

Since a reasonable interpretation of the foregoing statute would mean that a person to be eligible to represent any district shall have been a resident of such district for six months, and in view of the purpose of the establishment of councilmanic districts and the election of councilmen from each district, it is my opinion that the person elected by the council to fill the vacancy, caused by the resignation of a councilman from a particular district, must be from the same district as the councilman who resigned.

In answer to your third question, I call your attention to Section 48-1242 of Burns' 1933, quoted above, which provides that should any councilman representing any *ward* cease to be a resident of such ward during his term of office, such office shall at once be vacated. In answering your second question, I interpreted the provisions of this statute as being applicable to districts, instead of wards. Therefore based upon the express terms of such statute, any elected councilman who moves from one councilmanic district into another thereby vacates his office, and the common council of such city should fill the vacancy by appointing another person who is a resident of that same district.

OFFICIAL OPINION NO. 12

April 2, 1947.

Colonel Robert Rossow, Superintendent,
Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me a written request by your predecessor in office for an official opinion upon the following question:

“Will you kindly render an official opinion concerning the present status of the Presidential emergency which permitted, during the war, the operation on Indiana highways of commercial carrying vehicles with weight, height and length in excess of laws governing such operation in this state?”

"The enforcement personnel of this Department at the present time experience some difficulty in the controlling movement of over-weight and over-size vehicles on Indiana highways as some operators allege that the emergency is still in effect."

In such request it is assumed that there existed, or may still exist, a Presidential emergency which permitted, during the war, the operation on Indiana highways of commercial carrying vehicles with weights, heights and lengths in excess of the laws governing such operation in this state.

After a careful search, I have been unable to find any federal statute, Presidential proclamation, executive order or rule or regulation by any federal board or agency, declaring an emergency and permitting any deviation during the war from the laws of this state prescribing the maximum weight, height and length of commercial carrying vehicles. The only federal statute which I have been able to find in any way relating to this matter was passed by Congress on March 27, 1942, the same being 56 Stat. 176 (50 U. S. C. A. 631). That statute amended the Interstate Commerce Act and is in part as follows:

"(e) The Commission shall have authority with respect to motor carriers, to be exercised under similar circumstances and procedure, equivalent to the authority it has with respect to other carriers under section 1 (15) of part I (Title 49, § 1 (15)), and shall have authority, to the extent necessary to facilitate the prosecution of the war and *not in contravention of State laws and regulations with respect to sizes and weights of motor vehicles*, to make reasonable directions with respect to equipment, service, and facilities of motor carriers, and to require the joint use of equipment, terminals, warehouses, garages, and other facilities; and motor carriers shall be subject to the same penalties for failure to comply with action taken by the Commission under this paragraph as other carriers for failure to comply with action taken by the Commission under section 1 (15) of part I (Title 49, § 1 (15))." (My emphasis).

The foregoing statute clearly indicates that while Congress was enlarging the powers of the Interstate Commerce Commission during the war with respect to the equipment of interstate motor carriers, it expressly provided that such powers should not be exercised to contravene state laws and regulations with respect to sizes and weights of such carriers.

There is, therefore, apparently no federal authority under which the laws of this state concerning the size, length and weight of commercial carrying motor vehicles might be deviated from even during the war.

However, it does appear that on June 1, 1942, the State Highway Commission of Indiana adopted a regulation to follow the recommendations of the federal government for the size, width, length and height limits of commercial carrying motor vehicles, which limits in certain cases were in excess of the statutes of Indiana governing such matters. This regulation of the Commission, among other things, increased the overall length of such vehicles from 40 feet to 45 feet, and the overall height of such vehicles from 12 feet to 12½ feet. It was further recited in such regulation that it was understood that the federal recommendations would become effective through an executive order, or a federal law in the near future, but that this regulation was made in order to cooperate in the desirable free movement of motor vehicles in interstate commerce during the war emergency.

In the absence of the adoption of any federal law or regulation or executive order, it, therefore, becomes necessary to determine the authority of the State Highway Commission of Indiana to adopt such regulation. A search has failed to reveal that the Governor of Indiana made any executive order on this matter. At the time that the State Highway Commission of Indiana adopted the aforementioned regulation there was in existence in this state a specific statute setting the maximum limits for the height, width and length of commercial carrying motor vehicles. Section 2, Chapter 83, of the Acts of the Indiana General Assembly for the year 1931, as amended in 1941 and in 1947, same being Burns' 1940 Replacement, Section 47-530; Acts of 1947, Chapter 205, provides in part as follows:

“(a) No vehicle shall exceed a total maximum width, including any load thereon, of eight feet;

“(b) No vehicle shall exceed a total maximum height, including any load thereon, of twelve feet;

“(c) No single vehicle shall exceed a length of thirty-six feet, and no combination of vehicles coupled together shall exceed a total length of forty feet. For the purpose of this act a semitrailer shall be considered a separate unit;

“(d) No load on any vehicle or combination of vehicles shall extend more than three feet beyond the front thereof;

“(e) No vehicles shall carry any load on the running board on the left side of such vehicle extending more than six inches beyond the line of the fenders; and

“(f) No vehicle shall be driven or moved on any highway unless such vehicle is constructed or loaded as to prevent its contents from dripping, sifting, leaking or otherwise escaping therefrom.”

