As a practical matter, most such warrants are executed by police officers who are paid a salary, and prisoners within the State are returned in city owned cars operated at city expense, so that little or no expense is involved when such practice is followed.

OFFICIAL OPINION NO. 11

March 24, 1949.

Hon. James M. Propst,
Auditor of State,
State House,
Indianapolis, Indiana

Dear Mr. Propst:

I have your letter of March 11, 1949 in which you request an official opinion on the following questions:

"Under the 1945 Acts the Auditor of State shall set up on the first day of April of each year a three million dollar reserve for cities and towns. This reserve was set up from monies collected from January 1st to March 31st deposited in the Motor Vehicle Highway Account Fund.

"While we feel sure the intent of the Legislature was to distribute to the cities and towns 15% of the funds available for distribution on April 1st of each year and 15% quarterly thereafter, however, in view of the language used in Section 1a, can the Auditor of State use this method of distribution?

"Can the Auditor of State on April 1, 1949 and quarterly thereafter distribute to cities and towns on a population basis 15% of the funds available for distribution in the Motor Vehicle Highway Account Fund?

"Also Chapter 291 of the Acts of 1947 sets out a method of distribution of net Gasoline Tax collected in excess of $7,500,000.00 quarterly. This Act expires March 31, 1949.

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"Does the passage of Senate Bill No. 216 repeal Chapter 291 of the Acts of 1947?"

Senate Enrolled Act No. 216 concerns the distribution of funds derived from motor vehicle registration fees, licenses, driver's and chauffeur's license fees, gasoline taxes, auto transfer fees, certificate of title fees, weight taxes or excise taxes and all other similar special taxes, duties or excises of all kinds on motor vehicles, trailers, motor vehicle fuel or motor vehicle owners or operators. It is an amendatory act. It amends Chapter 275 of the Acts of 1945, page 1215.

Section (a) of the Acts of 1945 provided, among other things, as follows:

"Of the net amount in the motor vehicle highway account the auditor of state shall annually set aside for the cities and towns of the state the sum of three million dollars. * * * One-fourth thereof shall be distributed by the auditor of state on the first day of April of each year and one-fourth quarterly thereafter."

Senate Act No. 216 provides in part as follows:

"The money collected for the motor vehicle highway account fund and remaining after refunds and the payment of all expenses * * * shall be allocated to and distributed among the commission and subdivisions herein designated as follows:

"(a) Of the net amount in the motor vehicle highway account the auditor of state shall annually set aside for the cities and towns of the state fifteen per cent thereof. * * * One-fourth thereof shall be distributed by the auditor of state on the first day of April of each year and one-fourth quarterly thereafter.

"(b) Of the net amount in the motor vehicle highway account the auditor of state shall quarterly set aside for the counties of the state thirty-two per cent thereof: * * *

"* * *"

"(d) On the first day of April of each year and quarterly thereafter the remainder of the net amount in
the motor vehicle highway account shall be credited to the state highway fund for the use of the state highway commission.”

It can be seen, therefore, that Senate Act No. 216 has amended the 1945 Act, supra, in that the amount to be allocated to cities and towns is now set out in percent instead of actual amounts of dollars. Likewise, as in the Act of 1945, Senate Act No. 216 provides that “One-fourth thereof shall be distributed by the auditor of state on the first day of April of each year and one-fourth quarterly thereafter” and that “On the first day of April of each year and quarterly thereafter the remainder of the net amount in the motor vehicle highway account shall be credited to the state highway fund for the use of the state highway commission.”

Section (a) of Senate Enrolled Act No. 216 provides that the Auditor of State shall annually set aside for the cities and towns of the state fifteen per cent. It is to be noted that nowhere in the act is it stated just what time in the year this amount shall be set aside. “Annually” means yearly or once a year, but does not signify what time in the year.

Words and Phrases;


It has likewise been defined to mean “of and pertaining to year, returning every year, coming or happening yearly.”

Words and Phrases;


Applying this definition to Section (a), I am of the opinion that it should be construed to read as follows:

Of the net amount in the motor vehicle highway account the auditor of state shall yearly set aside for the cities and towns of the state fifteen per cent thereof or fifteen per cent of what comes into the fund yearly.

A familiar rule in ascertaining the legislative intent in an
ambiguous statute is to so construe it, if possible, as to prevent absurdity or injustice.

