

An examination of the italicized part (d), section 4, in my opinion, discloses a clear grant to the Fire Marshal of a discretionary power of supervision over all Class C places of amusement. This is especially evident by the language "and shall be inspected at such times as the State Fire Marshal shall deem necessary." In other words, the section provides that when the Fire Marshal deems it necessary he may inspect any Class C place of amusement and upon approving such place shall issue a Class C permit at no cost to the amusement inspected.

Therefore, in answer to specific questions of your letter, it is my opinion that the amusements of which you inquire should be classified under Class C and you may inspect and grant permits to the same, at no costs, whenever you may deem it necessary to insure adequate safety to the public.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Justice of the peace, authority in garnishee proceedings. Whether court of justice of the peace is a court of record.

August 9, 1937.

Homer O. Stone, Supervisor,
 Division of Small Loans and
 Consumer Credit,
 Department of Financial Institutions,
 State House,
 Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to sections 2-4401 to 2-4406a of the Cumulative Pocket Supplement of Burns Indiana Statutes Annotated, 1933, and requesting an official opinion in answer to the following questions:

"1. Do Justices of Peace have jurisdiction to issue supplemental proceedings under section 2-4401-2-3-6.

"2. Has a Justice of Peace authority to issue an order against wages in accordance with the aforesaid section.

"3. Does the aforesaid law apply to all judgments generally, that is, regardless of when any such judg-

ments were taken. In other words, can the above proceedings be had on judgments taken prior to July 1.

"4. Is a single person having no dependents entitled to an exemption of \$15 per week on the above exemption.

"5. Is any judgment debtor entitled to the \$15 exemption where a judgment does not arise out of a contract."

The above provisions are amendments of sections 592, 593, 596 and 598 of an Act entitled, "An Act concerning proceedings in civil cases," approved April 7, 1881, and constitute chapter 54 of the Acts of the General Assembly of 1937.

The above chapter was approved on March 6, 1937, and became effective upon the publication of the Acts on June 7, 1937.

Acts of 1937, p. 440.

At the same session there was enacted an amendment to the Householders Exemption Statute of the State, appearing as section 3-3501 of the June, 1937, Cumulative Pocket Supplement of Burns Indiana Statutes Annotated, 1933. This last section is chapter 296 of the Acts of the General Assembly of 1937.

Acts of 1937, p. 1348.

It was approved on March 12, 1937, and except as expressly limited therein, became effective upon the publication of the Acts of the General Assembly of 1937, on June 7, 1937.

In answering your questions I think a consideration of both chapter 84, of the Acts of 1937, *supra*, and chapter 296, of the Acts of 1937, *supra*, is required.

Returning now to chapter 84, *supra*, it will be observed that section 1 provides, in part, that when an execution against the property of the judgment debtor, or any of several debtors in the same judgment, issued to an officer authorized to serve the same at the place where such judgment debtor resides, or, if he does not reside in the state, to the officer of the court rendering such judgment who is authorized to serve such execution, is returned unsatisfied, in whole or in part, the judgment creditor, *after such return is made*, shall be entitled to an order, to be issued "by any circuit, superior, municipal

*or city court or by any Justice of the Peace in the jurisdiction to which such execution issued, or by the clerk thereof in vacation, requiring the judgment debtor to appear forthwith * * **, “to answer concerning his property or income or profits within the county to which the execution was issued; * * *”

Acts of 1937, p. 441. (Our italics.)

It will be observed from the foregoing that in the above section, which provides a procedure applicable to cases where an execution has been issued and returned unsatisfied, in whole or in part, a Justice of the Peace is expressly included as a court which may issue the order. I think, however, that this inclusion, of course, has reference to the case where the amount involved is within the jurisdiction of a Justice of the Peace.

Acts of 1937, p. 441.

The next section of chapter 84 provides in part as follows:

“If, after the issuing of an execution against property, the execution plaintiff, or other person in his behalf, shall make and file an affidavit with the clerk of *any court of record* of any city, county or *township* to the effect that any judgment debtor, residing in the territorial jurisdiction of such court, has property or income or profits, describing the same, which he unjustly refuses to apply toward the satisfaction of the judgment, the court, if in session, or the judge or clerk thereof in vacation, shall issue a subpoena requiring the judgment debtor to appear forthwith before the court, if in session, or, if not, at the next term of the court, or before the judge thereof, at a time and place to be specified therein, to answer concerning the same; * * *”

Acts of 1937, p. 441. (Our italics.)

It will be observed that in this section the term “Justice of the Peace” is not used, but instead the language used states, “any court of record of any city, county or township.” It has been held that the court of a justice of the peace is a court of record.

Pressler v. Turner, et al., 57 Ind. 56 p. 60;

Brackney v. State of Indiana, 188 Ind. 343 p. 344.

