regard to the indigency of the person treated. A claim covering the cost of necessary anti-syphilitic medical treatments authorized and ordered by a health officer for the prevention of the spread of syphilis and for the protection of the public from that disease, is; if properly drawn in all other respects, a valid claim against the city, town or county, as the case may be.

MOTOR VEHICLES, BUREAU OF: Bus fee: what rate applicable where operation is interstate but entire operation in Indiana wholly within limits of one city.

November 22, 1933.

Hon. Frank Finney, Commissioner,
Bureau of Motor Vehicles,
Department of Treasury,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue in response to the following question:

“What registration fee should the bureau of motor vehicles require from an applicant who is a carrier of persons for hire, operating interstate, with the corporate line of the Indiana terminus running coincident for a certain distance with the Indiana state boundary line over which coincident line the carrier passes in entering and leaving this state?”

The Supreme Court of the State of Minnesota in a decision handed down in 1926, dealt with an identical problem calling for the interpretation of certain sections of a motor vehicle law, which are strikingly similar to the pertinent provisions of chapter 218, of the Acts of 1925, (page 570) which is presently before us.

In Wickman v. Holm, 206 N. W. 705, the facts were as follows: the territory comprising the cities of Duluth, Minnesota and Superior, Wisconsin, is contiguous; the Saint Louis River forming the boundary line between the two cities as well as the boundary line between the two states. There is an interstate bridge over the river which connects the two cities, the southern approach to this bridge being in the city of Superior,
and the northern approach in the city of Duluth. Motor vehicles operating between the two cities pass over this bridge, and, going north, follow a route wholly within the city of Duluth until it reaches the center of that city. Wickman, the owner of five motor busses, operating between Duluth and Superior, tendered to Holm, the registrar of motor vehicles, a license fee computed upon the basis of busses operating wholly within one city and this, Holm refused and demanded that the fees be upon the basis of one whose operations were greater than operating wholly within the territorial boundaries of one city. The court, in passing upon the controversy, used the following language, which is pertinent to our question:

"We are of the opinion that the registrar used the wrong basis for calculation of the tax. These busses operated between the cities of Duluth and Superior; Superior is no part of Minnesota. So far as Minnesota is concerned, these busses were operated wholly within the city of Duluth, using only the highways of that city. Under chapter 418, Sec. 3, Laws 1923, these vehicles were subject to a tax of 2½ per cent, only, the same rate applicable to motor vehicles of the same character operated wholly within the limits of the same city.

"We are of the opinion and hold that the vehicles in question were not engaged in carrying passengers for hire, between points not wholly within the limits of the same city, within the meaning of the act, and therefore were not subject to the 10 per cent tax, and that the registration should have been made."

Wickman v. Holm, 206 N. W. 705.

Following the reasoning of the court in Wickman v. Holm, I am of the opinion that the following provision quoted from section 9, chapter 213, of the Acts of 1925 (page 577), is applicable:

"A fee of six dollars ($6.00) per person per annum, at the rated carrying capacity, allowing sixteen (16) inches for each person, exclusive of the driver, shall be paid upon the registration or re-registration, for each calendar year, for each motor bus operated for hire
over any of the public highways of the state on a regular schedule of time and rates: Provided, That the fee for motor busses operating wholly within the corporate limits of any city or town shall be one-tenth (1/10) of the regular registration fee for motor busses: Provided, further, That motor vehicles used in the transportation of school children, whether the entire motor vehicle, including the body and chassis, or the body only, is owned by the school corporation, shall not be classed as motor busses, nor shall such motor vehicles be required to pay the seat fee as hereinbefore provided in this paragraph.” (Our italics.)


I am of the opinion that the operation of the applicant in Indiana is wholly within the limits of the city forming the Indiana terminus, and that therefore, the rate of one-tenth of the regular fee for motor busses should be charged.

It has been urged that the following provision of section 9, supra, is controlling:

“* * * A fee of ten dollars ($10.00) per person per annum at the rated carrying capacity, allowing sixteen inches (16”) for each passenger, exclusive of the driver, shall be paid upon the registration or re-registration for each calendar year, for each motor bus operated for hire over any of the public highways of the state and engaged exclusively in interstate commerce.”

It will be sufficient to observe that this provision is clearly void as being violative of “the commerce clause,” article one, section eight, of the Constitution of the United States of America, in that it burdens interstate commerce solely because of its interstate character. This defect, however, does not affect the validity of the balance of the act.

The fee should be computed upon the basis of a motor bus operating wholly within the corporate limits of a city and should be computed as being one-tenth (1/10) of the regular registration fee for motor busses.