

OPINION 48

OFFICIAL OPINION NO. 48

December 30, 1966

**MOTOR VEHICLES—Traffic Violation Convictions—
Judgments Withheld—Duty to Report
Judgment to Commissioner of
Motor Vehicles.**

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

Your letter of December 29, 1965, has been received in which you pose the following questions:

“1. What is a ‘Judgment Withheld?’

“2. Are the courts required to forward abstracts of the record to this department in cases where judgment is withheld by virtue of the provisions of Burns Statutes, Sections 47-1052(a) and 47-1052(c), as supplemented by Section 47-1052(e) ?

“3. If the answer to the last question is ‘No,’ may such abstracts be obtained by this department pursuant to Burns Statutes, Section 47-2326, and if so, what enforcement procedure exists to require the courts to forward such abstracts?”

It is well to note preliminarily that there is a marked paucity of case law on the subject of Withheld Judgments. This is so because the use of such a procedure is of primary benefit to defendants in criminal cases; therefore, appeals are few.

Courts of general criminal jurisdiction in this State have traditionally availed themselves of the power to withhold judgments. The statute which confers this power to city courts which are courts of limited criminal jurisdiction, refers to this traditional power.

“ . . . The several city courts shall have power to suspend or to withhold judgment in any case *where any person shall have been convicted in such court or shall have entered a plea of guilty*, as now provided by law for the circuit and criminal courts of this state. . . .”
Burns IND. STAT. ANN., § 4-2403. (Emphasis added.)

It will be noted from this statute that a conviction or the entry of a plea of guilty is a condition precedent to the exercise of the power of withholding or suspending judgment.

Thus in answer to your first question a “JUDGMENT WITHHELD” exists where a person has been convicted in a court of competent jurisdiction or has entered a plea of guilty in that court, but where judgment is not entered on such plea or conviction.

Your second question asks whether the courts are required to forward abstracts of the record to the Department of Motor Vehicles in cases where judgment is withheld by virtue of the provisions of Burns IND. STAT. ANN., § 47-1052(a) and § 47-1052(c), as supplemented by § 47-1052(e).

Burns § 47-1052(a) reads, in part, as follows:

“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, . . .”

Burns § 47-1052(c) reads as follows:

“The clerk of a court or the judge of a court which has no clerk, in which any person is convicted of any

OPINION 48

offense under the motor vehicle laws of this state or has been convicted of 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 when such conviction has occurred, or in such other event as stated in section 5, subparagraph (a) thereof, forthwith forward to the commissioner a certified abstract of the record of such conviction." (Emphasis added.)

Burns § 47-1052(e) reads as follows:

"The abstract provided for by this section shall be in such form as the commissioner of the bureau of motor vehicles shall prescribe and when duly certified by the appropriate officer shall be received and accepted by any administrative agency or court as prima facie evidence of the conviction or judgment and all other action therein stated."

It is apparent from a reading of the three sections cited that the duty to report a conviction as described in the sections is incumbent upon the clerk of a court or the judge of a court as the case may be. Thus, it is essential to determine what is meant by the term "conviction" as it applies to the cited sections.

Burns IND. STAT. ANN., § 47-1048(e) defines "conviction" for the purposes of the sections in question.

Burns IND. STAT. ANN., § 47-1048(e) reads, in part, as follows:

"For the purpose of this act the term 'conviction' shall mean, conviction upon a plea of guilty or the determination of guilt by a jury or by a court though no sentence has been imposed or if imposed has been suspended and it includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant unless the forfeiture has been vacated. Provided, however, That the payment of money by any person as a penalty or as costs in accordance with any

agreement between a moving traffic violator and a traffic violations bureau, commonly termed 'Cafeteria Court,' shall also be construed as being a conviction for the purposes of this act and duties prescribed in the act to be performed by the clerk of a court shall be performed by the official or board charged with the administration of such traffic violations bureau. . . ."

It appears from the first part of the definition set out in this statute that the term sought to be defined i.e., "conviction" is contained in the definition, and this redundancy renders the definition ineffectual for purposes here. In any case, the definition is not sufficient to include the reporting of convictions where judgment is withheld. If in the definition, the term "conviction" means judgment, or if the term is to be included as an integral part of a judgment, then the withholding of the judgment leaves the clerk with nothing to report.

The second portion of the definition recites that "the term 'conviction' shall mean . . . the determination of guilt by a jury or by a court though no sentence has been imposed or if imposed has been suspended." A sentence can only be imposed as an incident to a judgment, thus if judgment is withheld there is, once again, nothing for the clerk or judge to report.

It is well to consider the information which, by statute, must be included in the abstract. Acts 1939, ch. 48, § 167 as found in Burns IND. STAT. ANN., § 47-2311, provides, in part:

"(c) Said abstract must be made upon a form furnished by the bureau and shall include the name and address of the party charged, the number, if any, of his operator's or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be."

It is plain that the duty weighing on the judge, magistrate or clerk is to report "the judgment," and if "the judgment" is withheld this duty cannot be performed.

OPINION 48

The failure, refusal, or neglect of any such officer to comply with any of the requirements of § 47-2311 renders the said officer liable on his official bond to a civil penalty of One Hundred Dollars (\$100). It is a well established principle of law that statutes penal in nature should be strictly construed. Indeed, it has been said that "it is reasonable for penal statutes to be construed so that they will be required to give 'fair warning' of what the law intends to do, if a certain line is passed, in language that the common world will understand. . . ." 3 Sutherland Statutory Construction § 5604 (3d ed. 1943), p. 52 and § 5605, p. 54 "The rule that penal statutes are strictly construed establishes a requirement of definiteness which must be met by the legislative draftsmen."

Thus, in answer to your second question, the terms of Burns IND. STAT. ANN., § 47-1052(a), (c), (e) do not require the courts to forward abstracts of the record to the Bureau of Motor Vehicles in cases where judgment is withheld.

Since the answer to your second question was "No" it is incumbent upon us to consider whether such abstracts may be obtained by the Bureau of Motor Vehicles pursuant to Burns IND. STAT. ANN., § 47-2326, which is the thrust of your third question.

Acts 1963 (Spec. Sess.), ch. 11, § 4, the same being Burns IND. STAT. ANN., § 47-2326 reads as follows:

"(a) Form. In traffic cases the complaint or information and summons shall be in the form known as the 'uniform traffic ticket and complaint,' substantially the same as adopted and recommended by the American Bar Association traffic court program. The uniform traffic ticket and complaint shall consist of four parts:

"(1) The complaint or information, printed on white paper;

"(2) the abstract of court record for the Indiana bureau of motor vehicles which shall be a copy of the complaint or information, printed on yellow paper;

"(3) the police record, which shall be a copy of the complaint or information, printed on pink paper; and

"(4) the summons, printed on white stock.

“Their reverse sides shall be as set out in form, with such additions or deletions as are necessary to adapt the uniform traffic ticket and complaint to the court involved. The notice, the appearance, the plea of either guilty or not guilty, and the waiver shall be printed on the summons.

“(b) When used. The complaint or information form shall be used in traffic cases, whether the complaint is made by a peace officer or by any other person, or the information is made by the prosecutor.

“(c) Records and reports. Each judicial officer or police authority issuing uniform traffic tickets and complaints shall be responsible for the disposition of all uniform traffic tickets and complaints issued under his authority, and shall prepare and submit such records and reports relating to the uniform traffic tickets and complaints in the manner and at the time as shall be prescribed by both the chief examiner of the state board of accounts and by the commissioner of the bureau of motor vehicles.”

This statute refers to the use of the uniform traffic ticket and complaint, hence your question must be limited to the disposition of abstracts in those courts which use the uniform traffic ticket. Obviously, the subject-matter of the act is not sufficiently broad to cover those courts which do not use the said tickets. Section (c) cited, *supra*, does give the Chief Examiner of the State Board of Accounts and the Commissioner of the Bureau of Motor Vehicles the power to prescribe records and reports relating to the uniform traffic tickets and complaints.

Our predecessor has opined that this power is rule-making power in 1963 O.A.G. No. 37, p. 190.

However, your question is directed to § 47-2326 itself, which does not contain any provision for the obtaining of abstracts in cases where judgment has been withheld, and it is doubtful whether any rule promulgated by the Commissioner or by the Chief Examiner of the State Board of Accounts could legiti-

OPINION 49

mately invade this area since the substantive act itself does not do so.

Thus, in answer to your last question, such abstracts may not be obtained by this Department pursuant to Burns Statutes, § 47-2326.

OFFICIAL OPINION NO. 49

December 30, 1966

INDIANA JUDICIAL STUDY COMMISSION—Amendment to State Constitution—New Judicial Article Proposing Abolition of Office of Justice of the Peace.

Opinion Requested by Hon. F. Wesley Bowers, Chairman,
Indiana Judicial Study Commission.

This is in response to your inquiry concerning the Indiana Judicial Study Commission's proposal of a new judicial article for the Constitution of the State of Indiana. Your letter indicates that one resolution has been prepared for submission to the 95th General Assembly, which resolution, if passed, would propose the repeal of Sections 1 through 20 of the present judicial article and the substitution therefor of twenty-one new sections. Your letter also advises that the proposed article is intended to eliminate the office of justice of the peace in Indiana, although it nowhere refers specifically to that office.

Your inquiry raises the following questions:

1. Whether a resolution for the repeal of an article of the Constitution and its replacement with another article is invalid if it contains more than one subject.
2. Whether the proposed article, if adopted, would eliminate the office of justice of the peace without specific abolition