

revenues. Therefore, to interpret this section to require anything but a strict compliance therewith would defeat the purpose of the Act. In my opinion, the italicized words above, especially "appropriation, requested and presented" cannot be interpreted to mean anything other than their clear import; i. e., if a request for additional appropriation be one cent above fifteen thousand dollars (\$15,000.00) then the provisions relative to the readings prior to passage must be complied with. To construe the section otherwise would be to allow the council to reduce the amount requested and presented to just below the maximum and pass the same without giving the taxpayers opportunity to be heard as contemplated by the Act.

The purpose of the County Reform Act and amendments thereto was to place checks upon expenditures of public money, and such purpose, if considered in construing the effect of Section 26-521, Burns 1933, leaves said section open to but one interpretation; that an appropriation of less than fifteen thousand dollars (\$15,000.00) upon a requested and presented ordinance for a larger sum must be read on two separate days prior to the passage thereof.

Therefore, it is my opinion that the appropriation by the County Council of Owen County on June 1, 1937, of \$12,455.00 was illegal as said appropriation was upon a request for \$20,914.00 and was passed upon the first day of the special session of said council.

HIGHWAY COMMISSION, STATE: Right of State Highway Commission to designate speed limits.

July 21, 1937.

Hon. Earl Crawford, Chairman,
State Highway Commission,
Indianapolis, Indiana.

Dear Sir:

I have at hand your inquiry with reference to the right of the State Highway Commission to designate speed limits on state highways passing through cities and towns in the State of Indiana.

In reply to this inquiry your attention is directed to Section 7, Chapter 272, Acts of the Indiana General Assembly, 1937, which reads as follows:

“The State Highway Commission is hereby authorized to designate any portion of any highway in the state highway system, or the route thereof through any incorporated city or town, of which said commission has the maintenance, or of any highway at the time used by said commission as a detour, as extra-hazardous if the commission shall conclude that such portion of such highway or route thereof is of such character that the safety of the users of such highway or route thereof and of the public requires that motor vehicles and motor bicycles shall be driven or operated over such portion of such highway or route thereof at a lesser rate of speed than would otherwise be lawful. When the commission shall have designated any portion of any such highway or route thereof as extra-hazardous it shall prescribe a maximum speed at which motor vehicles or motor bicycles may be driven or operated on or over such portion of such highway or route thereof. Every portion of any such highway or route thereof which is designated by said commission as extra-hazardous shall be indicated by appropriate signs placed on the shoulder or edge of such highway or route thereof at each end of the portion thereof so declared to be extra-hazardous, which signs shall (,) in letters at least two inches in height (,) show the maximum rate of speed permitted on such portion of such highway or route thereof. Any person who shall operate a motor vehicle or motor bicycle over any portion of such highway or the route thereof which is so designated as extra-hazardous at a greater rate of speed than is indicated on such sign shall be guilty of a misdemeanor and upon conviction shall be fined at (in) a sum of not less than five dollars nor more than one hundred dollars. On the trial of any person charged with the violation of this section oral proof of the contents of said sign and the location thereof shall be prima facie proof of the conclusion of said commission that said portion of said highway or route

thereof is extra-hazardous. *It shall be unlawful for any person other than the members of said State Highway Commission or its authorized employees to place any signs on any highway in the state highway system or the route thereof through incorporated cities and towns indicating or designating the rate of speed that shall be observed by the operators of motor vehicles or motor bicycles over such highway or route thereof or any portion thereof, and the State Highway Commission is hereby authorized to remove any signs so placed in violation of the above provisions of this section.*"

It will be noted that the above section specifically authorizes the State Highway Commission to fix speed limits on portions of the state highway which they deem as extra-hazardous. It will be noted further that the State Highway Commission is the only agency now authorized to place signs of any kind on the state highways indicating or designating the rate of speed that shall be observed by operators of motor vehicles over such highways.

