

ings, additions to buildings and betterments in structures." To be more specific the appropriating Act clearly does not contemplate the use of the capital outlays appropriation for the retirement of bonds issued prior thereto. The Legislature had the undoubted authority to prescribe and limit the use of an appropriation by it; and that apparently is what has been done in this case.

When I come to an examination of the Act under which the music hall bonds were issued, I am confronted with the same situation. See Section 2 of Chap. 49 of the Acts of 1929.

In my opinion your first question should be answered in the negative.

Without further information upon the subject, I am unable to answer your second question. I am not advised as to just what miscellaneous receipts are at the disposal of the Indiana State Teachers College Board. If you will indicate what these miscellaneous receipts are I can then pass upon that question.

INDIANA STATE POLICE: Whether a charge of vehicle taking under the statute must be filed where the vehicle was originally taken.

September 18, 1942.

Mr. Don F. Stiver,

Superintendent, Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Mr. Stiver:

I have before me your request for an official opinion which reads in part as follows, to-wit:

"Will you furnish me with an official opinion on the question as to whether or not a charge of vehicle taking may be placed in the county where the vehicle has been apprehended, or must the charge be filed in the county where the vehicle was originally taken."

The legislature in 1941 enacted a new law defining vehicle taking and providing for the penalty. This new act reworded and combined two previous acts, but the substance of the law

remains the same. This law is found in Burns' Indiana Statutes Annotated 1933, (1942 Supp.), Section 10-3011. I deem it necessary to point this out because of the following analysis of the question involved.

It is fundamentally true as established by our Constitution in Section 13 of Article 1 thereof, which reads as follows, to-wit:

"In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor."

that all criminal prosecutions must be brought in the county in which the offense shall have been committed. It is equally true, however, that in accordance with the common law theory of "fresh crime" the legislature in 1905 enacted a law providing for the possibility of a certain crime being committed in one county and the property taken being transported to another county. The law to which I refer is Section 9-209, Burns' Indiana Statutes Annotated, 1933. This section reads as follows, to-wit:

"When property taken in one county by burglary, robbery, larceny or embezzlement has been brought into another county, the jurisdiction is in either county."

Therefore, it would appear that if the property is taken by one of the criminal means above enumerated in one county and brought into another county the jurisdiction is in either county. The above section has been construed by our Supreme Court and I direct your attention to two cases which are controlling in Indiana. The first of these cases is the case of *Martin v. State*, 176 Ind. 321 (1911). In this case the defendant was charged with having committed burglary in Hancock County, Indiana. He was charged by an affidavit filed in Marion County for the crime of burglary which was committed in Hancock County. It appears from the case that

the affidavit was faulty and the case was reversed for that reason. However, in the discussion of the case, the court construed the section of the statute last above quoted. Upon the theory of "fresh theft" the court held that the section under discussion was not in contravention of the constitutional provision herein quoted. However, the affidavit in that case attempted to charge the crime of burglary and not the crime of bringing stolen property from one county to another. With this in mind, I now direct your attention to *Tosser v. State*, 200 Ind. 156 (1928) wherein the identical question was raised and the same statute in the light of the Constitution was considered. In that case the defendant was charged with larceny. The crime was committed in Knox County, Indiana, and the case arose from the Vigo Circuit Court where the original affidavit was filed. The affidavit in that case charged that the defendant did "feloniously bring into the county of Vigo, State of Indiana, various articles belonging to one Thomas J. Arnold, and of an aggregate value of \$285.00." The question was raised by contending that the motion to quash the affidavit should have been sustained for the reason that the section in regard to bringing stolen property into another county was violative of Section 13 of the bill of rights of the Indiana Constitution. The court, in deciding the matter and affirming the lower court in overruling the motion to quash, used the following language:

"It is claimed by the state that if property is alleged to be stolen in one county and taken into another county, as in the instant case, and a prosecution is had in the county to which the goods are taken, the presentment is sufficient if it properly alleges the theft in the county in which the goods are stolen. *Hurt v. State* (1866), 26 Ind. 106; *Jones v. State* (1876), 53 Ind. 235. In *Hurt v. State*, *supra*, the court said:

"The information charges a larceny by the defendant, committed in the county of Allen and that he brought the stolen property into Wells county. It is urged that this is not a charge of larceny committed in the latter county. Not at all approving of the form of this indictment, which should have directly charged a larceny in Wells, yet we cannot, under the code, hold it bad. Each

removal of the property by the thief into another jurisdiction, was at common law held to be a fresh taking, and therefore a new larceny. The averment in this case of such removal was, it is true, an allegation of the evidence. But it was conclusive. It could not possibly be true without resulting in the defendant's guilt. It was, therefore, necessarily the equivalent of a direct charge of larceny.'

