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"I hereby declare this vehicle is at least 25 years old and is used for exhibition and educational purposes only." (Our emphasis)

Therefore, it is my opinion that the definition of "antique motor vehicles" found in Burns' 47-2632, *supra*, does restrict the use of a motor vehicle so registered under the act. As hereinabove stated such use is restricted to "exhibition and educational purposes by the owner." Whether any usage of such plates is an authorized use thereof, or, constitutes a violation of the restrictions, is dependent upon the factual pattern in each specific case.

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OFFICIAL OPINION NO. 26

July 19, 1963

George A. Everett, Superintendent  
Indiana State Police  
301 State Office Building  
Indianapolis 4, Indiana

Dear Superintendent Everett:

This is in response to your letter of June 11, 1963, wherein you request an Official Opinion, relative to House Enrolled Act No. 1076 of the 1963 General Assembly, which will become Chapter 293, Acts of 1963.

Your specific questions are stated in the following extract from your said letter:

"House Enrolled Act No. 1076 of the 1963 General Assembly, in repeating the language of the previous law (Acts of 1939, Ch. 48, § 102, Burns, 1952 Repl., § 47-2116), which stated in part:

"(b) No stop need be made at any such crossing where a police officer or a traffic control signal directs traffic to proceed." (my emphasis)

left out the three words 'or a traffic'.

"1. What is the legal effect of the omission of these words?"

"2. Do the terms 'track or tracks of a railroad' as used in section (a) of the Act refer to the same type of tracks as 'street railway grade crossings' in section (c) of the Act, or is the difference one of 'railroad' tracks as opposed to 'streetcar' tracks?"

House Enrolled Act No. 1076, Acts of 1963, Ch. 293, reads as follows:

"SECTION 1. Acts 1939, c. 48, s. 102 is amended to read as follows: Sec. 102. Certain Vehicles Must Stop at All Railroad Grade Crossings. (a) The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet, but not less than ten feet, from the nearest rail of such railroad and while so stopped, shall listen through an open window or door and shall look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing and the driver shall not shift gears while crossing the track or tracks.

"(b) No stop need be made at any such crossing where a police officer control signal directs traffic to proceed.

"(c) This section shall not apply at street railway grade crossings within a business or residence district; and it shall not apply to abandoned or unused tracks.

"(d) Any driver convicted of a violation of this section shall, in addition to such fine and costs as may be assessed against him, have his driving privileges suspended for a period of not less than sixty days."

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In order to answer your questions, it is necessary to determine the legislative intent sought to be achieved by the use of the language employed in House Enrolled Act No. 1076, *supra*. The 1963 Act was an amendment to the Acts of 1939, Ch. 48, Sec. 102, as found in Burns' (1952 Repl.), Section 47-2116. It will also be noted that Section 102 of the 1939 Act was never amended prior to the 1963 amendment herein considered.

A comparison of Section 102 of the 1939 Act, as found in Burns' 47-2116, *supra*, with the amended section as found in House Enrolled Act No. 1076, *supra*, shows that the only changes made by the 1963 amendment were *to omit* the words "or a traffic" in subsection (b), immediately after the words "police officer" and *to add* subsection (d), which provides for the suspension of driving privileges. Otherwise, the original section and the section as amended in 1963, are identical.

Let us first consider your question No. 1, namely, what is the legal effect of the omission of the words "or a traffic?"

It is axiomatic that in the construction of a statute the main consideration is to ascertain and give effect to the intention of the Legislature. In *Blackburn v. Koehler* (1957), 127 Ind. App. 397, 140 N. E. (2d) 763, 764, the court stated:

"To ascertain the legislative intent we must consider the entire statute and the object sought to be attained thereby. The intention of the lawmaker constitutes the law."

In this consideration it is proper to note that Section 102, *supra*, contained the words "or a traffic" in subsection (b) thereof unchanged for a period of 24 years prior to the 1963 amendment.

The Supreme Court of Indiana carefully considered the matter of omissions in legislative enactments, in the recent case of *Woerner v. City of Indianapolis* (1961), 242 Ind. 253, 177 N. E. (2d) 34, wherein it is said:

"\* \* \* in *State ex rel. 1625 East Washington Realty Co. v. Markey*, Judge, 1937, 212 Ind. 59, 65-66, \* \* \*" the court said:

“ “Legislative enactments are not more than any other writings to be defeated on account of mistakes, errors or omissions, provided the intention of the legislature can be collected from the whole statute. *Where one word has been erroneously used for another, or a word omitted, and the context affords the means of correction, the proper word will be deemed substituted or supplied. This is but making the strict letter of the statute yield to the obvious intent.*” 25 R. C. L. § 227, p. 978; *Gustavel v. State*, 1899, 153 Ind. 613, 54 N. E. 123.’

