

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,

or any other offense committed under this Act, or any other act of this state regulating the operation of motor vehicles on the public highways, shall forward to the department a record of the conviction of any person in such court for a violation of any of such laws, and, if, in the opinion of the court, the defendant should be deprived of the right to operate a motor vehicle upon the public highways, the court shall recommended the suspension of the operator's, chauffeur's, public passenger chauffeur's or beginner's license, or beginner's permit of the person so convicted, for any determinate period of time, not exceeding one year, which the court, in its discretion, may deem best, and the department shall thereupon consider and act upon such recommendation in such manner as may seem best to the commissioner. At the time of the conviction the court shall obtain the defendant's license or permit and shall return it to the department."

Section 20 of said Act immediately following, makes it mandatory upon the commissioner of motor vehicles to suspend, for a period of not more than one year, the license or permit of any person upon receiving a record of conviction of such person of any of the crimes enumerated, such suspension to stand pending appeal to a higher court and to be modified only upon receipt of the certificate of the trial court that such cause has been reversed.

The second class listed requiring mandatory suspension is the offense for driving a motor vehicle while under the influence of intoxicating liquor. There is a provision in this section to the effect that the license shall not be suspended for any period longer than that fixed by the court. It will be noted that as to all other offenses under which the suspension is mandatory is discretionary with the department after considering the recommendations of the court and under the limitation that such suspension shall not be for a period of more than one year.

Chapter 126, Acts of the Indiana General Assembly, 1937, deals specifically with the offense of operating a motor vehicle while under the influence of intoxicating liquor, and makes the same a misdemeanor, punishable by a fine of not less than \$10.00 nor more than \$50.00, to which may be added imprisonment not exceeding six months for the first offense.

For a second or subsequent offense and for any violation of any order of court pertaining to this Act such person is deemed guilty of a felony. The Act further provides that as to first offenders the court shall enter an order on the records of the court prohibiting said person from driving or operating a motor vehicle for a period not exceeding one year. For a second offense the license shall be suspended for one year. The Act then further provides that:

“It shall be the duty of the clerk of the court trying such case, or the judge of a court which has no clerk, if no appeal therefrom be taken, or if any appeal so taken be dismissed or the judgment be affirmed, to transmit a certified copy of the final judgment of conviction to the department within two days after the date of the final conviction, and any clerk or judge who shall fail or refuse to transmit a certified copy of such judgment, as herein provided, shall be liable on his official bond, to a civil penalty of one hundred dollars, which shall accrue to the State of Indiana, and which may be recovered, together with the costs of the suit, in a civil action, brought by the Attorney-General, in the name of the State of Indiana, on relation of the Attorney-General.”

This provision, in my opinion, does not relieve the court trying the case involving violations of the law from the duty to report such convictions, together with his recommendations or judgment of suspension, which it is his duty to enter in cases involving driving while under the influence of intoxicating liquor, but provides for an additional report as to cases appealed in order that the department may have such information for the purpose of modifying or correcting their records to conform with final judgments.

It will be noted that chapter 71, Acts of the Indiana General Assembly, 1937, above quoted, does not become effective until January 1, 1938, and that chapter 162, Acts of 1929, is expressly repealed. Section 15 of chapter 162, Acts of the Indiana General Assembly, 1929, contains the same requirement, however, with regard to courts reporting convictions and making recommendations as to the suspension of operator's license. Section 16 makes it mandatory to suspend the license upon receiving word of a conviction for the offense of driving while under the influence of intoxicating liquor.

Since chapter 126, Acts of the Indiana General Assembly, 1937, deals specifically with the offense of operating a motor vehicle while under the influence of intoxicating liquor or other habit forming drugs and makes it mandatory upon the court to enter an order prohibiting said person from driving or operating a motor vehicle for a period not exceeding one year, such Act being the last expression of the legislature on this particular subject shall control and insofar as it is in irreconcilable conflict with section 16, chapter 162, Acts of 1929, operates to repeal by implication the provision requiring the department to suspend the license for one year.

It is my opinion, therefore, that from the time chapter 71, Acts of the Indiana General Assembly, 1937, became effective, your department is bound by the order and judgment of the trial court in cases involving the operation of motor vehicles while under the influence of intoxicating liquor or habit forming drugs insofar as the time fixed for the suspension of license is concerned. Beginning January 1, 1938, the provisions of chapter 71 become effective and this Act expressly provides that as to operating a motor vehicle while under the influence of intoxicating liquor the license shall not be suspended by the department for any period longer than that fixed by the court.

FIRE MARSHAL, STATE: Dry cleaning—Fire Marshal, inspection and fees.

August 13, 1937.

Hon. Clem Smith,
State Fire Marshal,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion as to the fees your department may charge for the inspection of and granting of permits to dry cleaning establishments. Your question reads as follows:

“In the 1921 and as amended Acts 1937, enforced by the State Fire Marshal, there seems to be some confusion among the dry cleaners of the state as to