

Motor Vehicle Laws and included in the definition of the motor vehicle highway account, even though collected in 1937 should be set up and should constitute the motor vehicle highway account from which account the various expenditures above named should be paid for services rendered on and after January 1, 1938.

HEALTH, STATE BOARD OF: Rules and regulations governing restaurants.

December 14, 1937.

Verne K. Harvey, M. D.,
 Director,
 Indiana State Board of Health,
 Indianapolis, Indiana.

Dear Doctor Harvey:

Receipt is acknowledged of your request for an official opinion dated November 8, 1937. This request is as follows:

"The Food and Drug Bureau has in mind the promulgation of rules and regulations for the sanitary control of public eating establishments. A copy of said proposed rule is herewith submitted for your further information. The proposed rule and regulation sets out the general scope of the proposal.

"Section 35-1207, Burns Indiana Statutes Annotated, 1933, provides in part as follows: '* * * The State Board of Health shall adopt such rules as may be necessary to enforce this Act and shall adopt rules and regulations regulating the minimum standards for food and drugs, * * *.' As you note from the proposed rule and regulation, it seeks to grade restaurants and similar establishments by giving to the particular restaurant a grade, such as 'A,' 'B,' or 'C.' It further proposes that the owner or operator of the restaurant shall keep posted in a conspicuous place where the same is displayed to the general public, the certificate of such grade.

"Does the Indiana State Board of Health act within its right by adopting such a rule or regulation and does it have the authority, under the Act, to punish any owner or operator for failure to keep posted in a conspicuous place such a certificate of grade?

"It is observed that a restaurant or other similar establishment falling below the minimum grade may be charged

with the violation of the law pertaining to adulterated foods, etc.”

The language as set out in section 35-1207, Burns Indiana Statutes Annotated, 1933, to wit: “* * * and shall adopt rules and regulations regulating the minimum standards of food and drugs, * * *” provides a clear and adequate ground upon which to base a rule or regulation pertaining to standards for food and drugs. It is noted in your proposed rule that you fix and establish grades of proficiency as applied to restaurants, that is: a Grade A restaurant is classified as being a restaurant complying with all the sections of your rule, Grade B and Grade C restaurants are those eating establishments that do not reach the degree of proficiency which a Grade A restaurant reaches, but yet do comply with your regulations.

It is noted that the proposed rule provides for the posting, “in a conspicuous place,” of a certificate of grade of a restaurant, such as “A,” “B” or “C.” That portion of the rule which provides for the posting of said certificate is not an unreasonable use of the powers granted to the board by section 35-1207 of Burns Indiana Statutes Annotated, 1933.

It is my opinion that the grading of restaurants is within the power granted the State Board of Health and in the regulation of said restaurant the department does have the right to see that all terms of the rule are complied with, such as keeping posted these grades: that since the failure to comply with the terms of the rule, such as: failure to keep posted in a conspicuous place the certificate of grade, constitutes a violation thereof, that section 8 of said proposed rule pertaining to penalty is applicable and that the same could be enforced under provisions of chapter 104 of the Acts of 1907.

SECRETARY OF STATE: Admission fees of foreign corporations.

December 16, 1937.

Honorable August G. Mueller,
Secretary of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion growing out of the following statement of facts, viz: