

such powers, receives by devise and asserts ownership of land devised to it and assumes to carry out the terms of the trust, such foreign company is doing business in the state, within the meaning of the statute."

It has also been held that a foreign corporation which is a lessee of a building and is engaged in subletting it for profit, is doing business within the state where the building is located.

Cassidy's Ltd. v. Rowen, 163 N. Y. Supplement 1079.

In view of the fact that section 351, subsection "A" of the Financial Institutions Act forbids a foreign corporation from maintaining any suit in any court upon any demand or contract connected with the business in this State, it is my opinion that the Bank of Manhattan Company should first obtain admission from the State of Indiana to discharge the duties of this trust before proceeding in this matter.

HIGHWAY COMMISSION, STATE: Has power under Acts of Legislature to pass rules and regulations for proper protection and control of State highways.

February 26, 1937.

Hon. James D. Adams,
Chairman State Highway Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

Receipt is acknowledged of your request of February 25, 1937, which reads as follows:

"The State Highway Commission requests an official opinion and advice on the following proposition.

"State Highway 21 is improved with a non-rigid type of surface. On account of the soft condition of this highway caused by climatic condition, this highway between Muncie and Marion was posted, forbidding traffic thereon with more than a three-gross-ton load. One William W. Gibson was arrested for violating this order. He had a load on his truck weighing 11,000

pounds in addition to the weight of the truck, and did great damage to the highway.

"Gibson was proceeded against in the city court of Muncie, presided over by Judge Frank Mann. Gibson expressed a willingness to plead guilty. Judge Mann refused to receive the plea, holding that it was an unlawful delegation of authority to the Highway Commission, and thereupon discharged Gibson. We are informed that the Prosecuting Attorney refuses to file these cases in any other court, so we are at a loss as to how to proceed.

"Will you therefore advise us if in your opinion the section upon which this prosecution is based (Section 12, Act of Chapter 83, Acts of 1931) is valid and, if so, how we should proceed to enforce it in Delaware County.

"On account of the necessity of the case we would be pleased to have a speedy answer."

Section 12 of chapter 83, Acts of 1931, reads as follows:

"Whenever a highway which is improved with gravel, Macadam or other non-rigid type of surface, or any section thereof, by reason of deterioration, rain, snow, or other climatic conditions would be destroyed or seriously damaged by the maximum load prescribed in this act, the State Highway Commission with respect to State highways and such other highways for the maintenance of which it may at the time be responsible, and local authorities with respect to highways under their jurisdiction and for the maintenance of which they are responsible, may adopt rules and regulations or ordinances, as the case may be, reducing the maximum weight prescribed in section 8 of this Act, so long as such condition continues. Notice of such reduction may be given either orally or in writing to the owner or operator of the vehicle by any duly authorized agent or employe of the body issuing the order, or by posting the substance of the order in conspicuous places at the terminal of and at all intermediate cross-roads of any such highway or section thereof, for which limitations of traffic have been prescribed; but no order of reduction shall be in effect until such notice has been given."

The Legislature by the Act of 1931 clearly intended to regulate the use of highways by vehicles by limiting the size or weight, etc. The Legislature in said Act further prescribed, with certainty, those regulations as to size and weight of vehicles, then proceeded to subdivide said general intent of regulation into two divisions. First, by section 8 thereof, in stating:

“(a) No vehicle equipped with pneumatic tires shall have a maximum wheel weight unladen or with load in excess of eight thousand pounds, nor in excess of eight hundred pounds per inch width of tire, measured between flanges of rim, nor an axle weight in excess of sixteen thousand pounds.”

In section 12 above quoted it is noted:

Second, that the weight, depending upon the condition of deterioration, rain, snow, or other climatic conditions, may be lessened by rules and regulations adopted by the Highway Commission reducing the maximum weight prescribed in section 8 of the Act during the existence of such conditions.

