DIVISION OF PUBLIC SAFETY: SAFETY RESPONSIBILITY DEPARTMENT: Indiana Motor Vehicle Safety Responsibility Act of 1943 is applicable to operators of state, county, and city owned vehicles.

January 29, 1944.

Opinion No. 8

Hon James C. Dunn, Deputy Director,
Division of Public Safety,
Safety Responsibility Department,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of December 13th which reads in part as follows:

> "I would like to have your official opinion of the responsibility of operators of State, County or City-owned vehicles such as County Highway trucks, City Fire and Police cars and trucks, etc., that is the responsibility of the operator under the new Safety Responsibility Law where the operator was not properly insured at the time of the accident.
>
> "Will the operators of State, County or City-owned vehicles be responsible the same as any other operator of a Motor Vehicle?"

At the outset, it is desirable to emphasize that the Indiana Motor Vehicle Safety-Responsibility Act of 1943 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. As stated in Nulter v. State Road Commission of West Virginia, 193 S. E. 549, 550:

> "The declared purpose of this statute is to protect the public on the highways against the operation of motor vehicles by 'reckless and irresponsible persons,' and that is referable to the police power of the state. This is the power of the government inherent in every sovereignty to enact laws, within constitutional limits, to promote the general welfare of its citizens."

It is likewise well to bear in mind that although in their governmental capacities municipal corporations are not subject to tort liability for negligence nor can the state be sued for tort, the servant, agent or employee of the state or municipality who commits the tort may be liable to respond in damages for his negligence. In Rowley v. Cedar Rapids, 212 N. W. 158, 53 A. L. R. 375, the court said:

> "The fact that the defendant Kennedy was an officer of the city, and that at the time he was traveling the streets upon business of the city in its governmental capacity (conceding the petition to so show), did not relieve him from the duty to exercise ordinary care in so doing * * *."

Wallace v. Feehan, 181 N. E. 862 (Ind.);
Wallace v. Feehan, 206 Ind. 522 at 538;
See also Florio v. Jersey City, 129 Atl. 470, 40 A. L. R. 1353, and subsequent annotation.

In order to determine whether the servant or employee of a state or municipal corporation is subject to the terms of the Indiana Motor Vehicle Safety-Responsibility Act, our first investigation should be with the terms of the Act itself. Section 2 of the Act, being Chapter 175 of the Acts of 1943 (47-1045, Burns' 1940 Replacement, Supplement) includes the following definitions:

> "(d) Person. Every natural person, firm, company, copartnership, association, or corporation.
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> "(e) Operator. Every person other than a chauffeur who is in actual physical control of a motor vehicle upon a highway in this state.
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> "(f) Chauffeur. Every person who is employed for hire for the principal purpose of operating a motor vehicle upon the public highways; and every person who operates a motor vehicle while in use as a carrier of passengers or property for hire; and every person who drives or operates a motor vehicle while in use as a school-bus for the transportation of puplis (pupils) to or from school.
>
> "(g) Owner. A person who holds the legal title of a motor vehicle; or in the event a motor vehicle is the

subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a motor vehicle is entitled to possession then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this act.

" * * *

"(j) Motor Vehicle. Every vehicle which is self-propelled upon a public highway in this state, excepting farm tractors.

"(k) Public Highway. Any street, alley, road, highway, or thoroughfare in this state, or any of them, which is used by the public or open to use by the public."

None of those definitions contain any exception which would exclude an employee or agent of the state or a political subdivision thereof. Section 4 of the Act (47-1047, Burns' 1940 Replacement, Supplement) provides in part:

"(a) The commissioner shall require, within not less than ten (10) days nor more than forty-five (45) days after an accident, from any *person* who, while operating any motor vehicle, shall have been involved in any motor-vehicle accident resulting in bodily injury or death, or in damage to property in excess of twenty-five dollars ($25.00), or, in the discretion of the commissioner, from the person in whose name such motor vehicle is registered, security sufficient in the discretion of the commissioner to indemnify the injured party against loss and guarantee the payment and satisfaction of any judgment or judgments for damages resulting from such accident as may be recovered against such owner or operator by or on behalf of the injured person or his legal representative; Provided, however, That if such owner or operator shall satisfy the commissioner that the liability, if any, for damages resulting from such accident is insured by an insurance policy or bond, the commissioner shall not require security from such owner or operator." (Emphasis supplied.)

Section 6 (47-1049, Burns' 1940 Replacement, Supplement) provides:

> "(a) The commissioner shall also suspend the operator's or chauffeur's license and any and all of the registration certificates and registration plates issued to any *person* upon receiving authenticated report as hereinafter provided that such person has failed for a period of thirty (30) days to satisfy any judgment in amounts and upon a cause of action as hereinafter stated.
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> "(b) The judgment herein referred to shall mean any judgment in excess of twenty-five dollars ($25.00) for damages because of injury to or destruction of property, including the loss of use thereof, or any judgment for damages, including damages for care and loss of services, because of bodily injury or to death of any person arising out of the use of any motor vehicle upon a public highway, excepting a judgment obtained by a member of the judgment debtor's family, or by a guest occupant." (Emphasis supplied.)

Thus, in neither one of the pertinent remedial sections of the statute is there any specific exemption which would apply to the class of persons mentioned in your letter. In fact, a reading of the whole act will show that the only express exemption of an operator of a motor vehicle is found in Section 41 (47-1080, Burns' 1940 Replacement, Supplement) which reads as follows:

> "Nothing contained in this act shall apply to any person, firm, company, copartnership, association, or corporation who, or which, is engaged, under regulation by the public service commission of Indiana, in the business of a common carrier of persons or property by motor vehicle, or by electric trackless trolley cars, or by electric street cars."

There being no express provision in the act to exclude operators of state, county and city-owned vehicles, our next inquiry is whether we may be permitted to construe the act so as to read such an exception into its provisions. In the case of Eastman v. State, 109 Ind. 278, in discussing the

question of creating exceptions by judicial construction, the court said at page 282:

> "Whether the statute is a wise one or not is purely a legislative question, and so is the question whether it is reasonable or unreasonable. * * *"

And on page 283:

> "In discussing the evidence, counsel assert that as the terms of the statute are broad and sweeping, courts must create exceptions in order to give it a just and reasonable effect. There are, perhaps, extreme cases where exceptions may be created by the courts, but these cases are very rare, and the authority to create exceptions is one to be exercised with great delicacy. It can never be exercised where the words of the statute are free from ambiguity and its purpose plain. It is only where the necessity is imperious, and where absurd or manifestly unjust consequences would otherwise certainly result, that the courts can create exceptions. This is not such a case. * * *"

Likewise, in Ayres v. State, 178 Ind. 453, it was insisted by the defendant that an exception should be read into the statute because it must have been so intended by the Legislature. In answer to that contention the court said that had such an exception been intended by the Legislature it would scarcely have used broad and inclusive language and, "the fact that there is no exception may be considered in determining the intent and construction to be given the act." It is no doubt arguable that the application of the Safety-Responsibility Act to an operator of a state or municipally owned vehicle and particularly to a so-called emergency vehicle imposes an additional obligation upon the operator, although it does not require of him any higher degree of care. It should be remembered, however, that such an operator has always been liable for any lack of due care, and, in fact, previous legislation concerning the operation of motor vehicles by public officers and employees have carefully emphasized that such public officials and employees are subject to common law standards of due care under the circumstances—whatever those circumstances may be. For instance, Section 25 of

Chapter 48 of the Acts of 1939 (47-1825, Burns' 1940 Replacement) provides that the requirements of the traffic laws shall be applicable to drivers of vehicles owned by the United States, this state or any county, city, town, district or other political subdivision, subject to specific exceptions as to emergency vehicles. Section 59 of the same Act (47-2008, Burns' 1940 Replacement) exempts emergency vehicles from prima facie speed limits, but expressly provides: "This provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street, nor shall it protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others." Section 81 of the same Act (47-2030, Burns' 1940 Replacement) provides in subsection (c): "This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway." The liability of the public employee is like that of a private operator. No basis is afforded to except him from a remedial statute founded upon that liability, common to all.

Since there is no express exception in the Safety-Responsibility Act as to the operators mentioned in your inquiry, nor is there an ambiguity in the Act which would justify the creation of such an exception by construction, I am therefore of the opinion that the Act as it now reads applies to the operators of state, county or city owned vehicles.

STATE BOARD OF TAX COMMISSIONERS: Taxation—Intangibles tax—religious, charitable and educational institutions not exempt.

January 29, 1944.

Opinion No. 9

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated January 19th, 1944, which reads as follows: