

**MOTOR VEHICLES, BUREAU OF: Indiana Reciprocity
Commission; refund of registration fees by Public Service
Commission.**

August 13, 1937.

Hon. Frank Finney, Chairman,
Indiana Reciprocity Commission,
Bureau of Motor Vehicles,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion as to the authority of your commission, or of the Public Service Commission, to refund or authorize the return of certain fees paid by out state motor carriers. Your letter is as follows:

“By provision and authority of chapter 29 of the Acts of 1937 the Indiana Reciprocity Commission is contemplating entering into an agreement with a like commission of Michigan in relation to the licensing, regulation and taxing of motor vehicles interstate, and in such agreement is considering the question of refunds of registration fees already paid by some Michigan carriers to the Indiana Public Service Commission for the current year, 1937-38. The reciprocity commission is reluctant to consider such refund provision going into the agreement without first learning that the Indiana Public Service Commission has the ability and authority to do so.

“The question is, can such registration fees be refunded and in what manner could such refunds be handled by the Indiana Public Service Commission?”

It appears that the Michigan Highway Reciprocity Board was created by an Act of Michigan legislature approved July 12, 1937. Prior to that date a number of Michigan motor carriers, believing that such a law would be enacted and that a reciprocity compact would be made with Indiana which might result in an agreement waiving certain fees, withheld the registration of their vehicles and the payment of the fees due July 1, 1937. Other carriers paid the fees to the commission and received their registration cards. The agreement now under consideration will probably waive the collection of certain fees in both states, including the Indiana

registration fee for the year, July 1, 1937, to June 30, 1938. The problem is, as to the refunding or return of those fees already paid into the state treasury if the reciprocity agreement is consummated.

It is important first to consider the nature of the fees, the refund of which is being considered. The Motor Vehicle Act requires the registration of every motor vehicle operated by a common or contract carrier. The annual fee therefor is fixed at twelve dollars. These registrations expire on the 30th of June of each year, and each vehicle continued in service must be reregistered each ensuing year.

Acts of 1935, Ch. 287, Secs. 33 and 35.

The statute further provided that such fees shall be due and payable on or before the first day of July in each calendar year.

Acts of 1935, Ch. 287, Sec. 35 (c).

When the fee is paid the Public Service Commission furnishes a registration certificate and an identification insignia which is to be displayed upon the vehicle.

Sec. 38 reads as follows:

“(a) All fees herein prescribed shall be paid into the treasury of the state through the secretary of the commission and quietused into an account to be known as the ‘motor vehicle account’ of the general fund.

“(b) For the purpose of carrying out and administering the provisions of this Act, there is hereby appropriated annually out of any money in such motor vehicle account of the general fund of the state treasury not otherwise appropriated, a sum sufficient for the administration of this Act, and any other moneys remaining to the credit of such Motor Vehicle Act account is hereby appropriated for operating expense of the Indiana State Police for the purpose of enforcing the provisions of this Act and regulating vehicle traffic: *Provided, however,* That the appropriation made for the Indiana State Police shall be reduced by the amount transferred hereunder.”

From these sections it appears that the registration fee is in the nature of a tax. The money is used in part to carry

on one of the necessary government expenses, that is, to support the Indiana State Police. The Public Service Commission is required simply to collect the money through its secretary and turn it over to the treasury of the state.

The Public Service Commission's expenses are provided for by the Biennial Appropriation Act (Acts of 1937, Ch. 114, P. 569.) Certain operating expenses are appropriated and it is further provided as follows:

"Provided, That all fees, receipts and moneys collected by the Public Service Commission under and pursuant to law shall be paid into the state treasury by said commission and the auditor of state shall issue quietus therefor. The auditor of state shall set aside such fees, receipts and moneys in the sum of fifty thousand dollars (\$50,000), as a rotary fund for the use of the said commission in accordance with the provisions of section 1 of this Act. All such fees, receipts and moneys accumulated in the state treasury in excess of fifty thousand dollars (\$50,000) shall be credited to the general fund of the state; and:

"Provided, further, That such rotary fund shall be used only for personal services and other operating expenses in case of special investigation by said commission, when it becomes necessary to employ additional expert services; no part of such rotary fund shall be used in payment of salaries, wages, or expenses of the regular officers or employees of the said commission; and,

"Provided, futher, That any expenditures to be made from such rotary fund shall be subject to the approval of the governor and the state budget committee."

I believe it is unnecessary to set out the statutes which give the reciprocity commission of Indiana authority to make an agreement, but there is no language in the Act that gives it any power to authorize or refund money from the state treasury, either acting alone or along with the Michigan board, which was not in existence until after July 12, 1937, and long after the money was paid.

Acts of 1937 of Indiana Legislature, Ch. 29. Enrolled Act No. 88 of the 59th Legislature of Michigan.

The Constitution of Indiana (Art. 10, Sec. 3) provides as follows:

“No money shall be drawn from the treasury, but in pursuance of appropriations made by law.”

There is no statute other than those provisions set out above which has to do with the registration fees of the Public Service Commission and certainly those provisions do not contain any authority, such as is required by the State Constitution, for the commission to refund any fees collected by it and turned over to the treasury of the state.

It may be stated generally as the law that there can be no refund or repayment of any taxes paid to the state in the absence of direct statutory authority for the refund.

61 C. J. Taxation, Sec. 2705;
Walter v. Hoople, 72 N. E. 229 (N. Y.);
Spring Valley Coal Co. v. State, 198 Ind. 620.

In the Spring Valley Coal case, the coal company had sued the State to recover money paid as a license fee and tonnage tax under the Coal Commission Act of 1920. The Supreme Court of Indiana in ruling that the tax could not be refunded said:

“And, under the facts alleged in the complaint, nothing more is shown than a payment by plaintiff in compliance with the terms of a statute of certain sums of money as license fees and taxes, made voluntarily, in preference to incurring the expense and inconvenience of presenting to the circuit court in the method provided by statute questions as to whether or not plaintiff was liable for them. The law does not create an implied contract to repay voluntary payments thus made.”

The court also said in that case:

“That money voluntarily paid into the public treasury to discharge a tax cannot be recovered back by reason of the tax being irregular, or void on account of the statute under authority of which it was sought to be imposed having been invalid, unless there is a statute authorizing a suit to be brought for that pur-

pose, is abundantly settled by authority; and the mere fact that the payment was made under protest does not change the rule."

It is my opinion, therefore, that the Public Service Commission is without authority to make or authorize the refund which is the subject of your inquiry.

ENGINEERS & LAND SURVEYORS, STATE BOARD OF REGISTRATION FOR PROFESSIONAL: Engineers—registration—authority of Board to require applicant to successfully pass examination before being granted registration.

August 13, 1937.

Mr. L. T. Gootee, Secretary,
Indiana State Board of Registration for
Professional Engineers and Land Surveyors,
State Capitol,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion concerning the authority of your board to require an applicant for registration as a professional engineer, to successfully pass a written examination as further evidence of his qualifications before being granted registration.

The specific case to which you refer deals with a person who filed his application for registration prior to the effective date of the Acts of 1935, and he claims that under the provisions of section 9, chapter 169, Acts of 1921, he was entitled to a certificate of registration upon the showing made by him in his application. This showing set out approximately eighteen years of engineering practice. However, upon investigation of your board it was determined that a part of the work set out in his application was of a character that did not constitute engineering practice and a serious doubt was entertained by your board as to whether the applicant had, in fact, engaged in active engineering practice for a period of ten years, and also a doubt as to his qualifications as an engineer.