Also, there was in existence at the time that such regulation was adopted by the State Highway Commission of Indiana, and still exists, Section 10 of Chapter 83 of the Acts of the Indiana General Assembly for the year 1931, as amended in 1937, same being Burns' 1940 Replacement, Section 47-538, which provides as follows:

“The state highway commission or local authorities having jurisdiction over any public highway and being responsible for the repair and maintenance thereof is authorized upon proper application in writing upon good cause shown to grant permits for transporting heavy vehicles and loads, or other objects, not conforming to the provisions of sections two and eight (§§ 47-530, 47-536) of this act, whenever in the discretion of any such officer or body the highway or bridge thereon will not be seriously damaged thereby. Any such permit may be issued for a single trip or for a definite period of time not exceeding

thirty (30) days; and such permit may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the authority granting such permit for a proper protection of such highway or bridge. Before any such permit shall be issued the applicant shall satisfy the officer or body issuing such permit of his responsibility to respond in damages for any injury to the highway or bridge or furnish satisfactory bond or other security to the satisfaction of such issuing officer or body, and in lieu of any weight tax or license fee such applicant shall pay a special license fee at the rate of ten cents (10c) per mile of travel, loaded or unloaded, but in no event shall the fee so paid be less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00) for each permit so issued. When any such permit is issued by the issuing officer or body, it shall be submitted to the department of treasury for approval, and thereupon the department shall fix the fee to be paid, as hereinbefore prescribed, and, upon the payment of such fee, or tax, the department shall validate such permit, and the fee or tax so received shall be credited to the motor vehicle highway account. Every such permit shall be carried in or on the vehicle or other object to which it refers and shall be open to inspection by any peace officer and it shall be a misdemeanor for any person to violate any of the terms or conditions of such special permit: Provided further, that the issuance of a special permit as provided in this section shall not relieve the responsibility for damages to highway(s) imposed by this act. The term 'public highway' as used in this section does not include streets, alleys or highways inside the corporate limits of cities and towns."

From the foregoing statutes it is plain that at the time the aforementioned regulation was adopted by the State Highway Commission of Indiana, there was and still is in existence a statute of this state setting the maximum length, height and width limits of commercial carrying motor vehicles, and also specifically providing the manner in which

such limits might be exceeded, namely, the issuance of a permit by the State Highway Commission according to the provisions of such statute. It, therefore, appears that this statutory procedure would have to be followed by the State Highway Commission of Indiana unless they were given some other power by law to authorize a deviation from the provisions of such statute.

Section 3, Chapter 12 of the Acts of the General Assembly for the year 1941, as amended in 1945, same being Section 36-162 of Burns' 1933, provides in part as follows:

“* * * The commission may make, amend and repeal such other written rules and regulations as may be necessary or appropriate in their judgment to carry out the provisions of this act or to preserve the highways while under construction, and also rules and regulations to regulate traffic in the interest of convenience in the use of, and in the interest of safety of travelers on, highways under the control of said commission, *not* inconsistent with this act and the laws of the state. * * *” (My emphasis).

It is significant that while the foregoing statute authorizes the State Highway Commission of Indiana to make rules and regulations to preserve the highways and to regulate traffic, it is specifically provided that such rules and regulations shall not be inconsistent with the laws of the state. As heretofore pointed out the laws of this state, at the time of the adoption of the regulation in question by the State Highway Commission of Indiana, and which still exists, prescribe the exact procedure to be followed by the Commission in authorizing commercial carrying motor vehicles to exceed the maximum length, width and height limits set by law. It is, therefore, my opinion that the regulation adopted by the State Highway Commission of Indiana on June 1, 1942 would be valid, only insofar as it conformed to the provisions of the Indiana law providing for the issuance of permits to those persons operating commercial carrying motor vehicles in excess of the length, width and height limits set by law.

In answer to your question, it therefore appears that the present status of the Presidential emergency is immaterial to your basic question. It is my opinion that commercial

carrying vehicles with weights, heights and lengths in excess of the maximum limits prescribed by Section 47-530 of Burns' 1940 Replacement, as amended by Chapter 205 of the Acts of 1947, may only be operated upon the highways of this state under permits issued by the State Highway Commission of Indiana pursuant to the provisions of Section 47-538 of Burns' 1940 Replacement.

OFFICIAL OPINION NO. 13

April 16, 1947.

Hon. John D. Pearson,
Commissioner of Insurance,
State House,
Indianapolis, Indiana.

Dear Mr. Pearson:

I have before me your letter of recent date in which you request an official opinion upon the following question:

“Reference is had to Chapter 196, Acts of the General Assembly, 1941. May we respectfully request an opinion as to the provisions of said chapter and whether they apply where the volunteer fire department is not a governmental unit but organized and financed by volunteer subscription and incorporated as a rural fire department, to purchase fire fighting equipment to be used exclusively within the confines of the township.”

Chapter 196 of the Acts of 1941, page 596, amends certain sections of Chapter 163 of the Acts of 1939, page 749, and both statutes must be considered together to answer your question. They are contained in Burns' 1933 (1945 Pocket Supp.) Sections 48-6161 to 48-6166, both inclusive. The 1939 Act, as amended in 1941, provides for certain tax exemptions for active volunteer firemen and makes it mandatory for any city, town or township of this state having a volunteer fire company or companies to procure insurance for the benefit of the members thereof. Your specific ques-