

additional compensation in all cities for certain officers where such cities own or operate public utilities. It was this Section that was amended by Chapter 271 of the Acts of 1945, and, as previously shown, omitted city treasurers among the officers entitled to the additional compensation provided for therein.

An analysis of the foregoing statutes, and a study of the development of such statutes, as amended from time to time by the legislature, indicates a consistent intention on the part of the legislature to omit the office of city treasurer from those provisions authorizing additional compensation in those cities which operate public utilities.

Based upon the foregoing reasons and authorities, it is my opinion that a city treasurer of a city which owns and operates sewage disposal plants or utilities is not eligible to receive additional compensation from the funds of such sewage disposal plant or utility, provided the common council would authorize the same by ordinance.

OFFICIAL OPINION NO. 97

September 10, 1945.

Col. Austin R. Killian,
 Superintendent of State Police Department,
 As Commissioner of Public Safety,
 Division of Public Safety,
 Room 49, State House,
 Indianapolis 4, Indiana.

Dear Sir:

Your recent letter requests an official opinion concerning legal duties of the Commissioner of the Division of Public Safety under Chapter 175 of the Acts of 1943, (Section 47-1044, Burns' 1940 Repl. (Supp.)), known as the "Indiana Motor Vehicle Safety-Responsibility Act," as amended by Chapter 355 of the Acts of 1945. Your request is based upon the following facts:

An individual "X" was the owner and operator of five motor vehicles duly registered, license plates issued therefor, and being operated in his dairy business. He

was the possessor of proper personal operator's license which, by a Court, under Chapter 265, Acts of 1943, was recommended for suspension for ninety (90) days on July 15, 1945, upon conviction under a charge of operating a motor vehicle while under the influence of intoxicating liquor; record of said conviction was certified to the Division of Public Safety, which division through action of the Commissioner, by an order dated July 20, 1945, thereupon suspended for ninety (90) days the operator's license of "X", also, any and all registration certificates and plates issued or registered in his name, at the same time ordering "X" to deliver the latter to the office of the Division in the State Capitol Building. "X" did not possess a motor vehicle liability policy, but on July 23, 1945, he tendered and offered proof of financial responsibility in the future.

Your question asks what is the legal duty of the Commissioner with respect to immediately accepting or rejecting such proof of future financial responsibility so tendered and offered, and specifically whether he should immediately accept such proof and cancel or modify the order of suspension as to all "registration certificates and plates," or should he reject and refuse to accept such proof until after the expiration of the ninety (90) days.

Your order of revocation and suspension was empowered by Section 5, Chapter 355, Acts of 1945. A part thereof, pertinent to your question and the subject of necessary interpretation, is sub-section (a), which reads as follows:

"Whenever the commissioner under any law of this state suspends or revokes the operator's or chauffeur's license of any person upon receiving record of the conviction of such person for any offense under the motor vehicle laws of this state, the commissioner shall also suspend any and all of the *registration certificates and registration plates* issued for any motor vehicles registered in the name of the person so convicted as owner except that he shall not suspend such evidence of registration, *unless otherwise required by law*, in the event such owner has previously given, or shall immediately give and thereafter maintain for a period of

three (3) years, proof of his financial responsibility in the future in the manner hereinafter specified in this Act with respect to each and every motor vehicle owned and registered by such person." (My emphasis.)

Sub-section (b) makes mandatory upon the Commissioner, "without notice or hearing" the duty to suspend operator's or chauffeur's license *and all registration certificates and plates* of any person convicted of certain enumerated offenses in violation of the motor vehicle law. Among the offenses enumerated is: "(2) Driving a motor vehicle while under the influence of intoxicating liquor or narcotic or other habit-forming drug."

With respect to this offense, the Division of Public Safety receives recommendations from a court by virtue of Section 1 of Chapter 265, Acts of 1943, which reads as follows:

"That upon the conviction of any person for driving a motor vehicle while such person is under the influence of intoxicating liquor or of narcotic drugs, the court shall recommend that the driver's license of such person be suspended for a period of not less than ninety days for the first offense, six months for the second offense and one year for subsequent offenses."

Sub-section (c) of the aforementioned Section 5 directs that:

"Such suspensions or revocation shall remain in effect and no new or renewal license shall be issued such person and no motor vehicle shall be registered in the name of such person, *until permitted under the motor vehicle laws of this state*, and not then unless and until such person gives proof of his financial responsibility in the future as hereinafter provided in this Act." (My emphasis.)

Elsewhere in the Act it is defined clearly what constitutes "proof of * * * financial responsibility" about which I understand there is no question of interpretation, and which is commonly referred to as the "S. R. 22 Certificate," furnished by the insurance carrier and accepted by your department in all cases of compliance.

Section 33 of the Act (Chap. 175, Acts 1943) provides that:

“This act shall in no respect be considered as a repeal of the provisions of the motor vehicle laws of this state unless specifically repealed herein, but shall be construed as supplemental thereto.”

