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OFFICIAL OPINION NO. 12

June 4, 1971

Mr. Robert K. Konkle
Superintendent
Indiana State Police
State Office Building
100 North Senate Avenue
Indianapolis, Indiana 46204

Dear Superintendent Konkle:

You have requested an Official Opinion concerning an interpretation of House Enrolled Act No. 1397, (IC 1971, 9-8-1.6), which can be summarized by the following questions:

- 1) "Does this act provide for the single misdemeanor of not having obtained the proper permit for moving a special tractor-mobile home rig, or are there several conditions for obtaining such a permit that become misdemeanors when violated?"
- 2) "Do police officers have the authority to confiscate permits issued pursuant to this statute when the terms and conditions of the permit are being violated in the presence of the officer?"

ANALYSIS

The Indiana General Assembly passed House Enrolled Act No. 1397, (IC 1971, 9-8-1.6), and provided an emergency clause making it effective upon the Governor's signature, which occurred on April 1, 1971. After this date, a permit must be obtained as provided for in Section 2 of the Act, as follows:

"It shall be unlawful for any person to operate a special tractor-mobile home rig on the public highways of this state unless such person first secures a permit to operate the same from the department, or from any agency or political subdivision of the state designated by the department to issue such permits."

Section 3 of the Act states that:

“The department [Indiana State Highway Commission] may grant a permit to operate a special tractor-mobile home rig on the public highways of the state to any person upon the following conditions and upon such regulations as the department from time to time prescribes.”

The Act then enumerates sixteen (16) requisite conditions for obtaining such a permit. It must now be determined if each of these sixteen conditions constitutes a separate misdemeanor when violated or whether the only misdemeanor is the failure to obtain the proper permit under Section 2.

The definition of the term “permit,” as adopted by the Indiana Supreme Court in *The City of Fort Wayne v. DeWitt* (1874), 47 Ind. 391, is:

“* * * to grant permission, liberty or leave; to allow; to suffer; to tolerate; to empower; to license; to authorize.”

This definition, in conjunction with the above quoted provisions of the Act, makes it clear that such a permit is issued for the operation of a rig under certain stated conditions. The sixteen enumerated conditions for obtaining a permit are vital to its issuance and become separate misdemeanors when violated. As is stated in Section 6 of this Act:

“Any ‘operator of a special tractor-mobile home rig’ violating *any provision of this chapter* shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed fifty dollars for *any one violation* * * *” (My emphasis)

It is, therefore, apparent that the Act is intended to provide a misdemeanor for operating without a permit or operating in violation of a requisite condition for the issuance of the permit. The sixteen conditions that must be met in order to keep a permit valid, become the instrument of making it invalid when violated, and *each condition, when violated, constitutes a separate misdemeanor offense*. An operator, in

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these circumstances, would be additionally guilty of committing a moving violation and would be subject to the penalties provided for in the rules and regulations promulgated pursuant to the Indiana Motor Vehicle Safety Responsibility and Driver Improvement Act, (IC 1971, 9-2-1).

Your second inquiry pertains to the power of the Indiana State Police to confiscate permits issued under this Act when its terms and conditions have been violated. The Act alone does not give this power of confiscation.

CONCLUSION

It is, therefore, my official opinion that House Enrolled Act No. 1397 requires that operators of special tractor-mobile home rigs obtain a permit, and the failure to obtain such a permit, or the failure to operate within its terms and conditions as enumerated in the Act, shall constitute separate misdemeanors.

This Act in and of itself, does not give the Indiana State Police the authority to confiscate a permit found to be in violation of the terms and conditions requisite to obtaining the permit, and this authority should be granted by way of subsequent legislation.