

OPINION 30

1. In a city of the third class operating a public utility, the salary of those utility officers and employees who receive an annual salary is in the first instance set by the board operating that utility (whether a committee of the common council, a utility service board, or the board of public works and safety), but such salary must be approved by the common council, which council may lower but cannot raise the salary so set.

2. In a city of the third class operating a public utility, the wages of those utility employees who receive an hourly wage is in the first instance set by the board operating that utility (whether a committee of the common council, a utility service board, or the board of public works and safety), but such wages must be approved by the common council, which council may lower but cannot raise the wages so set.

3. In a city of the third class operating a public utility, the decision whether to undertake major projects or expansions is in the first instance made by the board operating that utility (whether a committee of the common council, a utility service board, or the board of public works and safety), but the decision to undertake such an innovation must be approved by the common council.

OFFICIAL OPINION NO. 31

August 31, 1967

MOTOR VEHICLES—Registration Certificates—Apparently Useless and Unnecessary Information—Need to Follow Statute.

Opinion Requested by Mr. Ernest Bixel, Commissioner of Motor Vehicles.

I am in receipt of your recent inquiry concerning the recording of vehicle weight and horsepower on certificates of registration for passenger motor vehicles (automobiles).

You specifically inquire whether, considering the fact that the registration fee for such vehicles is no longer based on weight and horsepower and so such information is no longer of apparent value, and considering the trouble and expense of maintaining such apparently useless information, "the Bureau of Motor Vehicles can eliminate the entering of weight and horsepower on the certificate of registration."

Acts 1945, ch. 304, created the Bureau of Motor Vehicles, provided for the registration of motor vehicles, and established the fees for such registration. The intended scope of the Act is apparent in its title:

"AN ACT concerning motor vehicles, trailers and semi-trailers, concerning the ownership thereof, providing for the registration and licensing thereof, providing for the licensing of persons operating motor vehicles, creating a bureau of motor vehicles, defining its authority, powers and duties, defining penal offenses and fixing penalties, and repealing all laws in conflict and declaring an emergency."

Section 25 of the Act, the same being Burns § 47-2602, concerns the registration of vehicles. That section has been amended several times, but such amendments have not altered the required contents of the registration certificate. As last amended by Acts 1955, ch. 184, § 1, that section provides in part:

". . . Such owner shall file or cause to be filed, by mail or otherwise, with the department or the branch office as herein required, a verified application for the registration of such vehicle, upon appropriate form or forms, furnished by the department for that purpose. *Every such application* shall bear the signature of the owner written with pen and ink and said signature shall be acknowledged by the owner before a person authorized to administer oaths and such application *shall contain*. . . .

"2. A brief description of the vehicle to be registered, including insofar as the hereinafter specified

OPINION 31

data may exist with respect to a given vehicle, the name of the manufacturer, the engine number, the serial number, *the character and amount of motive power thereof, stated in figures of horsepower*, in accordance with the rulings established by the Automobile Manufacturer's Association; the manufacturer's rated capacity, if a truck, tractor, trailer, or semi-trailer; the type of body, the year-model, *manufacturer's shipping weight if a motor vehicle used as a passenger automobile*, and seating capacity if a bus, and such further information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to registration." (Emphasis added.)

Section 64 of Acts 1945, ch. 304, established the fees for the registration of motor vehicles, and provided in part:

"For each passenger motor vehicle of less than twenty-five (25) horsepower and weighing less than two thousand five hundred (2,500) pounds, five dollars (\$5.00).

"For each passenger motor vehicle of less than twenty-five (25) horsepower and weighing two thousand five hundred (2,500) pounds and less than three thousand (3,000) pounds, six dollars (\$6.00)."

The section set fees for a number of other combinations of weight and horsepower of passenger motor vehicles (and for other vehicles), but the above should suffice as an illustration.

Thus, as the 1945 Act was originally conceived, there existed a relationship between the size and horsepower of a passenger motor vehicle and the fee for registering that vehicle, and therefore, if for no other reason, the size and horsepower rating was properly an integral part of the certificate of registration. That relationship existed for a number of years. See Acts 1955, ch. 273, § 10, which amended the fee schedule but retained a weight-horsepower grouping as the basis for fees.

