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In the case of *Northern Ind. Gas & Elec. Co. v. Merchants Improvement Ass'n*, 87 Ind. App. 74, 160 N.E. 50 (1928), the Court dealt, not with the question of the amount of damages but rather whether a utility was entitled to *any* damages for the costs occasioned by its forced removal of its property upon vacation of an alley. In holding that the company was not entitled to damages, the Court stated that the utility "imposed no additional burden upon the fee, paid nothing for its privileges, and certainly should not be entitled to recover for the loss thereof by reason of the vacation of the alley." 87 Ind. App. at 78, 160 N.E. at 52. The case also referred to structure used by utilities as personal property which utilities have a right to remove and which could not be subjects for the assessment of damages.

Based on the above cases distinguishing easements from licenses, it is my opinion that the document called the meter request form creates only a license. Therefore, a utility which has installed equipment pursuant to such license is not entitled to compensation for the costs of its removal of said equipment forced by the construction or widening of a highway.

OFFICIAL OPINION NO. 52

December 30, 1966

MOTOR VEHICLES—Use of Uniform Traffic Ticket and Complaint—Sufficiency to Support Issuance of Warrant—Persons Other Than Peace Officers Signing Complaint.

Opinion Requested by Hon. Alan I. Klineman, State Senator.

This is in reply to your request for an Official Opinion in regard to the Uniform Traffic Ticket and Complaint. Your questions are as follows:

1. Can a charge of Reckless Driving or Driving While Under the Influence of Intoxicating Liquor be

stated on the Uniform Traffic Ticket and Complaint with sufficient certainty to withstand a motion to quash? If not, what is the effect of Burns § 47-2326, which requires that the Uniform Traffic Ticket and Complaint be used as an affidavit in traffic cases?

2. Does the statute require that the Uniform Traffic Ticket and Complaint be used as an affidavit where the charge is Driving While Under the Influence of Intoxicating Liquor, Second or Subsequent Offense?
3. Is the Uniform Traffic Ticket and Complaint a sufficient affidavit to support a warrant for arrest?
4. Must the Uniform Traffic Ticket and Complaint be used as an affidavit when a private citizen desires to make a complaint concerning a traffic violation?"

The use of the Uniform Traffic Ticket and Complaint is regulated by Acts 1963 (Spec. Sess.), ch. 11, as found in Burns IND. STAT. ANN., §§ 47-2323—2333, entitled "An Act governing procedure in traffic cases."

The purpose of the Act is expressed in § 1, Burns § 47-2323:

"This act governs the procedure in courts with original jurisdiction to hear and determine cases involving traffic offenses. It is intended to provide for the just determination of these cases and to that effect shall be construed to secure simplicity and uniformity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

Section 4 of the Act, Burns § 47-2326, provides in part:

"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;

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“(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.”

The Act is adopted from the Model Rules Governing Procedure in Traffic cases, which were drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its Annual Conference at New York, July 8-13, 1957.

The complaint or information adopted by the Indiana State Police is, as required by statute, patterned upon that proposed by the American Bar Association, and can roughly be divided into three sections. The first section contains spaces to be filled with the appropriate general information concerning the time and location of the offense, the name, address and license number of the driver, and the description and registration number of the vehicle. The second section is the offense section and contains short descriptions of various offenses and road conditions, and the section is so arranged that the entering of a few check marks will adequately describe most speeding, passing, turning, and disobeying traffic signal violations. The section also contains a blank entitled “Other Violations” into which descriptions of offenses not provided in the printed form are to be inserted, and another blank for citing the statute or ordinance so violated. The third section provides spaces for the signature of the complainant, the notarization of the affidavit, the notice of the time and place of the court hearing, and the accused violator’s promise to appear at the hearing.

At this point, I will address your questions in the order in which you have presented them.

1.

Your first question is whether a charge of Reckless Driving or Driving While Under the Influence of Intoxicating Liquor

can be stated on the Uniform Traffic Ticket and Complaint with sufficient certainty to withstand a motion to quash.

