

What has already been said with reference to the sheriff applies to the treasurer, although, as a matter of fact, it would appear to be necessary for the treasurer, who is ex-officio city treasurer of the cities of the second class within the boundaries of the county, to have branches in Gary, Hammond and East Chicago. The recorder and auditor, of course, would be entitled to appoint one chief deputy each without the approval of the board of county commissioners.

PUBLIC SAFETY, DIVISION OF: Power of State over mechanical signaling device on interstate trucks.

June 23, 1937.

Hon. Don F. Stiver, Director,
Department of Public Safety,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request of June 23, 1937, for an unofficial opinion relative to chapter 99, page 474, of the Acts of 1937.

This Act provides that if motor vehicles are so constructed or loaded that the driver can not indicate by hand signals his movements, the vehicle shall be equipped with a mechanical signaling device approved by the State Safety Committee. The question is whether or not this statute of Indiana is in conflict with the Federal Motor Carrier Law which gives the Interstate Commerce Commission certain power to regulate motor vehicles used in interstate commerce.

As to vehicles not used in interstate commerce, the Indiana law is of course within the power of the legislature to make. The Supreme Court of the United States has held a number of state laws invalid because the laws had to do with the same subject covered by a federal law. It was said that there could be no divided authority over interstate commerce, and in that field the regulation of Congress is supreme.

In the case of *Napier v. Atlantic Coast Line*, 272 U. S. 605, it was held that the federal law providing for the inspection of locomotive boilers by the Interstate Commerce Commission took away from the states any authority to legislate over the equipment of locomotives. An automatic fire-door law and a cab curtain law of the states was held to be invalid. The court said at page 613:

"It is also urged that, even if the commission has power to prescribe an automatic firebox door and a cab curtain, it has not done so; and that it has made no other requirement inconsistent with the state legislation. This, also, if true, is without legal significance. The fact that the commission has not seen fit to exercise its authority to the full extent conferred, has no bearing upon the construction of the Act delegating the power. We hold that state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the commission leads to that conclusion. Because the standard set by the commission must prevail, requirements by the states are precluded, however commendable or however different their purpose."

In that decision the court was dealing with the law regulating steam railroads.

Section 204 of the Federal Motor Carrier Act of 1935 makes it the duty of the Interstate Commerce Commission to regulate common carriers by motor vehicles and to "establish reasonable requirements with respect to * * * qualifications and maximum hours of service of employees, and safety of operation *and equipment.*" * * * This applies both to common and contract carriers. As to private carriers, the commission may prescribe "*standards of equipment.*"

On December 31, 1936, the Interstate Commerce Commission published and prescribed certain rules and regulations, among other things, governing the equipment of common and contract carriers. These regulations became effective July 1, 1937. Various requirements are provided under the title, "Parts and accessories necessary for safe operation" (Page 26). Included in the requirements are provisions for lighting, brakes, safety glass, miscellaneous parts and accessories. It will be noticed that there is no provision requiring a mechanical signaling device. The regulations prescribed are called "initial regulations" and "minimum requirements" (Page 5). It appears from this that further regulations may follow.

The problem which your question suggests is a very difficult one but at present my opinion is that although the Inter-

state Commerce Commission has not made provision for a mechanical signaling device in its regulations, it has the power to do this under the federal law, and the state law must give way to the federal statute and the regulation of the Interstate Commerce Commission.

There are a number of cases in the courts which have to do with the motor regulations by states and it is possible that there will be some authoritative court decisions which will definitely settle the question you ask.

BEAUTY CULTURISTS, BOARD OF: Right to funds collected for operation of office.

June 23, 1937.

Mrs. Lucille M. Booher,
State Board of Beauty Culturist Examiners,
Indianapolis, Indiana.

Dear Mrs. Booher:

This will acknowledge receipt of your letter of June 22, in which you submit the following question:

“Section 21 of our bill, in part, states ‘All funds so paid to the treasurer of the state, in excess of \$5,000.00, shall be turned over to the general fund and shall remain and be a separate and permanent fund for the maintenance of the board.

“The question is, in your opinion, can this board, acting through the proper channels, have transferred from our receipts in excess of the appropriation, sufficient moneys to carry out the provisions of this Act.”

Section 21, above quoted, appears in chapter 72, Acts of the Indiana General Assembly, 1935. Your attention is directed, however, to the provisions of chapter 114, Acts of the Indiana General Assembly, 1937, and particularly to pages 540 and 541, which constitutes the appropriation for the State Board of Beauty Culturist Examiners. This appropriation provides for fixed amounts and then contains the following provision:

“Such appropriation to be in lieu of any and all provisions heretofore made for the payment of salaries