

able to them, other than in their own homes, for the amount of money appropriated.

3. In answer to your third question, it is to be noted in Section 65-221, Burns' 1945 Supplement, it is provided "In all townships of the State the township advisory board shall annually appropriate the amount of the estimate of the township trustee *for travel allowance, telephone tolls and telegrams*: Provided, That the amount *so appropriated and allowed* for travel allowance, telephone tolls and telegrams, shall not exceed," (then follows a designation of the maximum amount to be appropriated and allowed for such items). It is to be noted this statute provides that such amount shall be "appropriated and allowed" for such items.

I am therefore of the opinion the amount of the estimate, not to exceed the amount specified in the act, should be "appropriated and *allowed*" for such items.

4. The answer to question No. 3 obviates any answer to your question No. 4.

OFFICIAL OPINION NO. 2

February 4, 1947.

Hon. John H. Lauer, Chairman,
State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Lauer:

Re: *Purchase of Automobiles*

I have your written request for an official opinion, which arises under the provision of the Appropriation Act (Acts 1945, p. 467) governing the purchase of equipment.

The provision in question reads as follows:

"Contingent fund for equipment:

"For the fiscal year beginning July 1, 1945, fifty-six thousand two hundred seventy-five dollars (\$56,275). For the fiscal year beginning July 1, 1946, eighty-nine thousand nine hundred fifty dollars

(\$89,950). Such appropriations to be available for the purchase of equipment for any of said departments upon requisition submitted by such departments when requisition has received the approval of the executive department. Provided, That from and after July 1, 1945, the central purchasing bureau, or any purchasing agent, shall not honor any requisition for the purchase of an automobile from any appropriation for any state officer or state employee unless the following facts are shown to the satisfaction of the budget committee, director of the budget and purchasing bureau: Elected state officers: That the duties of office require traveling about the State of Indiana in performance of official duties. Department heads: That the duties imposed in the discharge of the office shall require them to travel greater than six hundred (600) miles per month.

“Employees: No employee shall have assigned to him a state-owned automobile unless it is shown that the major portion of his duties as a state employee, require him to travel on state business in excess of twelve hundred (1200) miles per month. No employee shall be assigned a state-owned car, the delivery price of which exceeds eleven hundred dollars (\$1100). No department head shall be assigned a state-owned car, the delivery price of which exceeds thirteen hundred dollars (\$1300).

“No elected official, except the governor, shall be assigned a state-owned car, the delivery price of which exceeds one thousand five hundred dollars (\$1500).”

The pertinent parts of your written request are as follows:

“In carrying out the work of the State Highway Commission the operation of motor driven vehicles is an important item. In addition to the equipment of this character it is necessary for the Commission to own a sufficient number of automobiles for the use of the members, heads of the divisions and the engineers. Many of the employees of the Commission,

and especially the heads of the divisions and the engineers, because of the nature of their duties, are required to do much driving over the State. It is therefore necessary not only to keep equipment of this character in repair but also to purchase a sufficient number of new automobiles from time to time to maintain the service to the standards required.

“* * *

“The question that arises is whether the limitations fixed therein are applicable to purchases of automobiles to be made by the State Highway Commission, which purchases are required to be made under the provisions of acts governing the Commission that require competitive bidding upon advertisement, excepting purchases in the sum of five hundred dollars (\$500) or less.

“Will you please state your official opinion on this question?”

The following considerations, I think, are pertinent to a proper interpretation of the quoted provision: (1) the provision follows the heading, “Contingent fund for equipment;” (2) after the setting forth of the specific amounts appropriated, the language makes the appropriation “available for the purchase of equipment” by departments “upon requisition submitted” by them; (3) the requisitions in such cases are required to be approved by the executive department; (4) the appropriation is for equipment and no definite amount of the total sum authorized is earmarked for the purchase of automobiles; and (5) the language designating the different classes and limitation as to prices appears in a proviso, which requires action of the budget committee, the director of the budget, and the purchasing bureau.

In the same act (Acts 1945, pp. 557-561), the Legislature made appropriations for the State Highway Commission, and, though there are provisions in the language applicable to the Highway Commission that anticipate an expansion or a contraction of the amounts appropriated, due to the manner in which the funds are raised, the Legislature fixed, in the first instance, definite amounts for “operating expense, capital outlay and fixed charges.” The act then makes

classifications with reference to expenditures from the funds appropriated, the classes, briefly stated, being as follows: (1) miscellaneous service; (2) maintenance service; (3) construction and improvement of highways; and (4) administration.

The clause defining the duties of the Commission in making expenditures for miscellaneous service sets forth at length the items for which expenditures may be made, among which items are: "(d) payments for office equipment, laboratory equipment, motorless equipment, *motor equipment*, other equipment and small tools." The items of "transportation" and supplies are also authorized under (a) of this clause.

The legislation governing the duties of the Highway Commission provides an entirely different set-up, with reference to the purchase of equipment and supplies, from the method defined in the clause under the heading, "Contingent fund for equipment," *supra*. Under legislation that was in effect at the time the quoted clause, *supra*, was enacted, the Chairman of the Highway Commission had authority under orders of the Commission, to approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana. Acts 1933, ch. 18, sec. 9, p. 67; Sec. 36-109 Burns' 1933. The act of 1933 (sec. 8; sec. 36-108) further provides:

"All purchases of tools, implements, machinery, materials and supplies * * * shall be made pursuant to a system of competitive proposals and contracts * * *."