The question therefore arises as to whether or not the State Highway Commission has the authority to designate a rate of speed different from that set out in Section 47-516, Burns Indiana Statutes, 1933 Revision, which provides that:

"No person shall drive or operate a motor vehicle or motor-bicycle upon any public highway in this State at a speed greater or less than is reasonable or prudent, having regard to the width of the highway, the density of the traffic, the condition of the weather and the use of the highway, or so as to endanger the life or limb or injure the property of any person. If the rate of speed of any motor vehicle or motor-bicycle driven or operated upon any public highway in this State where such highway passes through the closely built up business portions of any city, town or village exceeds twenty (20) miles per hour; or if the rate of speed of any motor vehicle or motor-bicycle driven or operated upon any public highway in this State where such highway passes through the residence portion of any city, town or village exceeds thirty (30) miles per hour; such rate of speed shall be prima facie evidence that the person driving or operating such motor ve-

hicle or motor-bicycle is running at a rate of speed which is greater than is reasonable and prudent.”

It will be noted that the above statute only provides that the rate of speed indicated shall be prima facie evidence that the person driving is running at a rate of speed which is greater than is reasonable or prudent. It will be noted that this section of the statute does not forbid a rate of speed in excess of the figure named and whether or not a rate of speed in excess of such figure is unlawful under said statute depends entirely upon the circumstances surrounding such operation.

Our Supreme Court, in the case of *Miles v. State*, 189 Ind. 691, in commenting upon this section as it existed prior to the amendment above quoted, stated that:

“When reduced to the last analysis, the provisions of this statute require that drivers of all motor vehicles or motor bicycles on the highways of the State shall operate them at all places and under all conditions at such a rate of speed and in such a manner as a person of ordinary prudence would adopt in operating a similar motor vehicle, under like conditions, having regard to the traffic conditions and the use of the way and to the probable danger to the persons and property of others. Any speed in excess of that which is reasonable and prudent, having regard to traffic and the use of the way and to the probable danger to the person and property of others, is forbidden.

* * *

“The common law required the driver to take into consideration all the surrounding and attending conditions and circumstances, including the traffic and use of the way and the danger to life and limb and to the property of others as specifically mentioned in the statute; and that he must control his speed and regulate his conduct in driving or operating the vehicle in such a way as to comport with the manner in which a person of ordinary prudence would operate a similar vehicle under like conditions and circumstances. It thus appears that the duty to exercise ordinary care imposed by common law as the same applies to drivers of motor vehicles was not changed or enlarged by the

statute quoted. Insofar as a statute conforms to the common law, it is simply declaratory of the rules as they were previously stated and applied under the common law, and such affirmatory part of the statute cannot be given any other force or effect.

* * *

Regardless of the statute above quoted and regardless of any rate of speed which the State Highway Commission might deem reasonable and prudent in any particular locality, the common law rule of ordinary care still controls persons in the operation of motor vehicles upon the highway and it is for a jury to say generally whether or not a particular speed, in the light of all the circumstances, is or is not the exercise of ordinary care. This proposition has been recently reiterated by the Appellate Court in the case of *Yellow Cab Company v. Kruszynski*, 196 N. E. 136.

Since, under the act above quoted, the State Highway Commission is the only authority authorized to place any signs on the highway designating speed limits, and since the State Highway Commission is given specific authority to designate portions of the highway as extra-hazardous, it is my opinion that they may also designate other rates of speed which they deem reasonable and prudent on other portions of the highway. Whether or not the rates of speed designated comply with the rates of speed which the legislature has determined as prima facie evidence of negligence is not of controlling importance for the reason that violation of either rate does not constitute an offense, except insofar as such conduct is in contravention of the rule of the common law requiring ordinary care. In other words, the legislature has declared what they deem to be a standard of care required in the operation of motor vehicles.

The State Highway Commission may also indicate by appropriate signs along the highway rules which they deem necessary for the safety of the traveling public. Violations of such rules will or will not be deemed negligent in the light of the facts and attendant circumstances. Violations of the rules may only be punished criminally where they are within the territory marked as extra-hazardous or where they are in excess of a speed which is deemed reasonable and prudent, in the light of all the attendant circumstances.