“In the recent case of *Town of Homecroft et al, v. Macbeth*, 1958, 238 Ind. 57, 65, 148 N. E. 2d 563, 567, this court stated:

“*Where it is clear that words have been omitted which are necessary to make the statute workable and to give it complete sense, such may be read into the act to express the true legislative intent. State ex rel. 1625 East Washington Realty Co. v. Markey*, 1937, 212 Ind. 59, 7 N. E. 2d 989.’” (Our emphasis)

An examination shows that when House Bill No. 1076, *supra*, was introduced in the 1963 Legislature the words “or a traffic” were *not* included in said subsection (b) although the remaining language employed in subsections (a), (b), and (c) of the amendment is identical with that found in the original Section 102 of the 1939 Act. When such words are included in the amended subsection (b), the meaning thereof is clear and unambiguous; however, when such words are omitted, amended subsection (b) is ambiguous and thus the remaining wording of the subsection fails to make sense. *The apparent purpose of the 1963 amendment was merely to add the new subsection (d) which provides for the suspension of driving privileges.*

Therefore, in answer to your question No. 1, it is my opinion that the words “or a traffic” should be read into amended subsection (b) immediately after the words “police

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officer" in order to give said subsection complete sense and express the true legislative intent.

Your question No. 2 relates to the meaning of the words "track or tracks of a railroad" as used in subsection (a) of House Enrolled Act No. 1076, *supra*. Your concern is whether such words refer to the same type of tracks as those employed in "street railway grade crossings" as used in subsection (c) of the Act, or whether the difference is one of "railroad" tracks as opposed to "streetcar" tracks. The answer is dependent upon a determination of the legislative intent.

In the case of *In re Columbia Ry., Gas and Electric Company (S. C.)* (1928), 24 F. 2d 828, 831, the court said:

"\* \* \* All the cases recognize that, while there is a similarity between railroads and street railroads, there is also a difference. *In a large number of cases, the courts, emphasizing the similarity, hold that in statutes the word 'railroads' includes street railroads, unless the contrary is required by the context.* Others, emphasizing the dissimilarity, hold that 'railroad' does not include 'street railroads,' unless required by the context. *They all hold, however, that the meaning of the word is to be determined by construing the statute as a whole.*

"If the scope of the act is such as to show that both classes of companies were within the legislative contemplation, then the word 'railroad' will include street railroads. On the other hand, if the act was aimed at railroads proper, then street railroads are excluded from the provisions of the statute. *Omaha Street Ry. Co. v. Interstate Commerce Comm.*, 230 U. S. 324, 335, 33 S. Ct. 890, 57 L. Ed. 1501." (Our emphasis)

The Acts of 1939, Ch. 48, which is being amended by House Enrolled Act No. 1076, *supra*, in Sections 1 and 7, as found in Burns' (1952 Repl.), Sections 47-1801 and 47-1807, respectively, read as follows:

47-1801. "The following words and phrases when used in this act shall, for the purpose of the act, have the

meanings respectively ascribed to them in this article." [47-1801—47-1821]

47-1807. "(a) Railroad. A carrier of persons or property upon cars, *other than street cars*, operated upon stationary rails.

"(b) Railroad Train. A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, *except street cars*.

"(c) Street Car. A car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality." (Our emphasis)

It will be noted that in the above definitions, the Legislature was very specific in excepting "street railways" from the definitions prescribed for both "railroad" and "railroad train."

However, by the use of subsection (c) both in the original enactment of Section 102, *supra*, of the 1939 Act and the amendment contained in House Enrolled Act No. 1076, *supra*, specific provision is made that "this section shall not apply to street railway grade crossings within a business or residence district." Thus, this subdivision contains the clear implication that it was the intention of the Legislature for the section to apply to street railway grade crossings *in other than business or residence districts*. If it had not had such intent, it would only have been necessary for the Legislature to eliminate subsection (c) and stand on the definitions of "railroad" and "railroad train" contained in Burns' 47-1807. However, by the inclusion of subparagraph (c) it is evident that the Legislature intended to make an exception to their general definition of "railroad" and "railroad train" contained in Burns' 47-1807, *supra*. Otherwise, the provision pertaining to "street railway grade crossings" contained in subsection (c) would be wholly meaningless and surplusage. In the 1947 O. A. G., pages 42, 46, No. 11, it is stated:

"\* \* \* It is a familiar rule of statutory construction that each provision and word of a statute must be given effect if possible, and *it will not be presumed that*

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*the legislature intended to put into a statute words which are meaningless (Garvin, Rec. v. Chadwick Realty Corp. (1937), 212 Ind. 499)."* (Our emphasis)

Therefore, while any question as to applicability to "street railways" is perhaps moot due to the abandonment of this type of railway in Indiana, nevertheless, it is my opinion, in answer to your question No. 2, that House Enrolled Act No. 1076, *supra*, as written, is applicable to "street railway grade crossings," *if any there be*, which are outside or beyond any business or residence district.

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OFFICIAL OPINION NO. 27

July 25, 1963

Mr. T. Michael Smith, Administrator  
Inheritance Tax Division  
106 State Office Building  
Indianapolis, Indiana

Dear Mr. Smith:

This is in response to your letter, wherein you request an Official Opinion upon the following subject:

"Will you please advise me by way of an Official Opinion as to whether that portion of the publicly financed retirement funds (namely, The Teachers Retirement Fund, The Public Employee Retirement Fund, The State Board of Accounts Retirement Fund, The State Police Retirement Fund and The Judges' Retirement Fund) payable on death is a transfer exempt from taxation under the Inheritance Tax Laws (Burn's, Section 7-2401, seq.), and if not, the extents to which such death benefits are taxable."

Any transfer to be taxable for inheritance tax purposes must be included in the provisions of the Acts of 1931, Ch. 75, Sec. 1, as found in Burns' (1953 Repl.), Section 7-2401, and more specifically as found in the fourth grammatical paragraph of said section, which reads in part as follows: