chapter 7, Section 1, page 12, provides:

"The city judge shall be elected by the legal voters of such city, at the time and in the same manner as the other city officers are elected, for the term of four (4) years and until his successor is elected and qualified. His term of office shall begin at twelve o'clock noon, on the first Monday of January following his election; \* \* \* He shall hold daily sessions of the city court, Sundays and legal holidays excepted, at a place to be provided and designated by the common council. He

shall have and exercise within the county in which such city is located the powers and jurisdiction now or hereafter conferred upon justices of the peace in all cases of crimes and misdemeanors, *except as otherwise herein provided*. He shall have exclusive jurisdiction of all violations of the ordinances of such city. *In all cities of the first and second and third class he shall have exclusive jurisdiction of the trial of all misdemeanors constituting violation of highway traffic ordinances of such city, and of violations of the highway traffic laws of the state of Indiana; but this act shall not abridge the right of appeal from the judgments of said court to either the circuit or criminal courts of the state, as such right of appeal now exists in law*. He also shall have original concurrent jurisdiction with the circuit court or criminal court in all cases of petit larceny and all other violations of the laws of the state where the penalty provided therefor can not exceed a fine of five hundred dollars (\$500) and imprisonment in the jail or workhouse not exceeding six (6) months, or either or both: Provided, That such city judge, in any case brought before him charging any person with a crime or misdemeanor, if, in the opinion of such judge, the punishment which he is authorized to assess is not adequate to the offense, may so find, and in such case he shall hold such prisoner to bail for his appearance before the proper court, or commit him to jail in default of such bail." (Our emphasis).

Section 4-3802 Burns 1942 Replacement, Acts of 1939, Chapter 164, Section 2, page 753, among other things, provides for the appointment and qualification of magistrates. Therein the court of each county is authorized to have two or more magistrates.

"\* \* \* The magistrates shall be appointed by the judge of the circuit court of the county, in the following manner: In cities or towns which are county seats, and in cities of the first, second, third, fourth and fifth classes, the judge may, upon petition filed and hearing had as hereinafter provided, in his discretion, appoint two (2) magistrates for the magistrates court. \* \* \* If he finds that the services of such magistrates are

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needed as stated in the petition, he shall enter an order granting the petition. \* \* \*"

Section 4-3804, Burns, Acts 1939, Chapter 164, Section 4, page 753, provides for the jurisdiction of the magistrates court and among other things, provides:

"(a) The jurisdiction of the magistrates court in each county, and of each division of such court, shall extend throughout the county.

"(b) The magistrates court shall have and exercise original jurisdiction concurrently with the original jurisdiction which is now exercised in such county by the circuit court, superior court, criminal court, municipal court or city court, in all cases of petty larceny and in all other violations of the laws of the state for which the penalty provided can not exceed a fine of five hundred dollars (\$500) or imprisonment in the county jail or state farm for a period not exceeding six (6) months, or both such fine and such imprisonment.

"(c) The magistrates court shall have and exercise exclusive original jurisdiction concurrently with the exclusive original jurisdiction which is now exercised in such county by the circuit court, superior court, criminal court, municipal court or city court, of all misdemeanor violations of the highway traffic laws of the state and of all violations of the traffic ordinances of the town or city in which the particular division of the magistrate court is located.

"(d) The court shall have and exercise within the county the powers and jurisdiction now or hereafter conferred upon or exercised by justices of the peace in all cases of crimes and misdemeanors and in related proceedings such as surety of the peace, except as otherwise herein provided. Immediately upon the beginning of the terms of the two (2) first magistrates to be appointed in a county under this act, justices of the peace in such county shall cease to have any jurisdiction over the violation of the highway traffic laws of the state or over the violation of the traffic ordinances of any town or city; and mayors in such county shall cease to act as judges of city courts in such cities.

“(e) If the penalty which the magistrate is authorized to impose is, in his opinion, not adequate to the offense in any case brought before him, he may so find, and in such case he shall hold such prisoner to bail for his appearance before the proper court or commit him to jail in default of such bail.”

It is to be noted that under Section 9-715 Burns, *supra*, the Justice of the Peace has jurisdiction to try and determine all cases of misdemeanor punishable by fine only; and in trials before Justices of the Peace fines to the extent of \$25.00 with costs may be assessed. I interpret this to mean that the Justice of the Peace is not limited as to jurisdiction of misdemeanors where the penalty provided is greater than \$25.00 but actually has jurisdiction of all misdemeanors where the punishment to be assessed is by fine only but is limited to assessing a fine of \$25.00; for example, if the penalty set by statute is in an amount greater than \$25.00 the Justice of the Peace would have jurisdiction of the case but would be limited to assessing a fine of \$25.00 only.

