

“When the performance of a contract becomes impossible non-performance is excused and no damages can be recovered.”

Gregg School Township v. Hinshaw, 76 Ind. App. 503.

The same rule of law is announced in the case of State, ex rel., v. Hillis, 79 Ind. App. 599, wherein the Indiana Appellate Court announces the rule as follows:

“The performance of a contract is excused when its performance is a physical impossibility.”

It would seem, therefore, that it being impossible for the bus driver to perform his contract to transport children, the Township Trustee would be warranted in canceling his contract.

In answer to your second question it would seem that the contract should be terminated as soon as it is apparent that there will be no further need for the services of a bus driver during the school year. From that date on his services should be dispensed with.

The same rule would seem applicable to the third question and in my opinion the claim should only be allowed and paid until such date as it is apparent that the services of the bus driver will no longer be needed.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Conditional sale contracts—applicable to livestock.

March 16, 1937.

Hon. F. M. Call, Supervisor,
Division of Installment Finance,
Indianapolis, Indiana.

Dear Sir:

Your letter of March 9th submits the following questions:

First: “Can conditional sales contracts which have arisen as a result of the sale of livestock be properly classified as contracts for the sale of goods as that term is defined in section 1 of the Retail Installment Sales Act?”

Second: "If contracts based on the sale of livestock and/or insurance premiums are proper subjects for the Retail Installment Sales Act, should new or used finance charge rates as set forth in General Order Number 1 of the aforementioned statute be applied to such time sales?"

Section 1, chapter 231 of the Acts of the General Assembly, 1935, contains the following definition:

"The term 'goods' includes all chattels personal other than money, things in action, emblements, industrial growing crops, things so affixed to the land as to become a part thereof, or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

Since the statute defines "goods" as including all chattels personal, it is my opinion that the term is sufficiently broad to include livestock.

"It is said in Burrill's Law Dictionary that the word 'goods' strictly seems to be applicable only to inanimate objects; being in this respect less comprehensive than 'chattels,' which includes animals."

St. Joseph Hydraulic Company v. Wilson, 133 Ind. 465.

As to whether or not contracts therefore dealing with the purchase of livestock should be classified under your rates applying to new or used articles, it would seem that no depreciation having attached to this type of property by reason of sales from time to time, the rates applying to new commodities should be applied in this instance.

With respect to the purchase and sale of insurance premiums, beg to say that your question is not clear as to the exact commodity which is the subject of sale. If the insurance premium is money, clearly it is not within the provisions of the Act defining "goods." If it is a mere promise to pay, again it is only a chose in action and not within the term "goods" as defined within the Act. In either event it is my opinion that insurance premiums would not be a proper subject for regulation under the Retail Installment Sales Act.