

Furthermore, as pointed out above, the municipality is acting in a governmental capacity in all it does in this regard, and it would not be liable even if its officers were negligent in regard to the same.

The municipality or public department would not be liable for any negligence of the watchman. He is not hired by the municipality, cannot be discharged by it and the municipality does not control the manner in which he does his work. He is not the agent of the municipality as all the elements required to create the relation of master and servant so as to make the municipality liable for his acts are absent, namely the right to hire and discharge and control the manner of his work.

Even if he were an employee of the municipality, then the same rule would apply as to the providing of the other safety devices, namely that the municipality would be acting in its public or governmental capacity under its power to provide for the general welfare and safety, like in furnishing police or fire protection, and it would not be liable for any acts of such an employee.

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**CIVIL PROCEDURE: Execution, right of judgment creditor to control same.**

**General Assembly.**

February 27, 1943.

Mr. Donald H. Hunter, Member,  
House of Representatives,  
Indianapolis, Indiana.

Dear Sir:

Pursuant to your request, I have examined Engrossed Senate Bill No. 99. The title to this Bill is:

“A BILL FOR AN ACT to amend section 486 of an act entitled ‘An act concerning proceedings in civil proceedings,’ approved April 7, 1881.”

In my opinion the title to this bill is sufficient and complies with the requirements of the constitution of the State of Indiana.

Section 1 of the bill amends the original section 486 of the civil code of the State of Indiana to read that an execution shall be returnable within ninety (90) days from its date, whereas the original section 486 provides that the execution shall be returnable within one hundred eighty (180) days from its date. The Bill further provides that the judgment creditor may at the time of filing the praecipe for execution designate any other time less than ninety days for such return to be made, in which case, the execution shall be returned within the time designated by the judgment creditor.

The Appellate Court of Indiana, in construing the original section 486, has expressly held that it is the duty of the sheriff to whom the execution has been delivered to return the same whenever directed so to do by the judgment plaintiff or his attorney. See *Chatten v. Gerber*, (2d) Ind. App. 386, 388.

In view of the fact that a writ of execution is provided for the express purpose of enabling a judgment creditor to collect his judgment there is no valid reason why he should not be entitled to control and direct any writs and procedure available for such purpose. There is no provision in the Indiana Constitution which prevents the General Assembly from enacting a law similar to that contemplated by Engrossed Senate Bill No. 99. As a matter of fact such Bill merely enacts into law a practice and method of procedure now followed in the courts of the State of Indiana and provides a method whereby a judgment creditor is given authority to expedite his legal remedies provided for by proceedings supplementary to execution in other statutes for the collection of his judgment. It is my opinion that Engrossed Senate Bill No. 99 if enacted into law would be valid and constitutional.