The clear implication is, by the provision of this statute, that the rules and regulations, when the condition of the highway demands the same, become just as clearly a part of the statute as if those rules and regulations were prescribed, or rather written into the Act itself.

Your letter reveals that a man by the name of Gibson was proceeded against in the city court on an affidavit for criminal prosecution based on section 12; this being a criminal proceeding, the statute must be strictly construed.

We find the following interpretation of this theory in the case of *Snyder v. State (Ind.)*, 185 N. E. 509.

“... While criminal statutes must be strictly construed to avoid the creation of penalties by construction, such reasonable view must be taken of a statute as will effectuate the manifest intent and purpose of the lawmakers.”

Groff v. State, 171-547;

State, ex rel., v. Roby, 142 Ind. 168;

State v. Kelly, 54 Ohio St. 166 (43 N. E. 163);

Gilletts Criminal Law (2d Ed.), para. 20.

We again find significant language in the case of *Hunt v. State*, 195 Ind. 585, and cases there cited:

“Every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object, it is proper to consider the occasion and the necessity of its enactment and the evil which was intended to be prohibited.”

The Supreme Court again spoke in the case of *Snyder v. State*, 188 N. E. (Ind.) 777.

In the interpretation of section 52 of chapter 213 of the Acts of 1925, and of the interpretation of the State Constitution, Article 4, paragraph 23, by the same paragraph 23, the Legislature has the power to delegate the supervision of the highways, at times when they are in danger of being destroyed.

29 *Corpus Juris*, page 646, power to control and regulate highways:

“Subject to constitutional restrictions, the state, through its Legislature, has primarily the power to control and regulate the use of public highways, provided such regulations do not unreasonably interfere with the right of travel. Such power may be delegated to local authorities, but the power so delegated will be strictly construed, and the authorities to whom it is delegated must keep within the limits of the grant, and cannot exercise it beyond what is necessary to facilitate travel.”

Therefore, it is the opinion of this department that a charge properly prepared, based on section 12, chapter 83, Acts of 1931, should not be dismissed.

Second, that said section is valid, that it is within the power of the Legislature to enact a provision such as is here being discussed, namely, to enact a provision regulating vehicles as in your letter set out.

Third. Section 20 of said chapter reads as follows:

“Any person who violates any provision of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense in any sum not exceeding five hundred dollars; and for the second or other subsequent offense in any sum not more than five hundred dollars and in addition to such fine the court trying the cause may in its discretion suspend the registration of the vehicle used in such violation for a period not exceeding ninety days.”

The provisions of section 12 are, if not expressly made a part of the Act itself, made so by implication, and the conclusion is that the section may be enforced and a penalty imposed for violation thereof.

Fourth. Your further inquiry is, how you should enforce section 12 in Delaware County by reason of the fact that the city court of Muncie holds a different opinion, as to the legality of this section, than does this department, and also in view of the fact that the prosecuting attorney refuses to file these cases in any other court in the county.

By reason of the fact that the prosecuting attorney has charge of criminal proceedings in his own county, this department is not now in a position to impose its will and wishes on said official. However, it may be possible and perhaps probable that a conference could be had with the official of the county named, with a view of obtaining an agreement with him to file the case in another court in the county, or to influence him to make a proper record upon presentation of the case in the city court, which could be appealed. In which event, of course, the question of legality of said section could be fully and finally adjudicated.

No other suggestion as to procedure appears open to your department.

FARM, INDIANA STATE: Legality of proposed contract for electric current. Necessity to advertise for competitive bids.

February 26, 1937.

Hon. Ralph Howard, Supt.,
Indiana State Farm,
Greencastle, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion as to the legality of a proposed contract, which you enclosed, for Electric Primary Power and Light Service, between the Board of Trustees of the Indiana State Farm and the Northern Indiana Power Company, wherein it is provided that the board shall purchase certain amounts of electrical current from the company at certain rates for a fixed term of not less than five years.