

OPINION 41

OFFICIAL OPINION NO. 41

December 4, 1969

Superintendent Robert K. Konkle
Indiana State Police
301 State Office Building
Indianapolis, Indiana 46204

Dear Superintendent Konkle:

This is in response to your request for my Official Opinion which request is as follows:

“Is the privilege of an Indiana resident traffic violator who is arrested for a traffic offense—to be released on his written promise to appear later in court—limited to violations of the Acts of 1939, Chapter 48, as amended or is this privilege co-extensive with all traffic-related offenses regardless of the year, acts, and chapter of the laws of the State of Indiana by which they were enacted?”

The applicable statute is Acts of 1939, Ch. 48, Sections 163 and 164, as found in Burns' (1965 Repl.), Sections 47-2307 and 47-2308. Those two sections are quoted here verbatim:

“47-2307. When person arrested must be taken immediately before a magistrate.—Whenever any person is arrested for any violation of this act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is nearest or most accessible with reference to the place where said arrest is made, in any of the following cases:

“1. When a person arrested demands an immediate appearance before a magistrate;

“2. When the person is arrested and charged with an offense under this act causing or contributing to an accident resulting in injury or death to any person;

“3. When the person is arrested upon a charge of reckless homicide;

"4. When the person is arrested upon a charge of driving under the influence of intoxicating liquor or narcotic drugs;

"5. When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries, or damage to property;

"6. In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided."

"47-2308. *When person arrested to be given five day's notice to appear in court.*—(a) Whenever a person who is a resident of this state is arrested for any violation of this act punishable as a misdemeanor, and such person is not immediately taken before a magistrate as hereinbefore provided, the arresting officer shall prepare in duplicate written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, and the time when and the place where such person shall appear in court.

"(b) The time specified in said notice to appear must be at least five [5] days after such arrest unless the person arrested shall demand an earlier hearing.

"(c) The place specified in said notice to appear must be before a magistrate within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

"(d) The arrested person in order to secure release, as provided in this section, must give his written promise so to appear in court by signing in duplicate the written notice prepared by the arresting officer. The original of said notice shall be retained by said officer and the copy thereof delivered to the person arrested. Thereupon, said officer shall forthwith release the person arrested from custody.

"(e) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from office."

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Your question is whether Indiana residents who are arrested for violating traffic-related offenses punishable as misdemeanors, as specified in other Acts, are to be afforded the same alternative right to an immediate release upon giving their written promise to appear in court in accordance with Acts of 1939, Ch. 48, Sections 163 and 164, *supra*.

It is a principle of legal construction that statutes relating to the same general subject matter should be construed with reference to each other to achieve a harmonious and uniform system.

“All laws *in pari materia*, that is, all laws relating to the same subject matter, should be construed together in determining the legislative intention, and this rule applies although the statutes were enacted at different times and by different legislatures” Huff *et al.* v. Fetch *et al.* (1923), 194 Ind. 570, 143 N.E. 705.

It would thus follow that the Indiana General Assembly intended to allow residents of this state who violate traffic-related offenses punishable as misdemeanors to be released upon their written promise to appear so long as the offenses are not of the serious nature described in Acts of 1939, Ch. 48, Sec. 163, *supra*.

It should be noted that the written promise to appear places a substantial obligation upon the person who fails to appear, and his willful failure to appear constitutes an additional misdemeanor as well as grounds for the revocation of his driving privileges. (Acts of 1939, Ch. 48, Sec. 165, *et seq.*)

Thus, in answer to your question, it is my opinion that the privilege of an Indiana resident who is arrested for a minor traffic violation involving a motor vehicle to be released upon his written promise to appear later in court on a specified date applies to traffic-related misdemeanors only. It applies when the violator is not taken immediately before a magistrate by the arresting officer in accordance with Acts of 1939, Ch. 48, Sec. 163, *supra*. It does not apply to non-residents of Indiana. It does not apply to instances where a felony or suspected felony is involved. It does not apply in the six sets of circumstances outlined in Burns' 47-2307, *supra*.