1970 O. A. G.

OFFICIAL OPINION NO. 33

December 2, 1970

Mr. R. H. Harrell
Executive Director
Indiana State Highway Commission
Indianapolis, Indiana 46204

Dear Mr. Harrell:

I am in receipt of your request for my Official Opinion as to the correct fee to be charged for permits to move oversize and overweight vehicles. Specifically, your question is whether only the overweight charge should be made when a permit application indicates a combination oversize-overweight vehicle, or whether both the oversize and the overweight charges should be made in such a case.

ANALYSIS

The issuance of permits for the moving of oversize and overweight vehicles on the public highways of Indiana is regulated by Acts of 1931, Ch. 83, Sec. 10, as amended and found in Burns' (1965 Repl.), Section 47-538, which provides in part:

"* * * Before any such permit shall be issued the applicant shall satisfy the officer or body issuing such permit of his responsibility to respond in damages for any injury to the highway or bridge or furnish satisfactory bond or other security to the satisfaction of such issuing officer or body, and shall pay a special permit fee at the rate of ten cents [10¢] per mile of travel, loaded or unloaded, for all permits issued to exceed the legal length, width, or height limit but in no event shall the fee be less than ten dollars [$10.00] nor more than twenty-five dollars [$25.00]. For all permits issued to exceed the legal weight limit, the fee shall be twenty-five cents [25¢] per mile of travel, loaded or unloaded, but in no case shall the fee be less than ten dollars [$10.00] nor more than fifty dollars [$50.00] * * *"

87
The Act is clear and unambiguous. So the courts in construing a statute must interpret it to mean only what is expressly stated. Cheney v. State (1905), 165 Ind. 121, 74 N. E. 892. It provides for the supervision and administrative control of both overweight and oversize violations which are likely to occur in the operation of trucks over public highways.

One area of control covers trucks and trailers whose size exceeds the lawful limitations provided by statute. The purpose of the permit is to provide regulation and supervision over the size and shape of vehicles for the protection of the traveling public and also to minimize damages to bridges and other highway installations which might be caused by vehicles of excess size.

The other area sought to be controlled by permit is that of excess weight, a wholly unrelated consideration insofar as size or shape is concerned. In this case, the permit is to insure protection of the physical highway itself and to insure some measure of compensation to the State for damages caused by excessive weight.

Clearly, therefore, two separate areas of regulation are contemplated, each designed to control a distinct and separate phase of highway use, and each the subject of a separate permit.

It is a matter of common knowledge that the deterioration of hard surfaced highways is caused principally by the weight of the vehicle and not the number of vehicles passing over a given route. The fees charged, which are greater than those for oversized vehicles, are designed to compensate the State to some extent, at least, for damages done to the highway by reason of this overweight. Obviously, therefore, a combination permit which assesses only one fee, or any arrangement which does not separately classify the two offenses as distinct violations would be unrealistic. Also, the clear intention of the Legislature contemplates the need for the supervision of two separate offenses. For that reason, no combination permit, as such, is provided for in the statute and none was contemplated.

It should also be noted that Burns' Section 47-538, supra,
1970 O. A. G.

grants the appropriate authority for issuing overweight and oversize permits to the "state highway commission or local authorities having jurisdiction over any public highway or street and having responsibility for the repair and maintenance thereof."

It should also be noted that the same law specifically provides that the issuance of such a special permit does not relieve the permit holder from the responsibility for damages to the public highways and streets.

CONCLUSION

It is, therefore, my opinion that the above-cited statute (Burns' 47-538) requires a specific and distinct permit for each excess overweight vehicle using any public highway or street and an additional separate permit for each excess size vehicle using any public highway or street, with separate fees to be charged in each case. The same law assigns the responsibility for issuing such permits to the governmental body which is responsible for the repair and maintenance of said public highway or street.