Article 1, § 13, of the Indiana Constitution demands that the accused in a criminal prosecution shall have the right "to demand the nature and cause of the accusation against him." This provision requires that the affidavit apprise the accused of the nature of the crime with which he is charged with sufficient certainty for him to adequately prepare his defense. *Patton v. State*, 242 Ind. 477, 179 N.E. 2d 867 (1962).

Furthermore, it is provided by statute that an affidavit must contain a statement of the facts constituting the offense in clear and concise language, Acts 1905, ch. 169, § 169, p. 584, as found in Burns IND. STAT. ANN., § 9-1104, and that an affidavit which does not state the offense with sufficient certainty is subject to a motion to quash, Acts 1905, ch. 169, § 194, p. 584, as found in Burns IND. STAT. ANN., § 9-1129.

In the case of Driving While Under the Influence of Intoxicating Liquor, the Uniform Traffic Ticket, with the words "Driving a motor vehicle while under the influence of intoxicating liquor," or words to that effect, written in the "Other Violations" section, would, in my opinion, constitute a legally sufficient affidavit. This is the gist of the offense. Acts 1963, ch. 282, § 1, as found in Burns IND. STAT. ANN., § 47-2001. The balance of the form provides for other necessary information, such as time of the offense, location, type of vehicle, etc.

Similarly, it would appear that the form should withstand a motion to quash in the great majority of Reckless Driving prosecutions. A motorist is guilty of Reckless Driving if he commits one of six specified acts enumerated by statute, or drives in any other manner in which he is heedless of probable injury to the safety, property or rights of others. Acts 1963, ch. 282, § 1, as found in Burns IND. STAT. ANN., § 47-2001. The general rule is that, where a statute designates the particular acts constituting an offense, it is sufficient to charge a crime substantially in the language of the statute. *Allison v. State*, 240 Ind. 556, 166 N.E. 2d 171 (1960) ; *Lodyga v. State*, 203 Ind. 494, 179 N.E. 542 (1932). However, the exact words of the statute need not be used; other words which import the same meaning are sufficient. Acts 1905, ch. 169, § 174, as

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found in Burns IND. STAT. ANN., § 9-1105. In most cases, the uniform traffic ticket, with statutory words or words to the same effect written in the "Other Violations" section should be a legally sufficient affidavit.

In my opinion, the use of the Uniform Traffic Ticket and Complaint as an affidavit is made mandatory by the statute. Subsection (a) of § 4 of the Act provides:

"In traffic cases the complaint or information and summons shall be in a form known as the 'uniform traffic ticket and complaint' . . ."

Subsection (b) provides:

"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."

In a previous Opinion of the Attorney General, it was stated that the term "information," where it appears in the Act, may be read as synonymous with "affidavit." 1963 O.A.G. No. 37, p. 185.

Construction of the above sections as mandatory is consistent with the rule that the word "shall" in a statute is ordinarily considered to be mandatory in character. *State ex rel. Simpson v. Meeker*, 182 Ind. 240, 105 N.E. 906 (1914). This interpretation is also consistent with the desire of the Legislature, expressed in § 1, that the Act should be construed to secure simplicity and uniformity in procedure.

However, the Acts could not be construed as requiring the use of the Uniform Traffic Ticket as an affidavit in cases where its design clearly would not afford the statement of the offense with sufficient certainty to satisfy the constitutional requirements. If possible, an Act should be construed in a manner which will preserve its constitutionality. *State ex rel. Devening v. Bartholomew*, 176 Ind. 182, 95 N.E. 417 (1911).

Section 3 of the Act provides:

"Other rules and laws which govern criminal procedure shall, in so far as they are applicable, implement this act."

Therefore, the Act should be given effect within the framework of the constitutional and statutory requirements discussed above.

