

priated prior to March 13, 1959, under the 1953 Act. In 1960 and thereafter, additional compensation paid to prosecuting attorneys by counties would require proper action by the appropriate county officials.

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OFFICIAL OPINION NO. 43

August 14, 1959

Honorable Walter A. Baran  
Indiana State Senator  
5128 Walsh Avenue  
East Chicago, Indiana

Dear Senator Baran:

This is in answer to your letter, requesting an Official Opinion in connection with the impounding of overweight vehicles, wherein you state:

“My question is, does a bail bond for the total amount placed at the time of arrest cover the word ‘stayed,’ release the truck or release the defendant only and keep the truck impounded until the time of trial?”

The question concerns Acts of 1931, Ch. 83, Sec. 8a, as amended, and as found in Burns’ (1959 Supp.), Section 47-536a, the pertinent parts of which read as follows:

“When a person is apprehended operating or causing to be operated a vehicle or combination of vehicles on any public highway in the state of Indiana with a weight in excess of the limitations set out in section 8, said vehicle or combination of vehicles shall be impounded and kept within the custody of the officer apprehending such vehicle or combination of vehicles and to be moved only as directed by said officer; and such officer shall cause *said truck to be kept impounded until its weight is so reduced as to comply with the limitations expressed in section 8 and until all fines and costs levied on the basis of such excess weight are paid or stayed*, and any person so apprehended who shall move said vehicle or combination of vehicles or cause

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the same to be moved, after the same is impounded by said officer, other than as expressly directed by said officer, shall be subject to be charged with a felony and upon conviction shall be subject to a fine of not less than \$500 nor more than \$1,000 to which may be added imprisonment in the Indiana state reformatory or state prison for a period of not less than one [1] nor more than five [5] years." (Our emphasis)

Under the Indiana Constitution, Art. 1, Sec. 17, offenses other than murder or treason shall be bailable by sufficient sureties. Bail has been held to apply before trial since the presumption that the accused is innocent still prevails. Bail does not apply after the accused has been found guilty.

Ex parte Pettiford (1929), 97 Ind. App. 703, 167 N. E. 154.

The fines and costs referred to in the statute cited are assessed at or after the time of trial if the accused has been found guilty of the offense charged. Therefore, a "bail" bond could not operate to release the impounded truck, which could only be lawfully released after the trial when fines and costs are levied and then are paid or stayed.

It is therefore my opinion that a recognizance bond or "bail" bond filed and approved prior to trial cannot "stay" the fines and cost which have not yet been imposed. Therefore, such bond, while operating to release the person of the defendant from custody could not operate to release the truck.

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OFFICIAL OPINION NO. 44

August 21, 1959

Honorable Robert S. Justice  
State Senator  
216 East Broadway  
Logansport, Indiana

Dear Senator Justice:

Your letter of July 17, 1959, has been received in which you enclose a copy of the Resolution of Consolidation of the Carroll