Since Sec. 28-4330, Burns' 1943 Supp., *supra,* requires all teachers' contracts to be uniform, and in the form prescribed by the State Superintendent of Public Instruction, *without amendment,* it is my opinion that the above clause prohibiting married women from teaching would be invalid as a contract provision. However, if such school corporation had a rule prohibiting married women from teaching, such rule could be enforced under the above authorities. Such rule would not be valid to cancel such contract *without notice and hearing,* as same are required by Sec. 28-4308, Burns' 1933 *supra.* The time of taking effect of any cancellation or suspension of such teachers' services under any such rule also would be controlled by the provisions of Sec. 28-4308, Burns' 1933, *supra.*

DIVISION OF PUBLIC SAFETY: Licenses not required of operators of federally-owned vehicles—application of safety responsibility law to such operators.

August 24, 1944.

Opinion No. 80

Hon. Don F. Stiver, Director
Division of Public Safety,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of August 9, 1944, requests an official opinion on the following questions:

> "1. Is the driver of a Federal-owned and Federal-licensed motor vehicle, operating on streets and highways of the State of Indiana, required under Indiana Law to have an Indiana operator's or chauffeur's license?
>
> "2. Does the driver of a Federal-owned and Federal-licensed motor vehicle, involved in an accident causing property damage or personal injury, come under the provisions of the Safety Responsibility Law, Chapter 175, Acts of 1943?"

The answer to both of your questions depends upon the extent to which the exercise of state police power in imposing the requirements, interferes with or burdens Federal Government in the exercise of its proper functions. It is fundamental that a state may not so interfere with the Federal authority. The questions which arise involve application of that general principle to given state regulations.

The question presented in your first inquiry was answered several years ago by the Supreme Court of the United States in the case of Johnson v. Maryland, 254 U. S. 51. The plaintiff was an employee of the Post Office Department of the United States, and while driving the motor truck in the transportation of mail, was arrested in Maryland, tried, convicted and fined for so driving without having obtained a license from the state. In the Supreme Court the facts were admitted and the question presented was whether the state has power to require such an employee to obtain a license by submitting to an examination concerning his competence and paying $3.00 before performing his official duty in obedience to superior command. In his opinion, Justice Holmes said:

> "It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed."

Since that decision the Supreme Court has modified the rule of sovereign immunity by holding that an indirect, incidental, conjectural or consequential burden upon the national government arising by reason of a non-discriminatory state regulation or taxation of those who do the government's work is insufficient to constitute an interference with the sovereign

power. Penn. Dairies v. Milk Control Comm., (1943) 318 U. S. 261; Ala. v. King & Boozer, (1941) 314 U. S. 1; Graves v. N. Y. ex rel. O'Keefe, (1939) 306 U. S. 466; Helvering v. Mountain Producers Corp., (1937) 303 U. S. 376; James v. Dravo Contracting Co., (1937) 302 U. S. 134. Thus, in the Penn Dairies case the court says:

> "The trend of our decisions is not to extend governmental immunity from state taxation and regulation beyond the national government itself and governmental function performed by its officers and agents. We have recognized that the Constitution presupposes the continued existence of the states functioning in coordination with the national government, with authority in the states to lay taxes and to regulate their internal affairs and policy, and that state regulation like state taxation inevitably imposes some burdens on the national government of the same kind as those imposed on citizens of the United States within the state's borders (citing cases). And we have held that those burdens, save as Congress may act to remove them, are to be regarded as the normal incidents of the operation within the same territory of a dual system of government, and that no immunity of the national government from such burdens is to be implied from the Constitution which established the system. (Citing cases)."

While the court has overruled many previous decisions upon this question and has obviated some of the arguments on which the *Johnson* case was decided, it has never specifically questioned the *Johnson* case and I am not prepared to say at this time that that case would be overruled if the same question were again presented.

I am, therefore, of the opinion that while acting within the scope of his authority and in the regular course of his duties, the driver of a Federally-owned vehicle may not be required to obtain an Indiana operator's or chauffeur's license. If, however, the operator drives a Federally-owned car while acting not upon Federal business or without the scope of his authority, there is no question of interference with Federal functions, and he may be required to obtain the appro-

priate driver's license. Nor should this limitation upon the power of the state be extended without good cause to other than Federally-owned vehicles.

See State of Washington v. Wiles, 199 Pac. 749, where a contract mail carrier was required to obtain a state license for his motor truck on the theory that a mere contract did not render the contractor a government agency.

To the extent that valid traffic regulations do not interfere with the duty of a Federal employee, he is not excused from their observance by the fact of his employment. Mr. Justice Holmes, in Johnson v. Maryland *(Supra)*, said:

> "Of course an employee of the United States does not secure a general immunity from state law while acting in the course of his employment. * * * It very well may be that, when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the employment—as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets. * * *."

See also:

Annotation 18 A.L.R. 1169; 9 A.L.R. 368.

Nor does he escape responsibility for his own torts or misconduct.

Sloan Shipyards v. U. S. Fleet Corp., 258 U. S. 549 at 567;
McVey v. Gross, 11 Fed. (2d) 379 at 380.

The Safety-Responsibility Law, being Ch. 175, Acts of 1943 (47-1044, Burns' 1943 Pocket Supp.), is a police regulation of the state, designed to secure recovery for damages to persons injured by the negligent operation of a motor vehicle by another. Since the driver of a Federally-owned vehicle is personally responsible for negligent operation of the same, it is not an interference with the performance of the functions of the Federal Government to require such an operator to show his ability to respond in damages by the methods provided in the Safety-Responsibility Law. Upon his inability to make proof of financial responsibility as required therein, the commissioner may proceed as in the case of any other

operator of a motor vehicle, that is, by suspension of driver's license. Except, of course, that the employee of the Federal Government cannot be prohibited from driving the Federally-owned vehicle in the course of his employment since he does not have to obtain a license from the state in order to operate the vehicle for such purpose.

My conclusion, in answer to your second question, is that the driver of a Federally-owned and licensed motor vehicle involved in an accident causing property damage or personal injury, is subject to the provisions of the Safety-Responsibility Law to the extent that those provisions do not directly interfere with his operation of the Federally-owned motor vehicle. Thus, he may be affected in his right to operate any car when such operation is not within the scope of his Federal employment and for which he must secure an operator's or chauffeur's license.

STATE FIRE MARSHAL: Disposition to be made of inspection fees for fire permits.

August 28, 1944.

Opinion No. 81

Hon. Clem Smith,
State Fire Marshal,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of August 16, 1944, received requesting an official opinion as to disposition to be made by you of fees received on applications for fire permits to operate an amusement place, which applications are made pursuant to Ch. 83, Acts of 1937, as amended by Ch. 268, Acts of 1943, same being Sec. 20-1001, *et seq.*, Burns' R. S. 1943 Supp., your specific questions being as follows:

> "1. What should be the disposition of fees tendered with applications for permits, when, after an inspection of the premises, a permit to operate a place of amusement is refused or rejected?
>
> "2. What should be the disposition of fees paid in to the Fire Marshal Department where a permit has been