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
within the State in which they were located when re-
taken, or at the place where the goods were sold during
which period the buyer, upon payment or tender of
the amount due under the contract at the time of retak-
ing and interest, or upon performance or tender of per-
formance of such other condition as may be named in
the contract as precedent to the passage of the prop-
erty in the goods, or upon performance or tender of per-
formance of any other promise for the breach of
which the goods were retaken, and upon payment of
the expenses of retaking, keeping and storage, may re-
deam the goods and become entitled to take possession
of them and to continue in the performance of the con-
tract as if no default had occurred. Upon written de-
mand delivered personally or by registered mail by
the buyer, the seller shall furnish to the buyer a written
statement of the sum due under the contract and the
expense of retaking, keeping and storage. For failure
to furnish such statement within a reasonable time after
demand, the seller shall forfeit to the buyer ten dollars
($10.00) and also be liable to him for all damages
suffered because of such failure. If the goods are
perishable so that retention for ten (10) days as herein
prescribed would result in their destruction or sub-
stantial injury, or if the seller or his assignee feels
insecure for any reason in having the goods in the
possession of the buyer the provisions of this section
shall not apply, and the seller may resell the goods im-
mediately upon their retaking. * * *”

You submit the following question:

“If a buyer who is in default on certain installments
of his contract and has had the goods retaken as a
result thereof, attempts to make or tenders payment
of those installments in arrears, is it proper for the
seller or his assignee to refuse such defaulted payments
and instead, demand that the entire balance be paid
before the merchandise is returned to the buyer?”

In answering the above question I shall assume for the
purpose of the question and answer that the contract contains,
an acceleration provision whereby upon default in one or more
payments the seller may declare the purchase price in its en-
tirety to be due.
In consideration of this question I think sections 14, 15 and 16 of the Uniform Conditional Sales Act should be construed together. These sections are sections 58-814, 58-815 and 58-816 of the June 1939 Cumulative Pocket Supplement of Burns Indiana Statutes Annotated (1933). The first of these sections sets out the defaults which will entitle the seller to retake possession of the property sold. It provides three separate conditions under either of which possession may be retaken. They are as follows:

"1. Possession may be retaken when the buyer is in default in the payment of any sum due under the contract.

"2. Possession may be retaken when the buyer is in default in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods.

"3. Possession may be retaken when the buyer is in default in the performance of any promise, the breach of which is by the contract expressly made a ground for retaking of the goods.

Section 58-815 provides for the giving of notice of an intention to retake possession. Section 58-816, supra, on the other hand, provides for the retaking of possession without notice, saving, however, to the buyer the right of redemption under the terms set out in the Act. An examination of this section discloses that the conditions for redemption are stated in almost exactly the same language as is used to describe the defaults as provided in section 58-814, supra. For example, the first default which may be the basis for a retaking of possession, as set out in section 58-814, is that the buyer shall be in default in the payment of any sum due under the contract. Noticing now the provision of section 58-816, supra, it is disclosed that the first requirement for redemption is stated to be "upon payment or tender of the amount due under the contract at the time of retaking and interest * * * and upon payment of the expenses of retaking, keeping and storage * * *." Thus, where the ground for the retaking is a default in the payment of any sum due, the requirement for redemption is the payment of the amount due at the time of the retaking plus interest and expenses. The second ground for retaking possession, as set out in section 58-814, supra, is a default in the performance of any other condition which the
contract requires the buyer to perform in order to obtain the property in the goods. Singularly, the provision for redemption corresponding with that default is, as set out in section 58-816, supra, the “performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods.” Likewise, the third ground for retaking possession, as set out in section 58-814, supra, is a default in the performance of any promise, the breach of which is by the contract expressly made a ground for retaking of the goods. Likewise, in section 58-816 the required Act for a redemption by reason of such a default is the “performance or tender of performance of any other promise for the breach of which the goods were re-taken.” Where the default is in a payment, interest is added; and in each case the expense of retaking, keeping and storage is added. Significant in the language of the redemption section is the provision as to the rights of the buyer after the redemption has taken place. Note the language:

“may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred.”

This, of course, would be meaningless language if an acceleration in payments clause may be given effect, because certainly when the full amount of the purchase price is paid there is no occasion for the continuance “of the contract as if no default had occurred.”

