

1937 and 1939 amendments all that he has to do is to make his election prior to December 31, 1942.

The offer by the State, when accepted by the teacher, becomes the contract and, I think, both parties are bound by it, and as to the parties so electing the provisions of the previous act no longer apply. I do not think it is contemplated that a teacher having once elected to come under the 1937 and 1939 Acts can thereafter withdraw that election. If a teacher can do so once he can do so any number of times up to December 31, 1942, thus having the fund continually in confusion.

I do not find anything in the act which authorizes the Board either to receive the election,—although as already stated I think it is evident that they may so do,—or to permit its withdrawal, but I think the legal effect of electing to come under the 1937 and 1939 Acts is to make the provisions of those Acts applicable and binding, and when they once become applicable and binding there is no authority anywhere, except by and through the consent of all parties concerned, whereby that status can be changed. In my opinion the Board has no authority to accept a withdrawal of an election under the 1939 Act or thereafter to make any change in the liabilities and benefits accruing to the teacher so electing to come under the amendatory Acts differing from the liabilities and benefits as set up when the election was made.

POLICE, INDIANA STATE: State Police Officer, has right to break seal of shipment on interstate operated truck to make search following lawful arrest.

April 24, 1940.

Mr. Don F. Stiver,
 Superintendent, Indiana State Police,
 State House,
 Indianapolis, Indiana.

Dear Sir :

This will acknowledge receipt of your inquiry of recent date as follows :

“Kindly furnish me with an official opinion as to the legal right of a State Police Officer, following a lawful arrest of an interstate operated truck to break the seal

of the shipment for further search and possible seizure, where the officer did not have a search warrant.”

I direct your attention to Section 11, Article I, of the Constitution of Indiana which recites as follows:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.”

This section is practically a reiteration of the Fourth Amendment to the Constitution of the United States.

Applegate v. State ex rel. Browning, 158 Ind. 119, 124.

However, the Fourth and Fifth Amendments to the federal Constitution operate exclusively in restriction of federal power and are not concerned with state actions, and are not applicable to a search and seizure by a local officer.

Biggs v. State, 201 Ind. 200;

National Safe Deposit Company v. Stead, 232 U. S. 58;

Ohio ex rel. Lloyd v. Dollison, 194 U. S. 445, 447.

The general rule in this state is that, as an incident to a lawful arrest, a police officer may, without a search warrant, search an automobile in which the accused was riding at the time of the arrest.

Smith v. State, — Ind. —, 21 N. E. (2d) 709;

Pettit v. State, 207 Ind. 478;

Davis v. State, 203 Ind. 443;

Hoover v. State, 203 Ind. 248;

Allgaier v. State, 200 Ind. 583.

It would follow, that if the officer is entitled to make the search, he may do everything reasonably necessary to effect the search, including the breaking of locks and doors.

Jones v. State, 89 Ind. App. 564, 569.

See also:

Thomas v. State, 196 Ind. 234, 236;

Faut v. State, 201 Ind. 322, 324, 325, 326.

No citation of authority is necessary to sustain the fact that persons engaged in interstate commerce are subject to the criminal laws of this state for crimes committed within the state, the same as anyone else, and therefore, a rule of criminal law applying to the driver of an intrastate vehicle would, in the same manner apply where the vehicle was operated in interstate commerce.

Investigation reveals that there is neither a federal statute nor regulation of the Interstate Commerce Commission which requires interstate trucks to be sealed or locked. Consequently, such sealing or locking is a measure taken by the owner or operator of the truck on his own initiative and could scarcely be held to thwart the legitimate actions of police officers.

Therefore, I am of the opinion that it would not be illegal for a State Police Officer to break a seal for further search and possible seizure under circumstances outlined in your inquiry.

HIGHWAY, STATE COMMISSION: Financial statements submitted by bidders may be examined by anyone who makes a showing of sufficient interest.

April 30, 1940.

Mr. M. R. Keefe,

Chief Engineer, State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in which you state, among other things, that from time to time the Department is asked to allow the inspection of financial statements furnished to the State Highway Commission of Indiana by contractors as a part of their application for pre-qualification for bidding as required by Chapter 98 of the Acts of 1937. (Acts of 1937, p. 469.)