The "Other Violations" section of the form recommended by the American Bar Association is small, permitting very few words to be written in. Apparently this is because the designers of the form anticipated that states utilizing the form would permit certain agreed-upon descriptive titles of traffic offenses to be used in this section. *ECONOMOS, TRAFFIC COURT PROCEDURE AND ADMINISTRATION* 20 (1961). Such a procedure in Indiana would be a departure from the rule enunciated in *Hinshaw v. State*, 188 Ind. 147, 122 N.E. 418 (1919). In 1913, the Legislature passed an Act which purported to permit the pleading of conclusions and participial expressions in both civil and criminal cases, subject to a motion to make more specific. Acts 1913, ch. 322, amended by Acts 1915, ch. 62, as found in *BURNS IND. STAT. ANN.*, § 2-1005. In *Hinshaw*, the Supreme Court of Indiana limited the application of the Act to civil proceedings, holding that, insofar as it related to criminal proceedings, the Act was in conflict with Art. 1, § 13 of the Indiana Constitution. It has been suggested that the Supreme Court might promulgate a rule of court, modifying the standards of criminal pleading where the Uniform Traffic Ticket and Complaint is used. *The Uniform Traffic Ticket v. Indiana Criminal Procedure; Conflict or Compatibility*, 36 Ind. L.J. 99 (1961). As the law in Indiana stands at this time, it would be necessary to enlarge the size of the "Other Violations" section of the form before it could be used for all traffic offenses.

2.

In answer to your second question, it is my opinion that the statute does not require that the Uniform Traffic Ticket and Complaint be used as an affidavit where the charge is Driving While Under the Influence of Intoxicating Liquor, Second or Subsequent Offense. In such a case, the affidavit should set out facts concerning the prior conviction as well as the facts concerning the current offense. The design of the Uniform Traffic Ticket and Complaint does not permit this.

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3.

Your third question is whether an affidavit on the Uniform Traffic Ticket and Complaint form is sufficient to support a warrant for arrest.

Acts 1935, ch. 114, § 1, as found in Burns IND. STAT. ANN., § 9-701 provides:

“Any justice of the peace or city judge, hereinafter referred to as the magistrate, on complaint made on oath before him, charging any person with the commission of any felony or misdemeanor, shall issue his warrant for the arrest of such person, . . .”

Acts 1937, ch. 247, § 1, as found in Burns IND. STAT. ANN., § 9-1001 provides:

“When an indictment is found or an affidavit filed against a person charging him with the commission of an offense, the court or a judge thereof shall, subject to the provisions of subsection (b) of this act, direct the clerk to issue immediately a warrant of arrest returnable forthwith. . . .”

As indicated in the foregoing discussion, an affidavit on the Uniform Traffic Ticket and Complaint form, where it meets the constitutional requirement of certainty, is a valid affidavit; therefore, it would support the issuance of a warrant.

It should be noted that the two statutes cited above also provide that, in all cases which a magistrate is empowered to try, and in all misdemeanor cases, a warrant should not be issued initially unless the judge or magistrate has reasonable grounds to believe the accused will not appear in response to a summons. Chapter 11, Acts 1963 (Spec. Sess.), which provides for the use of the Uniform Traffic Ticket and Complaint, does not alter this rule.

4.

In answer to your fourth question, it is my opinion that the Uniform Traffic Ticket and Complaint should be used as an affidavit when a private citizen desires to make a complaint

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concerning a traffic violation. Subsection (b) of § 4 of the Act provides:

“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. . . .*”

The complainant can place his signature in the space ordinarily used for the signature of the arresting officer.

OFFICIAL OPINION NO. 53

December 30, 1966

**INDIANA COMMON SCHOOL FUND—TREASURER OF
STATE—STATE BOARD OF FINANCE—Selling of
Investment Securities Before Maturity Date—
Obtaining Capital For Advancements to
Local School Corporation.**

Opinion Requested by Hon. Jack New, Treasurer, State of Indiana.

This is in reference to your request for my opinion on the following questions:

Can the State Board of Finance sell on the open market long term United States Government Bonds originally bought at face value with money constituting a part of the principal of the Indiana Common School Fund, when the sale will be made for an amount of money less than the face value of the bonds, (a) in order to invest the proceeds in United States government bonds bearing a higher interest rate but having a different maturity date, or (b) for the purpose of obtaining cash to make advancements to school corporations pursuant to Acts 1959, ch. 379?