Sections 2-4403 and 2-4406 are the garnishee provisions of said chapter, and I think to clarify my conclusions they should be copied in full.

Section 2-4403 is as follows:

“After the issuing or return of an execution against the property of the judgment debtor or any one of the several debtors in the same judgment, and upon an affidavit that any person, corporation, municipal or otherwise, the state or any subdivision or agency thereof has property of such judgment debtor, or is or will be from time to time indebted to him in any amount, although the amount shall be determined from time to time as it becomes due and payable, which, together with other property claimed by him as exempt from execution, shall exceed the amount of property so exempt by law, such person, corporation, or any member thereof, or the Auditor of State or auditing officer of the municipal corporations, subdivisions or agencies of the state, may be required to appear and answer concerning the same, as above provided: Provided, That the governmental officers above named shall not be required to appear personally in court, but interrogatories shall be submitted by the parties and a copy thereof, with blanks for answer, and a copy of the order of the court ordering the same answered shall be transmitted to the officer required to answer the same by the clerk of the court, by registered mail, and on receipt of such interrogatories and such order, such officer shall answer such interrogatories and return the same to such clerk by registered mail, and such court shall have full power to compel answers thereto.”

Section 2-4406 is as follows:

“Upon the hearing, the judge of the court may order any property, income or profits, of the judgment debtor, not exempt from executions, in the hands either of himself or any other person, or any debt due to the judgment debtor, to be applied to the satisfaction of the judgment, and forbid transfers of property and choses in action; and the judge may order that the judg-

ment or execution shall be a continuing lien upon the income or profits of the judgment debtor in the hands either of himself or any other person, governmental officer or corporation to the extent that such income or profits are not exempted by law, provided that such lien shall not exceed ten (10) per cent of such income or profits and shall not, when added to all similar liens prior thereto, increase the total of all such liens prior thereto, increase the total of all such liens to a percentage greater than ten (10) per cent of the income and profits of the judgment debtor; and such judge or court shall have full power to enforce all orders and decrees in the premises, by attachment or otherwise."

It will be noted from the above quoted language that there is no express reference to a Justice of the Peace. One of the important changes, however, in the previous sections, Sections 2-4401 and 2-4402, is to include a Justice of the Peace with the officers who may issue orders thereunder, and Section 2-4403, *supra*, provides that a garnishee defendant "may be required to appear and answer concerning the same (referring to property of the judgment debtor or indebtedness to him) as above provided." The language, "as above provided," evidently refers to the procedure as set out in Sections 2-4401 and 2-4402, which does include a Justice of the Peace within his proper jurisdiction as an officer authorized to issue the writ therein provided for.

It is my conclusion that the intent of Section 2-4403 was to authorize a Justice of the Peace to issue an order for appearance to a garnishee defendant in cases otherwise within the jurisdiction of the Justice of the Peace.

The answers to your questions Nos. 1 and 2 are in the affirmative, in cases within the jurisdiction of a Justice of the Peace as to amount involved and as to territorial jurisdiction.

As to your third question, there is no limitation in chapter 84, *supra*, as to the judgments to which the proceedings therein set out may apply, but in the exemption statute, chapter 296, of the Acts of 1937, it is provided that the right to the subjection to execution of 10 per cent of the weekly wages, in excess of \$15 per week, of a judgment debtor, does not apply to judgments obtained prior to July 1, 1937.

Answering your fourth question, generally speaking, the answer is in the negative. The exemption provisions relate only to resident householders of the State. The term resident householder has been under consideration for definition in a good many cases and it would require consideration of all of these cases to set out the exact lines of differentiation. See the following:

McCaughey and Another v. Elliott and Another, 18 Ind. 121;
 Kelly v. McFadden, 80 Ind. 536;
 Lowry v. McAlister, et al., 86 Ind. 543;
 Bipus v. Deer, 106 Ind. 135.

The answer to your fifth question is in the negative. There is no exemption as applied to a tort judgment.

MOTOR VEHICLES, BUREAU OF: Driving while intoxicated; length of time license shall be revoked.

August 12, 1937.

Hon. Robert C. Hill,
 Chief Hearing Judge,
 Bureau of Motor Vehicles,
 Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of August 11, requesting our interpretation of the provisions of chapter 126, Acts of the Indiana General Assembly, 1937, insofar as they appear to be in conflict with the provisions of chapter 71, Acts of the Indiana General Assembly, 1937, with regard to the suspension of operator's license on conviction of certain offenses designated in the motor vehicle laws.

It will be noted that section 19 of chapter 71, Acts of the Indiana General Assembly, 1937, provides that:

“Court to report convictions and may recommend suspension of license or permit. Every court having jurisdiction over offenses committed under this Act or other acts concerning the operation of motor vehicles by persons or drivers, including reckless driving, speeding, driving without proper head and tail lights,