In 1961 the General Assembly adopted an Act entitled "AN ACT concerning license taxes on motor vehicles and mobile homes" (Acts 1961, ch. 345). The basic purpose of the Act is described in its section 2:

"SEC. 2. There is hereby imposed an annual license excise tax upon motor vehicles and mobile homes, which tax shall be in lieu of the ad valorem property tax levied for state or local purposes, but in addition to any registration fees imposed on such vehicles."

In its section 11, the Act provided:

"SEC. 11. Notwithstanding the provisions of Section 10 of Chapter 273 of the Acts of 1955, the annual registration fee on each passenger motor vehicle of less than twenty-five (25) horsepower shall be eight dollars (\$8.00); the annual registration fee on each passenger motor vehicle of twenty-five (25) horsepower or more shall be twelve dollars (\$12.00)."

Major portions of chapter 345, Acts 1961, were declared void as an unconstitutional exercise of the taxing power in *Wright v. Steers*, 242 Ind. 582, 179 N.E. 2d 721 (1962), but the Supreme Court in denying a petition for rehearing expressly stated that the constitutionality of section 11 had been neither argued before, nor determined by, the court (242 Ind. 582, 180 N.E. 2d 539).

Thus Acts 1961, ch. 345, § 11, superseded Acts 1945, ch. 304, § 64, as amended by Acts 1955, ch. 273, § 10, in relation to the fee for registration of passenger motor vehicles. That abrogation of the 1945 Act was completed by Acts 1963, ch. 246, § 1, which amended section 64 of the 1945 Act by deleting therefrom all mention of registration fees for passenger motor vehicles. (See Burns § 47-2801.)

Although section 11 of the 1961 Act superseded the 1945 fee statute, it still provided for different fees on the basis of horsepower, though not of weight. That remaining difference in fees was removed when that Act was amended in 1965.

OPINION 31

Acts 1941, ch. 345, § 11, as amended by Acts 1965, ch. 343, § 1, the same being Burns § 47-2801c, now provides:

“The annual registration fee on each passenger motor vehicle shall be twelve dollars (\$12.00).”

Thus, registration fees for motor vehicles have been assessed without consideration of the vehicle's weight since 1961 and without consideration of the vehicle's horsepower since 1965, and it would therefore appear that there no longer exists any need to enter that information on the vehicle's certificate of registration, for fee purposes.

However, it must be noted that section 25 of the 1945 Act, (Burns § 47-2602), as set out above, still provides that “Every such application . . . shall contain . . . the character and amount of motive power thereof, stated in figures of horsepower . . . manufacture's shipping weight if a motor vehicle used as a passenger automobile . . . and such further information as may be reasonably required by the department. . . .” (Emphasis added.)

In *State ex rel. City of Indianapolis v. Brennan*, 231 Ind. 492, 498, 109 N.E. 2d 409 (1952), the Indiana Supreme Court said:

“The word ‘shall’ when used in a statute is generally construed mandatory rather than directory, and this rule will control unless it appears clearly from the context or from the manifest purpose of the act as a whole that the legislature intended in the particular instance that a different construction should be given to the word.”

The context in which the word “shall” is used in section 25 of the 1965 Act clearly expresses the legislative intent that it be interpreted as mandatory. The certificate “shall contain” certain specified items of information, “and such further information [if any] as may be reasonably required by the department.” The obvious intent is to permit the department to add to, but not subtract from, the information to be entered.

It could be argued that the 1961 Act as amended in 1965 impliedly repealed the requirement to enter the weight and horsepower of the vehicle on the certificate of registration. However, such an argument is not tenable for two reasons:

First, repeal by implication is not favored. *Payne v. Buchanan*, 238 Ind. 231, 148 N.E. 2d 537 (1958); *Goldsmith v. City of Indianapolis*, 208 Ind. 465, 196 N.E. 525 (1935);

Second, an Act ordinarily will not be interpreted as impliedly repealing an earlier statute concerning some matter not contained in the title of the Act (see 1967 O.A.G., p. 158). The title of the 1961 Act is "AN ACT concerning license taxes on motor vehicles and mobile homes," and that title cannot reasonably be interpreted as referring to the information to be entered on the certificate of registration of a passenger motor vehicle.

