

The Act contains a limitation within itself and expressly provides that it covers all bonds issued at any other time. This would exclude any construction which would incorporate another and additional time limitation.

I am, therefore, of the opinion that no statute of limitation applies to the issuance of certificates of indebtedness under Section 1 of Chapter 89 of the Acts of 1939, except the limitation that bars the issuance of such certificates in exchange for bonds or coupons maturing prior to January 1, 1929.

OFFICIAL OPINION NO. 61

July 10, 1945.

Col. A. R. Killian, Superintendent,
Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge your letter of June 4, 1945, asking my opinion as to whether "transportation" license plates are required on trailers belonging to the United States Navy being transported over the public highways in Indiana under a government bill of lading.

The facts set out in the letter of inquiry to you include the following:

The driver, (X), employed by a private concern, was arrested for failure to have a "transport" plate on a trailer which he was transporting upon the highways of Indiana; the trailer was known as a "Schult" purchased by the United States Navy at Elkhart, Indiana, and being transported for the Navy, on a government bill of lading to DeLand, Florida.

Other facts which will be assumed for the purpose of this opinion are:

That the driver who was arrested possessed the required personal operator's or chauffer's license and was operating a tractor which was properly licensed as such

described motor vehicle, under the laws of Indiana; that the aforementioned Navy trailer was attached thereto, rolling upon its own wheels and being drawn by the motive power of the tractor to which it was fastened; and that, while the tractor displayed the proper registration license plate, there were no plates of any kind attached to the trailer, which latter fact was the basis for a charge of violation of the Indiana law, against the driver.

In Indiana, our statutory provision by which common carriers and contract carriers (of persons and property) operating in Indiana are required to obtain certificates of public convenience and necessity from the Public Service Commission of Indiana provides for an exemption:

“* * * To motor vehicles while being used or operated for or under the control of the United States government, * * *”

Section 47-1213, Burns' 1933 Statutes, 1940 Repl.

(“Trailer” is included in definition of “motor vehicles” Sec. 47-1212.)

Existing licensing and registration laws of this state exempt only vehicles owned by the “state of Indiana and by any county, township, city, town or school corporation thereof” from the payment of fees, but requires their registration. (Sec. 47-111, Burns' Statutes, 1940 Repl.) Parenthetically, I may say that the new licensing and registration law to become effective December 31, 1945, contains a similar exemption to which will be added United States Government vehicles. (Ch. 304, Acts of 1945, Sec. 65, p. 917.)

As a matter of practice, I understand, the department in administering a present law is not now attempting either to require the United States Government to register its vehicles or to pay a registration fee therefor, notwithstanding that the present law omits mentioning them as exempted from either requirement. This practice safely refrains from transgression of the rule of constitutional immunity of the national government from State taxation and from State regulation of

the performance, by federal officers and agencies, of governmental functions, in the absence of Congressional consent.

McCulloch v. Maryland (1819), 4 Wheat. 316, 427;

Ohio v. Thomas (1899), 173 U. S. 276.

Under the present law, if the United States Navy, being the owner, is not required under Section 47-102, Burns' Statutes, 1940 Replacement, to have the trailer registered in this state, then no charge against the driver in this case would have been proper under Section 47-104, Burns' Statutes, 1940 Replacement, which provides that:

“* * * no person shall use, operate or propel a motor vehicle * * * trailer * * * unless such * * * trailer * * * shall have had a distinctive registration license number assigned * * * and * * * a license plate bearing such registration number attached thereto. * * *”

But, according to the facts stated, it is represented that the arrest of the driver, (X), was “for not having a transport plate on the trailer which he was transporting.” That law provides, as to those defined as transport operators, for the issuance of a transport operator's license, payment of registration fee, assignment of a distinctive number to be displayed on the front and rear of the transport “combination”, makes it a misdemeanor for “anyone” violating any of the provisions of this section, and imposes a penalty by fine of from \$5.00 to \$100.00, to which may be added jail imprisonment of thirty days. (Ch. 271, Acts of 1937, Sec. 6, p. 1252; also, Sec. 47-121a, Burns' Statutes, 1940 Repl.)

A description of “transport” operations, as set forth in the forepart thereof, reads as follows:

“Any person, firm, association, copartnership or corporation engaged exclusively in the business of furnishing drivers and operator (operators) for the purpose of driving unladen motor vehicles for *persons, firms, associations, copartnerships* or *corporations* other than themselves, from one place to another, or any non-resident dealer or manufacturer, may, instead of registering each motor vehicle so transported as

hereinbefore provided, make a verified application upon a blank which shall be furnished by the secretary of state, for a general distinctive number for all motor vehicles transported by such operator and used and operated for the exclusive purposes hereinbefore provided. * * *

This statute, being penal in nature, is to be strictly construed. *Bienz v. State* (1934), 206 Ind. 482, 190 N. E. 170. Although the term "person" when used in a statute may at times mean and include the United States government (32 Words & Phrases p. 247 *et seq.*), yet it will not be so construed unless it was within the clear legislative intent of the act.

- District of Columbia v. American Oil Co. (1930), 39 F. (2d) 510;
- U. S. v. Cooper Corporation (1940), 312 U. S. 600;
- U. S. v. Securities Corporation General, *et al.* (1925), 4 F. (2d) 619;
- Troutman v. Eichar *et al.* (1940), 64 Ohio App. 415, 28 N. E. (2d) 953;
- Abeken v. U. S. (1939), 26 F. Supp. 170;
- U. S. v. Fox (1876), 52 N. Y. 530, 94 U. S. 315.

Since the inauguration of federal aid for state highway systems, the state of Indiana has received millions of dollars from this source to assist in constructing our present state highways. This federal assistance was granted specifically in order to have a nation wide system of highways for national defense. It is not to be presumed that the General Assembly sought to tax an activity of the federal government for which these millions had been expended.

The driver was not engaged in transporting the trailer in this case, in my opinion, for a "person," or a "firm," or an "association," or a "co-partnership," or a "corporation" other than his employer, and certainly was not doing so for either a "manufacturer" or a "dealer" since by the facts stated the trailer belonged to the United States Navy.

Therefore, it is my opinion that no license fee or plate of any nature could be required on the trailer owned by the United States Navy under the facts detailed in your request.