"Jones v. State, *supra*, also supports the contention of the state. In Martin v. State (1911), 176 Ind. 317, 95 N. E. 1001, the court says:

"'Prosecutions authorized by Section 1875, *supra*, in a case where property has been stolen in one county and brought into another by the thief, are upheld upon the distinct ground that a taking of stolen property from one county into another constitutes a new or fresh theft, and it may be said that the prosecution for such offense is in the county in which it was committed, and falls within the requirement of Section 13 of our bill of rights.'

"Section 13 of the Bill of Rights, Section 65, Burns' 1926, provides that in all criminal prosecutions the accused shall have the right to a public trial by an impartial jury in the county in which the offense shall have been committed. The court did not err in overruling the motion to quash."

Upon the theory of "fresh theft" and in view of Section 9-209, Burns' Indiana Statutes Annotated, 1933, it is possible to charge the crime of taking property from one county into another which was obtained in the commission of one of the crimes enumerated in the section. The question then presents itself as to whether or not the special criminal section defining the crime of "vehicle taking" would or could be included in one of the crimes enumerated in the section under consideration, to-wit: burglary, robbery, larceny or embezzlement. This question was considered by the Supreme Court of In-

diana in the case of *Leap v. State*, 189 Ind. 538 (1920). In that case the defendant was charged by indictment with the crime of grand larceny. The property described in the indictment as the subject of the larceny was an automobile. In the trial court the defendant took the position that no person could be prosecuted for larceny of an automobile because of the special section defining the crime of "vehicle taking." The question was raised directly because of the fact that there was a difference in the penalty. The defendant also asserted that he must be prosecuted under the act defining the crime of "vehicle taking." The court in deciding the question against the defendant said:

"The statute on which he (defendant) relies does not define the crime of larceny of an automobile or of any other vehicles mentioned therein. The felonious intent to deprive the owner of his property and convert the same to the use of the taker is an essential element in the crime of larceny. *Robinson v. State* (1888), 113 Ind. 510. Such felonious intent is not a necessary element of the crime of vehicle taking as defined by the later act."

The effect then of this case is that a prosecution for larceny for the theft of an automobile may be maintained regardless of the special section defining "vehicle taking." I deem it necessary to point out this distinction because under the rule that criminal statutes must be given a strict interpretation I do not believe that the crime of "vehicle taking" could be brought in any other county in the state except in the county in which the overt act was committed. However, on the other hand I am of the opinion in view of the foregoing authorities that the taking of any property, including an automobile which was taken in one county by burglary, robbery, larceny or embezzlement and brought into another county, in itself would constitute a fresh crime or "fresh theft" and would be in violation of the provisions of Section 9-209, Burns' Indiana Statutes Annotated 1933.

It is to be noted that each of the enumerated crimes included within the section must necessarily have the element of felonious intent in order to convict while on the other hand the act of 1941 defining "vehicle taking" does not necessarily

require felonious intent. Therefore, in answer to your specific question, I am of the opinion that a charge of "vehicle taking" must be brought in the county where the vehicle was originally taken even though as pointed out in the case of Leap v. State, *supra*, a prosecution for larceny for the theft of the same automobile would lie in either the county of the original commission of the act or in any county in the state into which the automobile might be taken by the perpetrator of the original offense.

INDIANA STATE LIBRARY: Organization of City and County Library Board—Whether joint board may be organized immediately upon appointment.

September 18, 1942.

Miss Hazel B. Warren,
Chief Extension Division,
Indiana State Library,
Indianapolis, Indiana.

Dear Miss Warren:

I have before me your letter of September 16, 1942, requesting an official opinion as to the status of the county members of a joint City and County Library Board, which county members are appointed pursuant to Section 41-514 of Burns' Indiana Statutes Annotated (1933), 1940 Replacement Volume.

In the case submitted the provisions of Section 41-513 of Burns' Indiana Statutes Annotated (1933), 1940 Replacement Volume have all been complied with to authorize the extension of free service to all the people of the county involved, and the Board of Commissioners have levied a tax as provided in the foregoing sections. At the present time the four county members have not been appointed and the City Library Board has been changed by the addition of several new members. The question is as to whether the City Library Board may reorganize without consideration to the appointment of the four county members, and as to when the four county members, become members of the board.