

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

issued for the operation of a place of amusement, and afterward, following an inspection, the permit is revoked?"

Section 1 of said statute, same being Sec. 20-1001, Burns' 1943 Supp., requires such permit; Secs. 2, 6 and 7 of said statute, same being Secs. 20-1002, 20-1006, and 20-1007, Burns 1943 Supp., require the filing of an application for such permit, prescribes the forms of such applications and the procedure to be followed by the State Fire Marshal in issuing such permits; Sec. 3 of said Act, same being Sec. 20-1003, Burns' 1943 Supp., requires the approval of the State Fire Marshal of the building, place or room, in which such amusement place is to be operated.

Sec. 4 of Ch. 83, Acts of 1937, as amended by Sec. 1, Ch 268, Acts of 1943, same being Sec. 20-1004, Burns' 1943 Supp., provides that such buildings so to be approved shall be classified in three classes—"A," "B" and "C"—and for applications for permits under Class "A" or "B" provides: "for which the *inspection fee* shall be — dollars (\$0.00) per year," the amount of the inspection fee being different for each of such classes.

Sec. 20-1004, Burns' 1943 Supp., *supra*, provides for those places of public amusement or entertainment in Class "C" as follows:

"(c) Class C shall include: (1) public halls, night clubs with stage or floor shows, and other places of public amusement or entertainment given in any building or part thereof, or given under tents or canvas.

"(2) places of amusement or entertainment that are under the direct supervision of the athletic commission of the state of Indiana;

"(3) halls, gymnasiums or places of assembly where-in contests, drills, exhibitions, plays or displays, dances, concerts or other types of amusement are held by schools, universities, social or fraternal organizations, lodges, farmers organizations, societies, labor unions or churches.

"(4) institutions in which the inmates are involuntarily detained; or,

"(5) any state, city or county building or property.

“(d) The several halls, gymnasiums or other places of assembly, amusement or entertainment designated as Class C in subsection (c) of this section, shall be under the direct supervision of the state fire marshal and shall be inspected at such times as the state fire marshal shall deem necessary to insure adequate safety to the public. After an inspection has been made, and if the state fire marshal shall approve such place of amusement or entertainment, a Class C permit shall be issued therefor, for which permit, an inspection fee of five dollars (\$5.00) shall be paid: Provided, however, That no inspection fee or charge for this or any other service rendered by the state fire marshal’s office under this act shall be assessed against any group, society or organization listed under class C subsection (3) of this act, unless rental fees are charged or collected, and no person shall be liable under this act until after inspection and receipt of notice from the state fire marshal’s office by registered mail.”

Sec. 8 of said Act, same being Sec. 20-1009, Burns’ 1943 Supp., provides, in part, as follows:

“It shall be the duty of the state fire marshal to enforce the provisions of this act and to inspect and examine all moving picture shows, theatres, dance halls, night clubs, cabarets, assembly halls and all other places of public amusement within the state annually.
* * *”

Section 20-1005, Burns’ 1943 Supp., same being Sec. 5, Ch. 83, Acts of 1937, provides as follows:

“All permits shall be issued to expire on the thirty-first day of December of the calendar year in which they are issued, and, regardless of the time when they are issued, the fee payable therefor shall be for a full year.”

The above statute does not authorize the charging of a fee for the issuance of any such permit for a business under Class “A” or “B” other than such inspection fee. Said statute does not contain a provision for a refund on applications for per-

mits under Class "A" or "B," in the event such buildings are not approved by the state fire marshal on making such inspection, or in the event an inspection is made, such business approved, and a permit issued which is thereafter revoked.

Sec. 1-201, Burns', same being 2 R. S. 1852, Ch. 17, Sec. 1, reads as follows:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary usual, sense. * * *"

It is, therefore, clear from an examination of the above statute the legislature intended to require the payment of an *inspection fee*, rather than a fee for the issuance of a permit, for a business under Class "A" or "B." Where an inspection has been made of any such business in Class "A" or "B," the applicant would not be entitled to a return of such inspection fee in the event such business place was not approved by you on inspection. For the same reason the applicant would not be entitled to the return of his money on an application for a permit for a business in Class "A" or "B," in the event a permit is issued to him and thereafter revoked.

A careful examination of Clause (d), of Sec. 20-1004, Burns' 1943 Supp., *supra*, reveals a legislative intention to require the payment of an inspection fee for that type of business under Class "C" only in the event a permit is issued, and relieves such applicant for the payment of any fee for an inspection or the issuance of a permit for that type of business listed under Class "C" subsection (3) of said Act.

In answer to your first question on such fees received on applications for permits for a business in Class "A" or "B," after an inspection has been made, such fees received should be paid into the State Treasury for the benefit of the State Fire Marshal Fund, as provided for by Sec. 12, Ch. 93, Acts of 1937, same being Sec. 20-1012, Burns' 1943 Supp.

In answer to your first question on fees received on applications for permits in Class "C," in my opinion no fee could be charged or retained by you for the making of an inspection, or the issuance of a permit, on that class of business listed

under Class "C" subsection (3), Sec. 20-1004, Burns' 1943 Supp., *supra*, unless rental fees are charged or collected; that no fee collected by you could be retained for any class of business listed under Class "C" of said statute unless such place of amusement or entertainment is approved by you on inspection, and a permit issued.

In answer to your second question, it is my opinion since the statute makes no provision for a refund, and specifically provides the same charge shall be made for such permits for a whole or a part of a year, that on applications for permits, where inspections are made and approved by you, and permits are issued and later revoked, that the fees paid therefor should be paid into the State Treasury for the benefit of the State Fire Marshal's Fund. However, this would not include such fees received under Class "C" subsection (3) of Sec. 20-1004, Burns' 1943 Supp., as previously pointed out.

In your letter you state this money is still in your hands pending the completion of inspections and the issuance of the permits. Consequently the money accompanying the original applications for licenses under Class "C," which should be returned in certain instances as heretofore pointed out, has not been paid into the State Treasury. In those particular instances said fees were turned over to you before the same were due and payable and were not *legally collected* by you within the meaning of Sec. 20-1012, Burns' 1943 Supp., being Sec. 12 of said statute, and that same are within your custody as an individual, holding the same in escrow for the applicant and to be applied to the payment of such license fee when the same is due and payable. For these reasons, where refunds should be made as above pointed out, such refunds may be made by you due to the fact the same has not been paid into the State Treasury. On this question see *Sherrick v. State* (1906) 167 Ind. 345, 355, and 357 to 360.