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officer or agency to administer, cooperate with, and effectuate the purposes of such federal law, and such officers or agency so designated or appointed with the approval of the governor shall administer the same.”

Since the answer to the first part of your question is in the negative, there is no need to consider the second part at present.

OFFICIAL OPINION NO. 19

September 22, 1966

**MOTOR VEHICLES—TOWNSHIP AND CITY OFFICERS
—Duty to Report State Traffic Violations—Duty to
Report Violations of City or Town Ordinances—
Availability of Traffic Violations Clerk.**

Opinion Requested by Hon. William J. Briggs, Prosecuting Attorney, 74th Judicial Circuit.

I am in receipt of your recent inquiry concerning the duty of Justices of the Peace to report convictions on traffic violations.

Your specific question is:

“Would you please advise as to whether Justices are required to forward record of convictions together with the fees provided in the Acts of 1965 in all cases relating to motor vehicles or whether they are required to forward records only in those cases where the traffic violation is a moving violation.”

Acts 1939, ch. 48, § 167, the same being Burns IND. STAT. ANN., § 47-2311, provides, in part:

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“(a) Every magistrate or judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this act or any other law regulating the operation of vehicles on highways.

“(b) Within ten [10] days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this act or other law regulating the operation of vehicles on highways, every said magistrate of the court or clerk of the court of record in which said conviction was had or bail was forfeited shall prepare and immediately forward to the bureau an abstract of the record of said court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.”

The above requirement for reporting convictions does not distinguish between moving and non-moving violations. There could, however, be some question as to whether the phrase “or any other law regulating the operation of vehicles on highways” would include municipal ordinances. Discussion as to whether violations of ordinances are to be included is rendered moot by Acts 1947, ch. 159, § 9, as last amended by Acts 1963, ch. 283, § 1, the same being Burns IND. STAT. ANN., § 47-1052, which provides, in part:

“(a) Every court having the jurisdiction of offenses under this act or other acts concerning the operation of motor vehicles, including any offense committed under any act of this state regulating the operation of motor vehicles on public highways, and including any offense either a misdemeanor or a felony, with regard to the operation, regulation or licensing of motor vehicles or of operators, *or of any city ordinance relating to moving traffic violation*, shall forward or cause to be forwarded to the department as hereinafter provided, an abstract of the record of the conviction of any person in such court for a violation of any such laws, and, if in the opinion of the court, the defendant should be deprived of his privilege to oper-

ate a motor vehicle upon the public highways, the court shall recommend the suspension of current driving license of the person so convicted for any determinate period not exceeding one [1] year, which the court in its discretion may deem best, and the commissioner shall thereupon comply with such recommendation: . . ." (Emphasis added.)

The emphasized portion of the above statute was added by Acts 1949, ch. 274, § 4. This specific addition relating to violation of city ordinances leaves no doubt that the legislature intended that any moving violation of a municipal ordinance be reported. Equally obvious is the legislative intent that non-moving violations of city ordinances need not be reported.

This conclusion is in line with a later and indirectly related Act of the Legislature. Acts 1963 (Spec. Sess.), ch. 11, § 10, the same being Burns IND. STAT. ANN., § 47-2332, permits a court to establish a traffic court violations bureau to facilitate the disposition of certain traffic violations. That statute provides, in part:

"(b) Offenses within the authority of violations clerk; schedule of fines. The court shall by order, which may from time to time be amended, supplemented or repealed, designate the traffic offenses within the authority of the violations clerk. Such offenses shall not include:

"(1) indictable offenses;

"(2) offenses resulting in an accident;

"(3) operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug, or permitting another person, who is under the influence of intoxicating liquor or a narcotic or habit-producing drug, to operate a motor vehicle owned by the defendant or in his custody or control;

"(4) reckless driving;

"(5) leaving the scene of an accident;

"(6) driving while under suspension or revocation of driver's license;

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“(7) driving without being licensed to drive;

“(8) exceeding the speed limit by more than 15 miles per hour; or

“(9) a second moving traffic offense within a twelve months' period. . . .

“(c) Plea and payment of fines and costs. (1) Parking and non-moving offenses. Any person charged with a parking, standing or a non-moving offense may mail or deliver the amount of the fine and costs indicated on the ticket for the violation, together with a signed plea of guilty and a waiver of trial, to the violations clerk.

“(2) Other offenses. Any person charged with any traffic offense, other than a parking, non-moving, or standing offense, within the authority of the violations clerk, may appear before the violations clerk and, upon signing an appearance, plea of guilty and waiver of trial, pay the fine established for the offense charged, and costs. He shall, prior to the plea, waiver and payment, be informed of his right to stand trial, that his signature to a plea of guilty will have the same force and effect as a judgment of court, and that the record of conviction will be sent to the motor vehicle commissioner of this state or the appropriate officers of the state where he received his license to drive.”

The differential treatment of non-moving and moving offenses in the above statute clearly indicates that it is the intent of the Legislature that all moving traffic violations be reported to the Bureau of Motor Vehicles, while non-moving violations need not be so reported.

Acts 1965, ch. 350, § 18, the same being Burns IND. STAT. ANN., § 47-1052b, provides in part:

“Upon the conviction of any person for any offense which authorizes or requires the clerk of a court or the judge of a court which has no clerk, to certify an abstract of the record of such conviction to the commissioner or the department, a certification fee . . .

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and a permanent operator's record fee . . . shall be so taxed by the court as a part of the costs against the defendant . . . and the permanent operator's record fee . . . shall be paid over to the commissioner . . ."

Therefore, it is my opinion that a certified abstract of the record and the permanent operator's record fee must be forwarded to the commissioner in all instances where there is a conviction of a violation of a state law regulating the operation of motor vehicles on public highways or of any city ordinance relating to moving traffic, but not in an instance where the conviction is for the violation of a city ordinance relating to non-moving traffic.

OFFICIAL OPINION NO. 20

September 30, 1966

STATUTES AND RECODIFICATION—Indiana Drainage Code—Duties of County Surveyor Concerning Construction and Maintenance of Drains.

Opinion Requested by Hon. John W. Donaldson, State Representative.

I am in receipt of your recent request for an opinion regarding the provisions of the 1965 Drainage Code relating to the maintenance of drains.

The Drainage Code, Acts 1965, ch. 305, the same being Burns IND. STAT. ANN., §§ 27-2001 through 27-2606, is an ambitious and comprehensive piece of legislation. Unfortunately, certain specific applications of the Code, especially those pertaining to maintenance, are not always clear. Therefore, in order to answer your questions it will be necessary to construe the Act and, like the Indiana Supreme Court in