

28-4506, Burns Indiana Statute, 1933 Revision, which reads as follows:

“In the event that any teacher, a member of the fund, leaves the service of the public schools for any reason, such teacher shall be entitled to withdraw the following portions of her contributions:

* * * After ten years 100%.”

The question therefore arises as to what constitutes 100 per cent of a teacher's contributions as specifically applied to the amount required in the payment of arrearages. It is my opinion that this question turns upon the interpretation of the word “contribution” as used in the above quoted Act. Webster defines “contribution” as follows: “A payment imposed upon a body or person * * * that portion which an individual furnishes to the common stock.”

A reading of the entire Act which creates the teachers' pension program requires that the funds paid in by the members be invested in interest bearing securities to the end that the fund may be increased by such earnings. This was doubtless the reason that a teacher coming into the program and claiming prior service was required to contribute 4 per cent compound interest on such teacher's arrearages in order that such teacher might share in the benefits of the fund and contribute such teacher's portion to its increase.

It is my opinion, therefore, that such teacher's contribution covers both principal and interest and that such teacher upon withdrawing from the fund would be entitled under the statute to withdraw 100 per cent of the amount actually contributed by such teacher.

VETERINARIAN, STATE: Fees to be paid for last half of year for operation of reduction plants.

November 6, 1937.

Dr. J. L. Axby,
State Veterinarian,
Statehouse,
Indianapolis, Indiana.

Dear Sir:

I have before me and have given consideration to your request for an opinion on the following facts:

“As may be found in chapter 278, Acts of 1937, titled, ‘An Act to Control Animal Diseases and to Regulate the Transportation and Disposal of the Bodies of Dead Animals; Providing Penalties for its Violation; Repealing Certain Specific Acts and all Other Laws and Parts of Laws in Conflict Therewith; and Fixing a Time When This Act Shall Take Effect,’ I desire to attract to your attention section 7, paragraph “b,” in which paragraph it sets out the manner in which licenses are to be issued, the fees to be paid and also the time for which licenses are to be issued.

“In the latter part of said paragraph “b,” section 7, you will find it is ‘Provided, further, That the full annual license and other fees specified in this Act shall be paid for any license and vehicle certificates issued in any year on or prior to June 30, and one-half of all such fees shall be paid for the first year for any such license or vehicle certificates issued in any year after June 30.’

“We have thirteen licenses issued under the old law which expire from October 29, 1937, to December 14, 1937, inclusive. Therefore, as administrative officer of this Act, it appears unfair, inconsistent, and unjust for these applicants to pay one-half the annual license for a period no longer than until January 15, 1938, at which time they will expire under the terms of the Act, and be subject to a renewal license fee of \$150 per annum, and such other fees as are provided.

“I therefore desire an opinion as to whether or not, under the law, I can avoid the mandatory collection of said fees for those short periods, as set out above.”

The question presented by the last paragraph of your letter is completely within the provisions of sections 6 and 7 of the Act of which you speak.

Section 6 of said Act reads as follows:

“Any person desiring a license to engage or continue in such business under this Act shall file an application for such license with the state veterinarian, on a form provided by him without charge, which application shall set forth the name and residence of the ap-

plicant, the location of his place of business, the particular method, or methods, which he intends to employ, or is employing, in the transportation and in the disposal of the bodies of such dead animals; the number and location of all substations he desires to operate, if any; the number and kind of vehicles he will use; and such other essential information relative thereto as such officer, by his rules and regulations, may require. *Such application shall be accompanied by an initial installment of \$100.00 on the total annual license fee, to apply upon the expenses imposed by this Act:* Provided, however, That any person, now having or operating a disposal plant, with or without any substations, and holding an annual license therefor, under existing law, shall be entitled to continue such operation until the date such license expires; *but not later than thirty days prior to such date of expiration, he must apply for a license under this Act, and pay the fees as herein provided, if he desires to continue such business, without interruption, and thereby he shall have a right so to continue under his old license, by paying all annual fees, at the rates fixed by this Act, until his new license under this Act shall be granted, or if refused, until any such refusal shall be finally sustained upon any appeal taken by him from such decision.*" (Sec. 6, Ch. 278, Acts of 1937. (Our italics.)

Section 7 (b) of said Act reads as follows:

"If such state veterinarian shall find that such applicant is such a responsible and suitable person to conduct such business, and that the disposal plant of such applicant, as herein defined, and the methods of operation thereof comply with all the provisions of this Act and with the rules and regulations herein authorized, and that such business is located in a place permitted by this Act, he shall thereupon issue to such applicant a certificate to that effect. *Thereupon such applicant shall pay to said state veterinarian the further and final installment of \$50.00 for said annual license fee and said state veterinarian shall issue to such applicant a license and four vehicle certificates and metal discs*

bearing the applicant's name and license number, one of which discs shall be attached to each vehicle so used, which license shall entitle him to operate one disposal plant and which certificates shall entitle him to operate not more than four vehicles for transporting bodies in such business: Provided, however, That for each such additional vehicle the licensee desires to operate he shall pay an additional annual fee of \$5.00 and procure an additional vehicle certificate and disc, and for each substation located elsewhere than on the grounds of the disposal plant he shall pay an additional annual license fee of \$20.00 and procure a substation license: and *Provided, further, That the full annual license and other fees specified in this Act shall be paid for any licenses and vehicle certificates issued in any year on or prior to June 30, and one-half of all such fees shall be paid for the first year for any such license or vehicle certificate issued in any year after June 30.*" (Sec. 7 (b), Ch. 278, Acts of 1937. (Our italics.)

By a reading of the entire Act, and especially the two sections set out above, it appears that the purpose of the Act is to supervise and regulate the disposal of dead animals and the operation of reduction plants engaged in such disposal; the fees collected under the Act to bear the expense of inspection, registration, licensing, etc. The express intent of the legislature, as exemplified by the unequivocal language of the statute (see italicized parts above) is that those parties renewing an existing license after June 30th to the beginning of the new licensing year shall pay one-half a year's fee. No exception to this schedule of fees is made due to the shortness of a renewal period.

There is nothing inconsistent or ambiguous about the language or provisions of this Act and no rules of statutory construction of which I am familiar permit the officer charged with its enforcement to digress from the plain provisions of the Act. To the contrary, the language of the Act is mandatory as exemplified by the frequent use of the word "shall," and it becomes such officer's duty, without discretion, to apply the statute in accordance with the intent of the legislature.

Therefore, in my opinion, there is no way to avoid the express provisions of the Act and follows that the question con-

tained in the final paragraph of your letter must be answered in the negative.

POLICE, INDIANA STATE: Motor carriers, exemption in suburban territory of city or town.

November 10, 1937.

Hon. Don L. Kooker,
Supervising Lieutenant,
Indiana State Police,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your inquiry of November 9, 1937, requesting an interpretation of sections 2 and 3 of the Motor Vehicle Act of the State of Indiana (Acts of 1935, Chap. 287, page 1412).

You submit the following facts:

“A truck operator has been engaged in carrying property for hire between the town of Brownsburg and the city of Indianapolis. He has no permit or certificate from the Public Service Commission, but has complied with other requirements of the motor vehicle laws as to license, weight tax, et cetera. The question is, whether or not his vehicle and his operation is exempt under the provision which permits operation within a city or town without authority from the Public Service Commission.”

The statute which requires motor carriers for hire to secure a certificate or permit from the Public Service Commission before they can operate upon any public highway contains the following clause:

“Sec. 3. The provisions of this Act shall not apply:
“(a) To motor vehicles other than the common carriers of persons engaged exclusively in transporting persons and/or property between point of origin and point of destination, and/or the suburban territory of such city or town, as herein defined.”* * *