The provision in which this clause appears authorized the purchase of items not exceeding two hundred fifty dollars (\$250) in cost without advertising; and the Legislature in the session of 1945, without change in the procedure set up for the making of purchases by the Commission, not only recognized the preceding legislation on the subject hereinbefore quoted and cited but authorized purchases for amounts not in excess of five hundred dollars (\$500) without advertising. Section 6, Acts 1945, ch. 359, page 1774 (Sec. 36-170 Burns' Supp. 1945) contains this provision.

"It is further directed that bids for all road, bridge, culvert and purchase contracts shall be advertised in

the same manner as is herein provided for in the case of bids for highway construction: Provided, however, That all bids for the purchase of equipment or supplies other than road aggregates or materials shall be advertised in two newspapers of general circulation representing the two major political parties published in Marion County except that the Chairman, with the approval of the Commission, may authorize the purchase of small tools, implements, machinery, materials and supplies in any sum not exceeding five hundred dollars (\$500) without advertisement."

The legislation governing the Highway Commission therefore does not require the approval of the purchasing bureau or of the director of the budget in the making of purchases. Furthermore, the legislation defining the powers and duties of the purchasing bureau specifically excludes the Highway Commission from the operation of the act. Section 6 of that act (Acts 1945, ch. 110, p. 235; sec. 60-617 Burns' Supp. 1945) contains this clause:

"This act shall not apply to the purchases for the State Highway Commission. * * *"

Since the section last cited was enacted, as a part of an amendatory act by the session of 1945, it would seem to be clear that the Legislature did not intend that the provisions of the clause entitled "Contingent fund for equipment," *supra*, to apply to the Highway Commission; and this conclusion would seem to be especially true in view of the procedure set up in the provisions of the acts hereinbefore cited governing purchases to be made by the Commission.

The Legislature has provided a method for purchases of supplies, equipment and materials that is inconsistent with the clause in the Appropriation Act, *supra*, governing the purchase of equipment by other state agencies. The Legislature is deemed to be familiar with the scope of the activities of the Commission and with other state agencies. The item of equipment, including automobiles, could well be a subject for consideration of the Governor and the central purchasing bureau in certain instances by reason of the appropriation

for that item. The powers of the Highway Commission are not unlimited in this respect, since the act defining its powers sets up a procedure for competitive bidding; and, hence, that act itself provides a method consistent with the scope of the activities of the Commission with reference to the procurement of necessary equipment and supplies.

The conclusions hereinbefore stated, I think, are supported by the rules of construction relative to the office of a proviso, such as appears in the clause, *supra*, of the Appropriation Act, entitled, "Contingent fund for equipment."

A proviso in a section of a statute, as a general rule, is to be strictly construed and limited to the objects fairly within its terms.

Hasse v. Bielefeld (1925), 197 Ind. 498;
State, *ex rel.* v. Bateman (1914), 181 Ind. 592.

The office of a proviso is not to enlarge or extend an act, or the section of which it is a part, but rather to put a limitation upon and to qualify the language employed.

Hughes v. Yates (1922), 79 Ind. App. 247;
Murray v. Gault (1913), 179 Ind. 658.

There are exceptions to these rules, but, in view of the provisions of the statutes hereinbefore cited, I think the proviso in this instance is within the rules stated. The provisions of the Appropriation Act, *supra*, with reference to the Highway Commission, do not contemplate that requisitions for equipment shall be issued and submitted to the Governor or to the director of the purchasing bureau for approval, nor does the legislation governing the Commission contemplate such procedure. The provisions of the legislation governing the purchasing agency, however, do contemplate action by the director of the purchasing agency with reference to purchases made by other state agencies. Section 7 of the act governing the director of that bureau (Acts 1945, p. 235; Sec. 60-618 Burns' Supp. 1945), enacted in the same session in which the provision in question was enacted, expressly provides that "requisitions shall be issued by state officers and heads of departments" and that purchases shall be made through the director of the purchasing

bureau; but the preceding section, *supra*, as hereinbefore stated, expressly excepts the Highway Commission from the operation of that act.

The purpose of the proviso in this instance, in my opinion, was to place restrictions on the purchases of equipment by officers and departments whose duties in this respect are within the class governed by the act creating the central purchasing agency.

Your request indicates that the Highway Commission has experienced difficulty in the purchase of automobiles, due to the increase in prices. The Legislature could hardly be deemed to have intended that the work of the Commission should be hampered for lack of necessary equipment. Though my conclusions hereinbefore stated are not to be construed as sanctioning the exercise of arbitrary power in the purchase of equipment, I think the Commission has the authority, under the competitive bidding system defined in the acts governing the Commission, to purchase necessary equipment as the exigencies of the conditions warrant. This power, as in the case of all statutory agencies, should be performed within the rule that requires the exercise of reasonable discretion.

For the reasons stated, I am of the opinion that the provision of the Appropriation Act out of which your question arises is not applicable to purchases of equipment, including automobiles, by the State Highway Commission and that the Commission's authority in this respect is governed by provisions of the State Highway legislation.

OFFICIAL OPINION NO. 3

February 11, 1947.

Mr. Leroy E. Yoder, Chairman,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion as to the legality of a rate schedule submitted by the Indianapolis