Under Section 4-2402, *supra*, it is to be particularly noted that in all cities of the first, second and third classes the city court shall have exclusive jurisdiction of the trial of all misdemeanors constituting violations of the highway traffic ordinances of such city, and of the violation of the highway traffic laws of the State of Indiana. Senate Bill No. 138, the Act herein in question, pertains to the highway traffic laws of the State of Indiana and therefore in all cities of the first, second, and third classes the Justice of the Peace would not have jurisdiction to try offenders under this Act.

It is to be noted further that under Section 4-2402 the city court in addition to having exclusive jurisdiction of the trial of all highway traffic laws he shall also have original concurrent jurisdiction with the circuit court or criminal court in all cases of petty larceny and all other violations of the laws of the State where the penalty provided therefor cannot exceed a fine of \$500.00 and imprisonment in the jail or workhouse not exceeding six months. I interpret this to mean that the city court in cities of the first, second, and third classes are limited to jurisdiction in all cases of petty larceny and all other violations of the laws of the State where

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the penalty provided therefor cannot exceed a fine of \$500.00 and imprisonment in the jail or workhouse not exceeding six months, except in those violations of the highway traffic laws of the State of Indiana and in those cases the city court may prescribe the penalty provided for said violations. In other words, if the penalty provided be in a sum in excess of \$500.00 then the city court would not have jurisdiction except for violations of highway traffic laws of the State in which cases the city court may assess the penalty prescribed by statute.

Under Section 4-3804, *supra*, Sub-section (c), it is to be noted that the magistrates court shall have and exercise exclusive original jurisdiction concurrently with the exclusive original jurisdiction which is now exercised in such county by the circuit court, superior court, criminal court, municipal court or city court of all misdemeanors violations of the highway traffic laws of the State and of all violations of the traffic ordinances of the town or city in which the particular division of the magistrates court is located. I interpret this section of the statute to mean that the same powers over traffic violations as conferred upon city courts of the first, second and third classes has been conferred upon magistrates courts. The exclusive jurisdiction over such violations was conferred upon the city courts in the class designated and the magistrates courts at the same session of the Legislature and the statutes in my opinion, therefore, should be construed in *pari materia*. See: State *ex rel.* Spencer v. Baker, (1937), 212 Ind. 44, 7 N. E. (2) 984.

Under Sub-section (a) it is to be noted that immediately upon the beginning of the terms of the two magistrates to be appointed in a county under this Act the Justice of the Peace in such county shall cease to have any jurisdiction over the violation of the highway traffic laws of the State. At the present time Marion County is the only county in the State that has magistrates courts and under this section the Justices of the Peace in Marion County definitely have no jurisdiction to try any violation of the highway traffic laws of the state.

In the case of Basson v. State of Indiana (1933), 205 Ind. 532, the defendant was found guilty in the Circuit Court of driving upon a public highway while under the influence of intoxicating liquors. The defendant contended that the Circuit Court had no jurisdiction of the offense charged or of the

subject matter of said cause; that under the statute, Section 4-2402 Burns, *supra*, the city judge of Richmond had exclusive jurisdiction. The Supreme Court, after quoting the statute, said:

“\* \* \* The first part of the above quoted statute gives the city judge the same jurisdiction that is given or may be given justices of the peace, except as therein provided, and then makes the exceptions, one of which is that the city judge shall have exclusive jurisdiction of the trial of all misdemeanors constituting violation of highway traffic laws of the state of Indiana. This, we think means exclusive jurisdiction as against the justice of the peace court, and not as against the circuit courts. We do not believe it was intended by the law-makers, by this statute, to take away any of the jurisdiction of the circuit, superior, or criminal courts of this state possessed at the time this act was passed. The statute is subject to no other reasonable construction. \* \* \*”

Therefore, in answer to your third question it is my opinion that the Justices of the Peace in cities of the first, second or third class have no jurisdiction to hear cases involving the provisions of Senate Bill No. 138; that Justices of the Peace courts in all other counties do have jurisdiction but are limited to assessing a fine in the amount of \$25.00; that the magistrate's court has the same jurisdiction as the city courts of the first, second and third class for violations of the highway traffic laws of the state of Indiana and, therefore, have jurisdiction of violations of the provisions of Senate Bill No. 138; that the penalty prescribed under Sections 3 and 4 of Senate Enrolled Act No. 138 provides for fines only and under Section 3 of the penalty may exceed the sum of \$500.00, nevertheless the city court of the first, second or third class, as well as the magistrate's court has jurisdiction to assess the full penalty prescribed by the act.