Murray v. Gault (1913), 179 Ind. 658, 101 N. E. 632;

Statutes should be construed in the most beneficial way which their language will permit to prevent absurdity, hardship or injustice; to favor public convenience; and to oppose all prejudice to public interest.

Helms v. American Security Co. of Indiana (1939), 216 Ind. 1, 22 N. E. (2) 822.

An amendatory act sometimes furnishes aid to a court to expel an ambiguity in the act amended.

Oster v. Department of Treasury (1941), 219 Ind. 313, 37 N. E. (2) 523.

A basic and fundamental rule of statutory construction is to ascertain legislative intent or, more accurately put, to determine the true meaning of the language used in the light of the object and policy of the lawmaking authority.

State ex rel. Clemens v. Kern et al. (1939), 215 Ind. 515, 20 N. E. (2) 514, 21 N. E. (2) 141.

It is a general rule of interpretation that statutes should, if possible, be so construed as to make them practicable. Hence, a construction of an ambiguous statute should be avoided which would render the application of the statute impracticable, or which would require the performance of a vain, idle or futile thing, or attempt to require the performance of an impossible act.

50 American Jurisprudence, Sec. 360, p. 365.

Words or phrases may, however, be supplied by the courts and inserted in a statute where that is necessary to obviate repugnancy and inconsistency in the statute, complete the sense thereof, and give effect to the intention of the legislature manifested therein. The rule is especially applicable
where such application is necessary to prevent the law from becoming a nullity.

School Town of Andrews v. Heiney (1912), 178 Ind. 1, 98 N. E. 628;

Section (d) of Senate enrolled Act No. 216 provides that on the first day of April of each year and quarterly thereafter the remainder of the net amount in the motor vehicle highway account shall be credited to the state highway fund for the use of the State Highway Commission. Does this mean that on the first day of April each year that all of the fund in the vehicle highway account has been distributed and that there is nothing left in the fund? If so, how can one-fourth of the amount allotted to the cities and towns and the counties be distributed by the Auditor of State on the first day of April of each year and one-fourth quarterly thereafter?

It is imperative, therefore, that we apply to this act the rules of statutory construction set out herein and in doing so we are lead to believe that the intent of the legislature was that fifteen per cent of the amount received in this fund annually should be distributed to the cities, same to be paid out quarterly beginning April 1 of each year. Surely the legislature recognized that the Auditor did not have any crystal ball that would tell him in advance the amount said fund would receive. The only practical construction one can give to this act is that fifteen per cent of the amount available for distribution in the fund quarterly, beginning the first day of April, should be paid the cities, and that from said fund, available for distribution, should be set aside quarterly for the use of the counties thirty-two per cent, and what remains in the fund available for distribution at the end of each quarter should be paid or credited to the state highway fund for the use of the state highway Commission.

Therefore, in my opinion you, as Auditor of State, on April 1, 1949 and quarterly thereafter, may distribute to cities and towns on a population basis fifteen per cent of the funds available for distribution in the motor vehicle highway account fund.
Chapter 291 of the Acts of 1947 concerns the distribution of proceeds from the motor fuel tax. All distributions authorized by this act have been made except perhaps any distributions authorized by the last paragraph of Section 1 of said act, which provides:

"Said amounts shall be distributed to the several cities, towns and counties at the same time as distribution is made under the provisions of Chapter 275 of the Acts of 1945; and said amounts shall be expended by the cities, towns and counties as provided for in said Chapter 275. This act shall not be interpreted to affect any distribution made to cities, towns and counties pursuant to Chapter 168 of the Acts of 1941 and all acts amendatory thereof. If, upon the expiration of this act, the state highway commission has not received the sum of thirty million dollars, for each of the preceding years and distributions have been made to cities, towns and counties pursuant to this act, there shall be allocated to the state highway commission from the distribution to be made to cities, towns and counties from the motor vehicle highway account fund an amount, not in excess of such distributions made to such cities, towns and counties necessary to make the sum of thirty million dollars for each of said years."

Section 2 of this act provides:

"This act shall expire by limitation on March 31, 1949."

The validity of the last paragraph of Section 1 is most questionable. Herein is presented the question of whether or not a distribution can be made after the expiration date of said act and, likewise, whether or not there is an attempt to bind future legislatures. These questions, however, do not need to be answered as, in my opinion, Senate Act No. 216, which sets up a new system of distribution, is silent as to that part of Chapter 291 set out herein. And as Senate Act No. 216 sets up no exceptions or provisions with reference to the part of Chapter 291 set out and covers the same subject matter, same is repealed by implication.