At the outset, perhaps it is proper to point out that the Indiana Motor Vehicle Safety-Responsibility Act of 1943 (and its amendatory Act of 1945) in its civil remedial aspects is predicated upon a state policy to facilitate recovery for loss suffered because of the negligent operation of motor vehicles by others, and to protect the public on the highways against the operation of motor vehicles by reckless and irresponsible persons. It is referable to the police powers of the sovereign state, and any appropriate means adopted to insure competence and care on the part of licensees and to protect others using the highways is consonant with due process.

Ule v. State (1934), 208 Ind. 255, 263, 194 N. E. 140;

State v. McDaniels (1941), 219 N. C. 763, 14 S. E. (2d) 793;

Reitz v. Mealey (1941), 314 U. S. 33, 62 S. Ct. 24, 86 L. ed. 21.

In connection with the New York Safety-Responsibility Act containing provisions very similar to our own act, it has been held that a license to operate a motor vehicle is a privilege which might be denied, rather than a right, and the payment by the licensee of the required fees upon issuance to him of an automobile operator's license and registration certificate does not convert the privilege granted into a property right of which he may not be deprived *without notice and hearing*.

Heart v. Fletcher, Commissioner (1945), 53 N. Y. S. (2d) 369.

In answering your question, my consideration will therefore, be confined to statutory construction. The rule is well stated in *Pere Marquette R. Co. v. Baertz* (1905), 36 Ind. App. 408, 414:

“In giving force to a statute, courts should look to the language used by the lawmaking power as expressive of its will; and where this language is plain and free from ambiguity, and the meaning expressed is definite, a literal interpretation of the statute should be adopted. Black, *Interp. of Laws*, p. 35. It is not within the province of the court to take from or to enlarge the meaning of a statute by reading into it language which will, in the opinion of the court, correct any supposed omissions or defects therein. As has well been said in the case of *Davis v. Elliott* (1893), 7 Ind. App. 246: ‘The rights of the parties are to be determined not by what the legislature might well have done, but by what it has actually done.’ *State ex rel. v. Aetna Life Ins. Co.* (1889), 117 Ind. 251; Black, *Interp. of Laws*, p. 37.”

The Commissioner is mandated under subsection (b), to “suspend forthwith without notice or hearing, the operator’s or chauffeur’s license and all registration certificates and plates issued or registered” in the name of “X”, on account of the offense included in said sub-section. This follows the action of the court in recommending a ninety (90) day suspension of the *driver’s license* of “X”, under Chapter 265, Acts of 1943, hereinbefore quoted.

Subsection (c) of the Act in question, which we have hereinbefore set out in full, directs that “such” suspensions or revocations must remain in effect, and no motor vehicle registered (in the name of “X” *until permitted under the motor vehicle laws*. And, not then unless and until he gives proof of his financial responsibility in the future. Under the motor vehicle laws his driver’s license, by operation of the court and your department, was suspended for ninety (90) days. Therefore, no new or renewal of “driver’s license” under any condition could be effected within ninety (90) days, because “not permitted under the motor vehicle laws.” But, the conviction had nothing to do with the suspension or revocation of the registration certificates or plates on his automobiles.

Under subsection (a) which we have already set out in full herein, the meaning is that the *registration certificates and registration plates* shall not be suspended as to the motor vehicle registered, “unless otherwise required by law,” “in the

*event such owner has previously given, or shall immediately give and thereafter maintain for a period of three (3) years, proof of his financial responsibility in the future * * * with respect to each and every motor vehicle owned and registered by such person."*

His operator's license is gone from him, irrevocably, for ninety (90) days by virtue of the order of the commissioner, and the motor vehicle laws which the operator violated, but as to registration certificates and plates, if he shall "immediately" give (not having previously given) proof of financial responsibility, as defined, his vehicles may be operated. The proviso "unless otherwise required by law" still applies, however. For example, he would *not* have his registration certificates and plates restored to permit operation of his vehicles (by others), regardless of his tender of financial responsibility, if he should have suffered an unsatisfied civil judgment to go against him, as outlined in the Act, and on record in your department at the time of his tender.

What amounts to giving proof "immediately" is a question of fact, since the act does not define the meaning thereof. It would amount to what is reasonable under the circumstances of each case. Any leeway exercised is effected by the commissioner for, when he has done his mandatory duty and revoked immediately, the compulsion to act is then upon the licensee. Under Section 29 of the Act he is liable to a penalty of fine and imprisonment if, "during such suspension or revocation *or in the absence of full authorization from the commissioner,*" he "shall drive * * * or permits any motor vehicle owned * * * to be operated by another upon any highway * * *."

My answer to your question is that it was proper in the case of "X" to modify the order under Section 5, Acts of 1945, with respect to suspension and revocation of registration certificates and plates, upon tender "immediately" of proof of financial responsibility as defined in the Act, with respect to each and every motor vehicle owned or registered in his name. This, I assume, answers the other considerations you mentioned as being collateral thereto.