The Uniform Conditional Sales Act was enacted in Indiana in 1935, and so far as I have been able to find this particular question has not been presented to either the Appellate or the Supreme Courts of this State. However, I am not without authority upon the question in the decisions of other states. I find that the exact question was presented and decided by the court in the case of Clark v. Tri-State Discount Co., Inc., et al., 271 N. Y. Suppl. 779. In that case the court said on page 784:

“The question is: Does a buyer in default under a conditional sales contract containing an acceleration clause comply with the statute by making a timely payment or tender of the delinquent installment, plus interest and the enumerated expenses, or must he pay or tender the entire balance of the purchase price?
“It will be observed the statute provides that the buyer ‘upon payment or tender of the amount due under the contract * * * may redeem the goods and become entitled to take possession of them, and to continue in the performance of the contract as if no default had occurred.’ The words ‘amount due under the contract’ refer to the installment in default and not to the balance of the purchase price. To hold otherwise would make useless and meaningless the other words of the same sentence—‘and to continue in the performance of the contract as if no default had occurred.’ If it were the legislature’s intention, where the contract contains an acceleration clause, to require a buyer in default who seeks to redeem the property to pay or tender the entire balance of the purchase price, then his right under the statute ‘to continue in the performance of the contract as if no default had occurred’ would be rendered nugatory. If he paid the entire balance due, the contract would be completely performed and his obligation under it fully discharged.

“Although the parties agree, as they did in the instant case, ‘if any of buyer’s indebtedness shall become due and remain unpaid in whole or in part * * * the full amount unpaid * * * shall become due and payable forthwith,’ they must be deemed to have contracted with reference to the statute. The statute was, in legal effect, a part of the contract. Strauss v. Union Central Life Ins. Co., 170 N. Y. 349, 356, 63 N. E. 347.

“Moreover, the seller may not circumvent the statute, nor the buyer waive the protection it affords him. Section 80-f of the Uniform Conditional Sales Act (Personal Property Law), so far as material, provides: ‘Waiver of statutory protection. No act or agreement of the buyer before or at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of sections seventy-eight * * *.’”

You are also referred to the case of Harlee v. Federal Finance Corporation of America, 152 Atl. 596, in which case the court held that an acceleration clause such as has been referred to in this opinion in a contract of conditional sale is repugnant to the intent and purpose of the Conditional Sales
Act and contrary to its provisions. The court in this case discusses the questions quite fully. An excerpt from the opinion will be sufficient to indicate the line of argument used by the court. The court said on page 599:

"Examining section 18 in the light of the above rules of construction, it is our opinion that the words 'the amount due under the contract' should not be considered alone, but must be considered in connection with the words 'and to continue in the performance of the contract as if no default had occurred' appearing in the same sentence, and, therefore, the literal meaning of the words in the first part of the sentence is limited or qualified by the words at the end of the same sentence and that the words 'amount due under the contract' were intended to mean the amount due as installments, and it was not intended that they should be given a meaning such as would make it possible for the contract to require the payment of the balance of the purchase price at once upon a default in the payment of any installment.

"Any other interpretation would make inoperative, useless and without meaning the words of the section 'and to continue in the performance of the contract as if no default had occurred' when applied to a conditional sale contract containing an acceleration clause, for if the balance of the purchase price and all expenses were paid by the buyer, there would be nothing remaining to be performed by him and this would be contrary to the rules of construction above stated.

"The only other case we have been able to find in which the exact question before this court has been determined is that of Street v. Commercial Credit Co. (Ariz.) 281 p. 46, 48, 67 A. L. R. 1549. In that case the court said:

'On the other hand, the construction contended for by appellant (buyer) would protect the equitable rights of both parties. In equity the seller is entitled only to his purchase price and expenses. He has already agreed to accept that price on the installment plan. If the buyer is in default, and that for a day, on one payment only the seller may seize the property, and the buyer must not only make up the delinquent payment with
interest in ten days, but must also pay all the expenses of retaking, keeping, and storage. A failure to redeem within the statutory time allows the seller to then pursue any of his remedies on the theory that the whole purchase price is then due and payable. Surely he is amply protected so far as his equitable rights are concerned. And the buyer will be warned against unnecessary defaults by his liability for expenses, generally amounting to a penalty of from 10 to 50 per cent, of the delinquent installment. He is, however, given a chance to redeem on terms which, though onerous, are usually possible, unless his financial situation is hopeless.

"On the other hand, the construction contended for by appellees (seller) would frequently give the seller his full, original purchase price, plus an additional profit of from 10 to 60 per cent, by means of a resale, while in its practical workings it would make redemption impossible by a very large proportion of debtors who had already paid a substantial part of the purchase price and could continue the installment payments, though finding it utterly impossible to raise the full amount unpaid in one sum."

You are next referred to the case of Street v. Commercial Credit Co., et al., 281 Pac. 46, a case already quoted from by the court in the last preceding citation.

See also the case of Cox v. General Motors Acceptance Corporation, et al., 241 N. W. 609, where the court on page 611 made the following statement:

"If the respondent made the tender he claims he made, appellant could not take advantage of any acceleration clause in the contract to insist upon payment of the full contract amount."

For the reasons given and upon the authority of the cases above cited, your question is answered in the negative.