

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

whether they should pay an inspection and filing fee of \$25.00 under section 3, or should they pay \$15.00 under section 5 and 34 of said Acts for a new dry cleaning permit."

The Act to which you refer is the Act regulating dry cleaning establishments, the same being chapter 172 of the Acts of 1921. An examination of the amendments thereto by chapter 25 of the Acts of 1937 reveals that the scope of regulation was enlarged by the latter Act and that provision was made for the application of the Act upon its broader subject by amending section 34 of the original act. Such provision is made in section 2, chapter 25, Acts of 1937 and reads as follows:

"That section 34 of the above entitled Act be amended to read as follows: Sec. 34. All of the provisions of this Act except the provisions contained in the sections enumerated in subsection (b) of section 1 of this Act shall apply to the business of any person whose process of cleaning or dry cleaning is limited to sponging and hand immersion in open vessels containing not more than three gallons volatile liquid at any one time. Any person whose business is hereby made subject to the provisions of this Act and who, prior to the taking effect of this Act, was not required to obtain a permit, and who is in business at the time when this Act takes effect, shall be granted a permit or a renewal permit upon the payment of the fee prescribed in section 5 of this Act. Thereafter any person who engages in such business shall pay the fee prescribed in section 3 of this Act and the renewal fee prescribed in section 5 of this Act."

Sections 3 and 5 of the original Act read as follows:

"Upon the filing of every such application, the applicant shall pay to the state fire marshal a filing and inspection fee of twenty-five dollars (\$25.00)."

"The permits may be renewed at any time within thirty days after the termination thereof, by the filing of an application for such renewal and the payment of a fee of fifteen dollars (\$15.00) therefor, provided the applicant for such renewal permit has

complied with the provisions of this Act, and with the laws of the State of Indiana.”

The reading of the foregoing sections reveals that the provisions of the amendatory section are inconsistent with the rates charged under the original Act. This difficulty is apparent when it is seen that the fee to be charged under section 34, as amended, is a fee charged for a renewal of the permit under the Act as it stands in its entirety. This is inconsistent with provisions of section 3, and a question is thereby raised as to which will prevail.

The general rule is that a statute which amends a former act operates, as to matters thereafter occurring, as if the amendments had been incorporated in the original.

State, ex rel., v. Adams Express Co., 171 Ind. 183.

This being the case, the problem simplified itself to the interpretation of ambiguous provisions of a single act wherein the intent of the legislature as expressed in the Act must prevail. In ascertaining such intent it is proper to look to the intended scope and purpose of the Act and to the Act as a whole rather than any specific section. With this in mind, it is my opinion that it was the legislative intent that dry cleaning plants within the purview of the law should be regulated as a single class. Nowhere in the Act, with the possible exception of section 34, is there any provision whereby any dry cleaning establishment is not uniformly subject to all provisions of the Act. In view of such, it is clear that the legislative intent was to subject all establishments seeking permits to the fee schedule of the Act.

Likewise, in construing inconsistent and ambiguous sections of an Act, the purpose of the Act as evidenced by a consideration of it in its entirety will be accepted as a statement of the legislative intent, and in view of such, an interpretation will be adopted which will prevent an unjust or absurd application of the provisions of the Act. Applying this rule to the act under consideration it appears that the purpose of the Act is to regulate all dry cleaning establishments within its purview and to subject all to the same schedule of fees for inspection and renewal of permits. Therefore, in my opinion, it is impossible to grant any applicant an

application for the fee charged in section 5 without arriving at an unjust and absurd interpretation of section 34 of the Act. Such a construction would be against the general import of the Act considered in its entirety and would be an evasion of the intended purpose of the Act.

The Act adequately expresses the legislative intent to be to subject all establishments to all provisions of the Act, sections 3 and 5 inclusive, and it is therefore, in answer to your inquiry, my opinion, that all establishments making applications under the 1937 amendment are subject to the \$25.00 permit fee of section 3 and are thereafter entitled to the renewal provisions of section 5.

---

**WELFARE, DEPARTMENT OF PUBLIC: Secs. 5 and 24 of Welfare Act of 1937; appointment of assistant county Welfare director; appropriation not made for appointment of assistant county director; recovery of salary by assistant.**

August 13, 1937.

Hon. T. A. Gottschalk, Administrator,  
State Department of Public Welfare,  
141 South Meridian Street,  
Indianapolis, Indiana.

Dear Sir:

We have your letter of recent date in which you ask for a construction of section 5 (k) and section 24 of the Welfare Act, as amended by the Acts of 1937, and calling attention to the fact that the State Board of Public Welfare on July 1, 1937, fixed and determined the minimum number and classification of employees and salary ranges for each classification for the several county departments of the state, and asking for an official opinion in answer to the following questions:

"1. Under these provisions of section 5 (k) and section 24 and the action so taken by the state board, will the appointment by a county director, with the approval of the county board, of an assistant, within the minimum number and classification fixed by the state department be prima facie a necessary appointment within the provisions of said section 24?