ALCOHOLIC BEVERAGES DIVISION: Alcoholic beverages—Seizure of vehicles unlawfully transporting.

February 6, 1936.

Hon. Paul P. Fry, Chairman,
Alcoholic Beverages Division,
State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your request for an official opinion of February 5th, 1936, as follows:

"I am writing you concerning Section 35 of the new Liquor Control Act and particularly that portion of it which reads, 'When any conveyance of any kind shall be used for the illegal transportation of alcoholic beverages, etc., no person interested in said transportation or having knowledge thereof, shall have any right, title or interest in or to said conveyance so used.'

"We have several cars confiscated where a finance company, such as General Motors, has a Conditional Sales Contract. We have one car confiscated where there is a mortgage. Assuming these contracts and mortgages to be bona fide agreements for value, must the State recognize the interest of the innocent person? That is, one who has no interest or no knowledge of the illegal transportation involved in the particular transaction out of which the car was seized and confiscated.

"Kindly let me have your opinion as to the right, title or interest in and to the confiscated car of innocent contract, lien or mortgage holders."

The question of rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor, has been many times decided by the various State and Federal Courts as well as in the Courts of this State.

In 47 A. L. R. on p. 1063, it said:

"It may be stated generally that statutes providing for the forfeiture of all conveyances or vehicles used in the illegal transportation of intoxicating liquor either
expressly provide for the protection of the property interests of innocent persons therein, or the courts, with few exceptions, have construed the statutes as implying such protection.”

In the case of Indiana Investment, etc., Co. v. Zimmerman, 89 Ind. App. 316, the rule was stated to be that the owner was entitled to have its rights protected, but that the burden of proof was upon the claimant of the property to show that it was in good faith the owner thereof, and that it had no knowledge of the fact that it was being used in violation of the law.

In the case of Forgen v. State, 91 Ind. App. 604, the right of a finance company to recover property upon which it held a conditional sales contract and which property was used in an unlawful manner without its knowledge, was upheld. Hundreds of cases to the same effect might be cited in the various State and Federal Courts.

I am, therefore, answering your question to the effect that the rights of an innocent contract, lien or mortgage holder should be recognized, but that the burden of proving both the ownership or interest and the lack of knowledge of the use to which the vehicle is put is upon the claimant.

MEDICAL REGISTRATION AND EXAMINATION, STATE BOARD OF: Osteopaths and chiropractors—Whether entitled to advertise as podiatrist or foot correctionalist.

February 7, 1936.

D. R. Tucker, President,  
Board of Podiatry Examiners,  
Indiana State Board of Medical Registration and Examination,  
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion, dated January 24, 1936, regarding two propositions, the first of which is as follows:

“Whether or not a regular licensed osteopath, or an osteopath licensed under the 1927 Drugless Amend-