shall * * * enter a decree finding no inheritance tax payable in said estate." Said section 7 was amended by the Acts of 1933, page 1022. Said section as amended omitted that part above quoted as passed in 1931. Section 7 was again amended in 1937, page 1310, which provided, in language similar to that of the Acts of 1931. "If it appears to the satisfaction of the court from said petition or upon hearing that in no event could there be a tax payable on the estate, he shall enter a decree finding no inheritance tax payable in said estate * * * ," and there the law stands today.

The provision found in section 8 as amended in 1939, providing, "That the court, after the filing of said schedule by the executor, administrator, trustee or heir, shall within ten days from the filing of same, transmit said schedule to the county assessor or inheritance tax appraiser as the case may be of the county in which the court is sitting," is not in conflict with section 7 of the Acts of 1937 and the same is not repealed.

ACCOUNTS, STATE BOARD OF: County sheriff entitled to charge only for actual mileage covered in transportation of persons to state institutions.

November 21, 1939.


Dear Mr. Brennan:

I have your letter of November 17, 1939, in which you ask the following question:

"Can a sheriff transport one (1), two (2) or three (3) prisoners to the Indiana Reformatory, and one (1), two (2) or three prisoners to the Indiana State Prison, at the same time, by the same conveyance and legally charge the mileage to which he would be entitled under the statute, if they were transported in separate respective groups, and assuming, that at the time there were no more prisoners in the custody of such sheriff, awaiting transportation to the same penal institution.

"Example: If county sheriff of "A" county transports two prisoners to the Indiana Reformatory at
Pendleton and one prisoner to the Indiana State Prison at Michigan City, at the same time and in the same conveyance, is he legally entitled to mileage (a) county seat to Pendleton and return and county seat to Michigan City and return, or (b) county seat to Pendleton, Pendleton to Michigan City, Michigan City to county seat?"

The General Assembly in Special Session in 1932, passed the following Act, chapter 26, page 40, Burns 1933 Statutes, sections 49-1315 and 49-1316.

“That the sheriffs of the several counties of this State shall be entitled to charge and collect the following amounts on account of the services performed by such sheriffs, which shall belong to and be the property of the sheriff performing such service:

“(a) For removing persons to the state prison, reformatory, state farm, woman’s prison, boys’ school, girls’ school, any State hospital or other State institution, the following amount:

“1. If such persons be transported by a common carrier, the actual cost of transportation for the sheriff, for each person in custody and for each attendant allowed by law who may actually accompany such sheriff, together with any other expenses necessarily incurred.

“2. If such persons be transported by a conveyance furnished by the sheriff, the sum of eight cents per mile for each mile necessarily traveled, by each such conveyance, but not more than one mileage shall be charged for any one conveyance, although transporting more than one person.

“(c) Where, in any case, there are more persons than one in the custody of the sheriff awaiting transportation to the same State institution, the sheriff shall transport all of such persons, or at least three, if there be as many as three, at the same time, and on the same trip, unless upon a showing made to the judge of the court which sentenced such person or persons and the approval of the court, on account of the dangerous character of one or more of such persons, the interests of safety require that only one such person be transported, in which event the sheriff shall file the approval
of the court with his claim, and no such mileage shall be allowed by the board of county commissioners unless this subsection shall have been complied with.

"The board of commissioners of any county may purchase for and furnish to the sheriff of such county a motor vehicle which may be equipped for use as an ambulance or may be used for the transportation of persons who are in the custody of the sheriff. The motor vehicle so furnished shall have a seating capacity for not less than six persons, excluding the driver and two guards. The board of commissioners shall provide for the maintenance and upkeep of such motor vehicle. Where a conveyance is furnished and maintained by the county for the use of the sheriff, no mileage shall be allowed, but the sheriff shall be entitled to be reimbursed for any other expenses which may lawfully incur other than mileage."

It is to be noticed that section one (1) above set out provides that if persons are transported by a common carrier, the sheriff is reimbursed for the actual cost of transportation for each person in custody and for each attendant together with any other expense necessarily incurred. Section two (2) provides that if the persons are transported by a conveyance furnished by the sheriff he would be entitled to eight cents per mile for each mile necessarily traveled by such conveyance but not more than one mileage shall be charged for any one conveyance, although transporting more than one person.

It seems to me that the language used in the foregoing sections is so clear that it needs no construction. It speaks for itself, and plainly means that if the sheriff of county "A" should take one or more persons to one of the state institutions named, in his own conveyance, he would only be entitled to charge eight cents per mile in going from and returning to the county seat of "A". If he took two or more persons in his own conveyance and at the same time, one of whom was to be left at Pendleton and the other to be taken to Michigan City, he would be entitled to one mileage to Pendleton and one mileage from Pendleton to Michigan City and one mileage from Michigan City back to the county seat "A".

Subsection (c) of section 49-1315 lends strong force to the above construction. It provides: "Where in any case, there are more persons than one (1) in the custody of the sheriff
awaiting transportation to the same State institution, the sheriff shall transport all of such persons, or at least three (3) if there be as many as three (3) at the same time * * *” This language clearly shows the legislative intent to prevent the sheriff from charging extra mileage. Section (2) provides that the county may provide the sheriff with a motor vehicle for the purpose of transporting persons to the different institutions and in that event the sheriff is entitled to no mileage but only for other expenses lawfully incurred. Here, again, is clearly shown the legislative intent to reduce the expense of transportation to a minimum.

In construing a statute the time when enacted and the economic condition of the country at the time may be taken into consideration. The Act was passed in 1932; the special session was called, in part, due to the distressed economic condition of the country. Acts were passed to reduce taxation and to cut public expenses where possible, and, the Act in question, no doubt, was passed pursuant to this purpose.

I am of the opinion that, as outlined in your letter, if the sheriff of “A” county transports two prisoners to the Indiana Reformatory at Pendleton and one prisoner to the Indiana State Prison at Michigan City at the same time and in the same conveyance, he is legally entitled to charge only one mileage from county seat “A” to Pendleton, Pendleton to Michigan City and return from Michigan City to county seat “A”.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Seller, under conditional sales contract containing acceleration clause, must return retaken merchandise upon tender of installments in arrears.

November 25, 1939.

Hon. Ross H. Wallace, Director,
Department of Financial Institutions,
Indianapolis, Indiana.

I have before me your letter which, in part, is as follows:

“Section 16 of the Uniform Conditional Sales Act reads as follows:

“Redemption. If a seller does not give the notice of intention to retake described in section fifteen, he shall retain the goods for ten (10) days after the retaking