OPINION 42

OFFICIAL OPINION NO. 42

May 6, 1949.

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

Dear Sir:

I have your letter requesting an official opinion on the following questions pertaining to Senate Bill Number 138:

"1. We have been requested by various courts for an opinion reference the penalty for truck violations. Could you submit us a formula to figure these penalties?

"2. How does the 1,000 pound tolerance apply?

"3. The question has arisen as to whether or not the penalty can be measured as in this Act.

"4. I also understand that the constitutionality of this law may be questioned in this, to wit: excessive, unreasonable, and discriminatory fines.

"Would you also prepare a model affidavit for us to use as a pattern in charging a motorist for overweight violation when there are several axles of the vehicle overweight?"

The violation is contained in Section 2 of Senate Enrolled Act Number 138 which reads as follows:

"SEC. 2 * * * Sec. 8. (a) 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 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) * * *”

The penalty clause is contained in Section 3 which reads as follows:

“SEC. 3. * * * 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.” (Our emphasis.)

In Attorney General's Official Opinion Number 17 for 1949, it was said:

“* * * no vehicle shall be operated on any public highway unless the three provisions provided for in subsection (a) in Section 2 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
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offense. The statute is subject to no other construc-

"Therefore, it is my opinion that separate affidavits
cannot be filed charging an overweight wheel, an over-
weight axle and an overweight load. * * *"

Official opinion number 17 further held that a tolerance
of one thousand pounds was allowed under Section 3 when
the excess load did not exceed two thousand pounds. Under
Subsection 1 of Section 2, the total gross weight shall not
exceed seventy-two thousand pounds. There would be no
penalty, if perchance the total weight amounted to seventy-
three thousand pounds as under Section 3 a tolerance of
one thousand pounds is allowed. If the total gross weight
amounted to over seventy-three thousand pounds, but not
more than seventy-four thousand pounds, then the penalty
to be inflicted would be two cents per pound over and above
seventy-three thousand pounds. If the total gross weight
exceeded seventy-four thousand pounds the penalty to be
inflicted then would be four cents per pound. In excess of
seventy-two thousand pounds no tolerance is permissible or
allowed if the load exceeds seventy-four thousand pounds.
Perhaps the following formula would be helpful:

<table>
<thead>
<tr>
<th>Permissible Load</th>
<th>72,000 pounds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tolerance</td>
<td>1,000 pounds</td>
</tr>
</tbody>
</table>

No penalty unless load exceeds seventy-three thousand
pounds.

Seventy-three thousand pounds to seventy-four thousand pounds, the penalty is two cents per pound.

Seventy-two thousand pounds to seventy-five thousand pounds, the penalty is four cents per pound.

Seventy-five thousand pounds to seventy-six thousand pounds, the penalty is six cents per pound.

Seventy-six thousand pounds to seventy-seven thousand pounds, the penalty is eight cents per pound.

Seventy-seven thousand pounds to __________, the penalty is ten cents per pound.
EXAMPLE:

75,200 TOTAL GROSS WEIGHT
72,000 Amount allowed

3,200 Overweight
$ .06 between 75,000 and 76,000

$192.00 Fine

A tolerance of one thousand pounds is likewise allowed under subsection 2 and subsection 3. I do not mean by this that one is allowed a tolerance of three thousand pounds, it may be that the violation is only under one of the subsections; in which case he is allowed a tolerance of one thousand pounds. And if perchance all three subsections are violated he is allowed but the one thousand pounds on the total.

EXAMPLE:

74,200 total gross weight
72,000 allowed

2,200 excess
33,100 tandem axle weight (group containing two axles)
32,000 allowed

1,100 excess
10,000 weight front right wheel—10 inches wide
8,000 allowed

2,000 excess
5,300 total excess

The penalty is ten cents per pound as excess exceeds five thousand pounds. Amount of fine $530.00.

As amount of excess exceeds two thousand pounds, there would be in this example no tolerance.
EXAMPLE:

73,000 gross weight
72,000 amount allowed
1,000 excess

16,800 tandem axle weight
16,000 amount allowed

800 excess
1,800 total excess

As same has less than two thousand pounds, tolerance equals one thousand pounds. Violation 800 pounds. Penalty two cents per pound. Fine $16.00.

I have been unable to find any authority holding this method of assessment of penalty is unconstitutional or unreasonable, therefore in my opinion same is constitutional. I have prepared a form of affidavit which I am attaching hereto.

FEC: mfl
Enc.

(Caption)

JOE BLOW, being duly sworn upon his oath says:

THAT James A. Watson, on or about the —— day of ———, 1949 at and in the County of Jay, State of Indiana, did then and there without having secured a permit to do so as provided by law, unlawfully operate and move on a public highway in said County and State, said highway not having been established and designated by the State Highway Commission of Indiana as a heavy duty Highway, a vehicle having an excess load of FIVE THOUSAND (5000) pounds over and above the maximum allowed by law, said weight distributed on said vehicle as follows, to-wit:

74,100 pounds total gross weight with load, 33,500 pounds weight concentrated on the roadway surface of said highway from front tandem axle group, consisting of two axles, 9,200 pounds weight distributed on front wheel, said wheel having tire width of ten inches between flanges of rims. 19,200 pounds distributed on rear axle, contrary to form of statute
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in such cases made and provided and against the peace and dignity of the State of Indiana.

/s/ JOE BLOW

SUBSCRIBED AND SWORN to before me this ________

day of ______________, 1949.

/s/ HANK BIEF,  
Prosecuting Attorney

My Commission Expires ________________________.

See: Wiley v. The State (1876), 52 Ind. 516.

OFFICIAL OPINION NO. 43

May 17, 1949.

Hon. Charles F. Fleming,  
Secretary of State,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter requesting an opinion from this office which reads in part as follows:

"I am herewith requesting an official opinion that would pertain to the Motor Vehicle Laws of our State. This in substance is my question:

"If a trucking concern operating interstate would purchase license plates from an official Indiana auto license branch, would all of the equipment that said plates were issued for, be assessed by a Township or County assessor and placed upon the tax duplicates in that Township or County?"

From the above quoted letter I assume your inquiry is concerned with your official duties as Commissioner of Motor Vehicles in enforcing the various provisions of the Motor Vehicle laws. The question presented is distinctly flavored with the problem of taxation but for the reason just stated