
July 20, 1938.

Sen. William B. Janes,
Chairman of the Public Safety Committee,
Senate Chambers,
State House,
Indianapolis, Indiana.

Dear Sen. Janes:

On July 19, 1938, you requested the opinion of this office on the following question: "What would be the status of the law in Indiana relative to holders for certificates of registration for motor vehicles if section 7 of chapter 271 of the Acts of the Indiana General Assembly for 1937 were repealed?" (Section 7 of chapter 271 of the Acts of 1937 is colloquially known as the gadget law.)

The original law relative to holders for certificates of registration was section 7 of chapter 265 of the Acts of 1921 passed by the 72nd General Assembly during the encumbency of the Hon. Warren T. McCray as Governor. This section provided that the secretary of state, who at that time was the Hon. Ed Jackson, should furnish such containers and charge therefor a fee of fifty cents. Said section 7 read as follows:

"Said receipt of registration shall be enclosed in a suitable container to be furnished by the secretary of state, such container to have a frame of aluminum or other metal, and to have a cover of isinglass or other transparent material, through which such certificate can be easily inspected, and with such container, said secretary of state shall furnish screws or other suitable means of attachment to this motor vehicle. Said container shall be furnished by the secretary of state with transportation charges prepaid, for a fee of fifty cents (50c), and any money collected from such fees and remaining after the payment of all expenses shall be credited to the auto theft fund."

19—54007
Section 8 of said chapter 265 provided:

"Except as in this Act otherwise provided, no person shall operate or drive or cause to be operated or driven, a motorcycle or motor vehicle on the public highways, unless such motorcycle or motor vehicle shall at all times carry in or upon it, subject to inspection by any peace officer or employe of the secretary of state, the receipt of registration furnished for it as hereinabove provided, which in case of motor vehicle shall be affixed in the container furnished by the secretary of state, in plain sight in the driver’s compartment of the motor vehicle; in case of a motorcycle shall be carried either in plain sight affixed to said motorcycle, or in the tool bag or some other convenient receptacle attached to said motorcycle.

For failure to comply with the requirements set forth herein relative to the receipt of registration, any person upon conviction shall be fined not less than five ($5.00) nor more than one hundred dollars ($100.00) and upon a third offense shall be confined thirty (30) days in jail in addition to the above penalty."

These sections, namely 7 and 8 of Chapter 265 of the Acts of 1921 remained the law until 1935 when the 79th regular session of the General Assembly by chapter 44 of the Acts of 1935 amended sections 7 and 8. Section 7, supra, was amended by the 1935 law so that the provision for containers for certificates of registration was as follows:

"Said receipt of registration shall be enclosed in a suitable container which shall have a frame of aluminum or other material, and a cover of isinglass or other transparent material, through which such certificate can be easily inspected."

It will be noted that the 1935 amendment of section 7, supra, was a general law.

In 1937 the General Assembly passed section 7 of chapter 271 which was a specific law making provision for a specific type of certificate of registration holder or container. The 1937 law did not expressly repeal any prior law relative to containers.
Briefly stated, then, the status of the law relative to container-ers is this: Sections 7 and 8 of the 1921 law were amended in 1935 by express enactments, the law of 1937 affected the former law only by implication.

The amendment of 1935 of the 1921 law extinguished sections 7 and 8 as they appeared in the 1921 law. I think there is no question about this in view of the rule as laid down by the Indiana decisions. In the case of Blakemore v. Dolan, et al., 50 Indiana, 194 at 204, it was said, "When a section in an existing law is amended in the mode prescribed by the constitution, it ceases to exist, and the section as amended supercedes such original section, and the section as amended becomes incorporated in and constitutes a part of the original act; and the original section is as effectively repealed and obliterated from the statutes as if it had been repealed by express words * * *" Also in the case of State, ex rel. Micely v. Wildey, et al., 209 Indiana, 1 at 5 and 6, the Supreme Court of the state said, "An amendment of a section of a law 'to read as follows' operates to repeal all of the section amended not embraced in the amended section of the law. Lewis' Sutherland, statutory constitution (2d ed.), section 337 Smith v. State (1924), 194 Indiana, 686, 688, 144 N. E. 471."

In view of the above quoted rule, sections 7 and 8 of the Acts of 1921 were obliterated. In order to answer the question we must not determine the effect of section 7 of chapter 271 of the Acts of 1937 upon the 1935 amendment of sections 7 and 8 of the Acts of 1921. As was pointed out heretofore, the 1938 statute was a general law, while the 1937 statute was a specific law and would under the rule in Indiana control as ever against the prior general statute. As was said in the case of Kingan & Co. against Cass, 190 Indiana, 554, 557, "The rule of law obtains in this state that general statutes give way to specific statutes upon the same subject matter." However, this rule is subject to some qualifications. As was pointed out in the case of Daniels v. the State, 150 Indiana, 346, 358, "General statutes give way to special statutes upon the same subject * * * only when the special statute is complete within itself." A reading of section 7 of chapter 271 of the Acts of 1937, in my opinion, shows clearly that it is a special statute covering the same subject as the 1936 law and that it is complete within itself. Thus then said section 7 would control
as to certificate of registration holders and the portion of the 1935 law dealing with the same subject would give way. Therefore, then, in view of what I have said it is my opinion that if this special session of Legislature were to repeal section 7 of chapter 271 there would be in Indiana no law relative to the display of certificates of registration in holders or otherwise. Further support is found for this conclusion in section 1-307, Burns' Statutes 1933, the same being section 1 of chapter 36 of the Acts of 1877 which provides in part as follows: “Whenever an Act is repealed which repeals a former Act, such Act shall not thereby be revived, unless it shall be so expressly provided * * *”

PLANNING, STATE BOARD OF: Towns. Whether towns are treated as having established a plan commission without action by the Board of Trustees.

July 22, 1938.

Hon. L. F. Moorman, Director,
State Planning Board of Indiana,
239 N. Pennsylvania Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion construing Chapter 3 of the Acts of 1927 which provides as follows:

“SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That the provisions of chapter 209 of the Acts of the General Assembly of 1921, and all Acts amendatory thereof, relating to city planning in the respective cities of this state, may apply with equal and like effect to the several incorporated towns of this state, except that the rights, powers and duties of the common council and the city plan commission, as prescribed in said act, shall be possessed, exercised and performed by, and are hereby conferred upon the boards of trustees in incorporated towns; and the rights, powers and duties of the city clerk and the city controller, as prescribed in said Act, shall be