4. Section 2 of Senate Enrolled Act No. 138 reads as follows:

“\* \* \* Except as otherwise provided by regulation of the State Highway Commission of Indiana, or unless the owner or operator shall first have secured a permit

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as provided in Section 10 of this act, no vehicle or combination of vehicles having weight distributed otherwise than within the following limitations of this subsection (a) shall be operated or moved on any public highway:

“(1) The total gross weight, with load, in pounds of any vehicle or combination of vehicles shall not exceed seventy-two thousand pounds.

“(2) The total weight concentrated on the roadway surface from any tandem axle group shall not exceed sixteen thousand pounds for each axle of a tandem assembly.

“(3) No vehicle shall have a maximum wheel weight, unladen or with load, in excess of eight hundred pounds per inch width of tire, measured between flanges of rim, nor an axle weight in excess of eighteen thousand pounds.

“(b) \* \* \*.” (Section b concerns the establishment of heavy duty highways and regulations concerning them. There are as yet no heavy duty highways.)

“(c) As used in this act:

“(1) ‘Axle weight’ shall be considered the total weight concentrated on one or more axles spaced less than forty inches from center to center.

“(2) An ‘axle’ shall be construed to be the common axis of rotation of one or more wheels or rollers whether power driven or freely rotating, and whether in one or more segments and regardless of the number of wheels carried thereon.

“(3) ‘Tandem axle group’ shall be considered to be two or more axles spaced more than forty inches from center to center having at least one common point of weight suspension.”

The first part of Section 2 provides that unless it is provided otherwise by regulation of the Highway Commission where the owner shall have first secured a permit as provided by the Act *no vehicle or combination of vehicles having weight*

*distributed otherwise than within the following limitations of this sub-section (a) shall be operated or moved on any public highway.* I think this means that no vehicle shall be operated on any public highway unless the three provisions provided for in Section (a) are complied with; that the failure to comply with any one or all three is the violation. I do not believe that it was the intention of the Legislature to make the failure to comply with all three of the conditions a separate and distinct offense. The statute is subject to no other construction.

Basson v. State of Indiana, *supra*;  
State v. Jones, (1???) 73 Me. 280.

Therefore, it is my opinion that separate affidavits cannot be filed charging an overweight wheel, an overweight axle and an overweight load. So the answer to your question number four is in the negative.

5. It is my belief that I have covered question number five in answering question number three.

Though you do not request same I deem it advisable to call your attention to the fact that House Enrolled Act No. 107, same being an amendatory act, amended Section 1 of Chapter 205 of the Acts of 1947, which provides for the width, height and load of motor vehicles, was signed by the Governor March 8, 1949, and that same carried an emergency clause; that Senate Enrolled Act No. 138 was signed March 10, 1949; that Section 1 of Senate Enrolled Act No. 138 of 1949 is likewise an amendment of Section 1 of Chapter 205 of the Acts of 1947. It is the law that:

“\* \* \* From the earliest times it has been uniformly held that an act of the Legislature which attempts to amend a section of a statute which has already been amended is unconstitutional and void, notwithstanding the title of the amendatory act sets out in full the title of the act sought to be amended. \* \* \*”

Draper v. Zebec (1941), 219 Ind. 362, 337, 38 N. E. (2d) 995, 37 N. E. (2d) 952.

Nothing therefore that House Enrolled Act No. 138, insofar as Section 1 of Senate Enrolled Act No. 138 is concerned,

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applying the rule of law quoted herein, it becomes apparent that Section 1 of Senate Enrolled Act No. 138 is unconstitutional and void. That House Enrolled Act No. 107 amended Section 1 of Chapter 205 of the Acts of 1947 only by deleting the following: "Provided, however, that in all cases in which passenger common carrier motor vehicles in excess of thirty-six feet in length are used in interurban service the cars shall be provided with toilet facilities."

The provisions of Section 1 of Chapter 205 of the Acts of 1947 pertaining to the width, length and height of vehicles therefore remain unchanged.

FEC:nb

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### OFFICIAL OPINION NO. 18

April 7, 1949.

Public Service Commission,  
Mr. Roscoe C. O'Bryne, Commissioner,  
Room No. 401,  
State House  
Indianapolis 4, Indiana.

Dear Sir:

This is in reply to the request of your Mr. Cannon of April 1, 1949 with which you enclosed copies of rules 19 to 28 inclusive of the Indianapolis Water Company. You wish to know whether the water Company can require all of its customers to install copper service pipes between the water main and the customer's meter, these service pipes are to be maintained by the Water Company; that the copper pipe has a longer service life but has higher initial cost, but the longer life reduces the maintenance charges which the Water Company assumes.

I observe that Rule 22 is the only rule that has any apparent direct bearing on this quotation. This rule reads as follows:

"Rule 22. The Company shall have the right to reject any work between the main and the meter which does not conform to these rules or which includes the installation of unsafe or non-standard equipment or