Therefore, there can be no doubt that Acts 1945, ch. 304, § 25, as amended (Burns § 47-2602), is still the statutory law in the State of Indiana.

An administrative agency such as the Bureau of Motor Vehicles must administer the law as it is written and cannot through its own actions change that law. *Department of State Revenue v. Colpaert Realty Corp.*, 231 Ind. 463, 479, 109 N.E. 2d 415 (1952); *Boone County R.E.M.C. v. Public Serv. Comm'n*, 129 Ind. App. 175, 155 N.E. 2d 149 (1958). No alternative is possible in view of Article 4, section 1, of the Indiana Constitution, which provides in part:

"The Legislative authority of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives."

Thus, only the Legislature can repeal or nullify any statutory provision no matter how unnecessary or obsolete subsequent events appear to have made that provision.

There is one other factor which must be considered and which, when considered, makes the conclusion inescapable. Your question was phrased, and this opinion is basically written, in terms of passenger motor vehicle registration fees and the irrelevance of information on weight and horsepower.

OPINION 31

er to such fees. The tacit assumption is that such information does not now and never has served any other purpose.

However, it must be remembered that the purpose of registering motor vehicles is not to collect fees, but rather to facilitate identification of vehicles and their owners. There always exists the possibility that the Legislature has determined that information concerning weight and horsepower assists identification.

In this regard the case of *Kryder v. State*, 214 Ind. 419, 15 N.E. 2d 386 (1938), is pertinent. That case concerned a 1937 law that required a vehicle's certificate of registration to "be prominently displayed at all times in a holder approved by and bearing the stamp of approval of the commissioner of motor vehicles, in the lower inside right-hand corner of the windshield." As a part of its decision holding that law constitutional, the court said:

"The act is clearly an attempt to exercise the police power of the state. Its main objective appears to be to provide a convenient and practical means of identifying motor vehicles and the owners thereof so as to facilitate inspection by police officers and to insure a more general observance of the laws of the state with respect to such vehicles." (214 Ind. at 424, 15 N.E. 2d at 389.)

"The act under consideration has come to be popularly known as 'The Gadget Law' and much that has been said about it in briefs and in oral argument has reference to its virtue rather than its legality. This court cannot concern itself with matters of legislative wisdom. If the act is ill-advised or undesirable the public should look to the General Assembly for its repeal." (214 Ind. at 427, 15 N.E. 2d at 390.)

Numerous other cases, though none so appropriate, could be cited to support the proposition that the wisdom or usefulness of an Act of the Legislature is a matter to be judged only by the Legislature.

Therefore, in answer to your question, the Bureau of Motor Vehicles is not authorized to eliminate the entering of

1967 O. A. G.

weight and horsepower of passenger motor vehicles on the certificate of registration of such vehicles.

OFFICIAL OPINION NO. 32

September 1, 1967

**SCHOOLS—Payment of Rentals Pursuant to Leases
Executed by School Corporations.**

Opinion Requested by Mr. Richard L. Worley, Chief Examiner,
State Board of Accounts.

This is in answer to your letter of April 24, 1967, which requests an opinion concerning the funds of Indiana public school corporations, and reads in part as follows:

“Pursuant to Chapter 335, Acts 1967, lease rental payments shall be made from the Debt Service Fund. Also pursuant to Chapter 352, Acts 1967, lease rental payments shall be made from the Debt Service Fund. However, pursuant to Burns 28-1108 (Chapter 69, Acts 1965) one of the specified purposes of the Cumulative Building Fund is to provide funds for the leasing or renting of existing real estate suitable for school classroom purposes.

“Several school corporations are now in the process of preparing budgets for the 1968 calendar year. We have had several inquiries, and we expect more during the budget hearings within the next few weeks, as to whether lease rental agreements may be paid from the Cumulative Building Fund.”

Two Indiana statutes authorize Indiana public school corporations to contract for the lease of school buildings con-