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1. The sale of state-owned lands coming within the purview of Burns' 22-529 and 22-530, *supra*, may be made by the use of sealed bids, to be opened and read publicly, at a specified time.
2. A. An anti-collusion affidavit may be required.
B. It is permissible to disclose the appraisal value to prospective bidders in their bid documents and in the legal notice of advertisement.
C. A certified or cashier's check may be required for "earnest" money, to be enclosed with the bid.

OFFICIAL OPINION NO. 51

September 10, 1959

Honorable William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter of August 13, 1959, has been received and reads as follows:

"This letter comes as an official request to review the Driver Education Permit as created by the 1957 General Assembly (Chapter 305, Section 1, Paragraph G, Page 843) to determine if the present interpretation and use of the law is actually according to the intent of the legislature that prepared it at that time. The present interpretation of the law (since April 1959) is causing an undue hardship on high school students past the age of 15 years 7 months who enroll in an approved driver education program in the high schools in Indiana.

"The problem simply stated is this: Students who take driver education in the high schools after reaching the age of 15 years 7 months are compelled to hold the driver education permit for 6 months and are not permitted to apply for a probationary operator's license.

The driver who is not school-trained is permitted to apply for a probationary operator's license at the age of 16 years 1 month. Therefore, the present interpretation appears to be in actual conflict with the provisions of the probationary operator's license as set forth by law. Thus, the school-trained driver is unfairly penalized by a time factor for completing an approved driver education course in the schools of the state."

Acts of 1957, Ch. 305, Sec. 1, referred to in your letter amends Acts of 1945, Ch. 304, Sec. 55, as amended by Acts of 1955, Ch. 273, Sec. 7, as found in Burns' (1959 Supp.), Section 47-2707, and reads as follows:

"(a) The department upon receiving an application for a beginner's permit from any person, more than eighteen [18] years of age, who, prior to the date of making such application, has operated a motor vehicle for a period of less than one [1] year, or from a person more than sixteen [16] and less than eighteen [18] years of age, shall, upon such person's successfully passing all parts of the examination, herein provided for a beginner's permit, not involving the actual operation of a motor vehicle, issue a beginner's permit entitling the applicant, while having such permit in his immediate possession, to drive and operate a motor vehicle upon a public highway for a period of six [6] months from the date of issuance of such permit, but must be accompanied, except when operating a motorcycle, by the holder of a valid operator's, chauffeur's or public passenger chauffeur's license, duly issued in accordance with this act, who is actually occupying [occupying] the seat beside the driver.

"(b) Any person to whom a beginner's permit has been issued shall present himself for an examination for an operator's license as provided in this act not later than thirty [30] days after the date of expiration of his beginner's permit: Provided, however, *That any holder of a beginner's permit shall be eligible to take such examination after thirty [30] days have elapsed from the date of issuance of such permit:* Provided further, That not more than two [2] such examinations

shall be allowed any such permittee during the period for which such permit is issued. Any such permittee, who does not take such examination within seven [7] months from the date of issuance of such permit, shall be required to obtain a new beginner's permit.

“(c) Any person, who is more than sixteen [16] years and one [1] month of age, who has successfully passed the examination for an operator's license as provided in this act after at least thirty [30] days' driving experience as the holder of a beginner's permit; or any person, more than sixteen [16] years and one [1] month of age, who has satisfactorily passed such examination after at least eight [8] months' driving experience as the holder of a school permit, such school permit having been held for the school term immediately preceding such application; or any person, more than eighteen [18] years of age, who has driven or operated a motor vehicle for more than one [1] year and has passed the examination for an operator's license; or any person over sixteen [16] years and one [1] month of age who previously has held an Indiana operator's, chauffeur's or public passenger chauffeur's license, and whose last held operator's, chauffeur's or public passenger chauffeur's license has not been suspended or revoked, shall, upon proper application to the department, be issued an operator's license which shall entitle the applicant to operate a motor vehicle upon the public highways of this state: Provided, That any person over the age of sixteen [16] years and one [1] month who has previously been a resident of any other state, district or country and has never held an Indiana operator's or chauffeur's license, and is at the time of his application for an operator's license under this act, a resident of the state of Indiana, and has held, for the calendar year next previous to his becoming a resident of the state of Indiana, an unrevoked operator's or chauffeur's license in the state, district or country in which he has been a resident, in accordance with the laws of such state, district or country, shall, upon application to the department, be issued an Indiana operator's license, in accordance with the same procedure as that prescribed herein for a person over the age of

sixteen [16] years and one [1] month who has previously held an unrevoked Indiana operator's or chauffeur's license.

“(d) Any person, eighteen [18] years of age or more, who has operated a motor vehicle for more than one [1] year and is employed for the principal purpose of operating a motor vehicle; or any person who drives or operates a motor vehicle while in use as a carrier of property for hire, who has satisfactorily passed the examination provided for chauffeurs in this act; or any person who was the holder of a chauffeur's license in any of the three [3] preceding calendar years, shall, upon proper application to the department, be issued a chauffeur's license, which shall entitle the applicant to operate a motor vehicle upon the public highways, in such employment or while such motor vehicle is in use as a carrier of property for hire or any private motor vehicle: Provided, however, That a chauffeur's license shall not entitle the licensee to operate a motor vehicle as a public passenger chauffeur.

“(e) Any person twenty-one [21] years of age or more who has successfully passed the physical examination by a duly licensed and practicing physician of this state and who has: Held a public passenger chauffeur's license for any one [1] of the next three [3] preceding years; or held a chauffeur's license for any one [1] of the three [3] next preceding years and passed the examination for a public passenger chauffeur's license; or has operated a motor vehicle for two [2] or more years and passed the examination for a public passenger chauffeur's license; shall upon proper application to the department upon a form prescribed by the commissioner be issued a public passenger chauffeur's license, which shall entitle him to operate any motor vehicle upon the public highways.

“(f) Whenever in this section it is provided that the department shall issue a permit or license the same shall be issued only upon the payment of the proper fee, as provided in this act, at the time when making application for such permit or license.

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“(g) Any high school student who is at least fifteen [15] years of age and enrolled in a driver education course approved by the superintendent of public instruction, when duly certified by his driver education instructor or principal, may make application for a driver education permit and upon passing the required examination shall be issued a driver education permit. Such permit shall serve as a student’s beginner’s permit: Provided, That while participating in practice driving on the public streets and highways, the holder shall be accompanied in the front seat of a car equipped with dual controls by a certified driver education teacher.

“Upon certification, on the reverse side of the driver education permit, that the permittee has successfully completed a driver education course and examination by his instructor or principal, such permit shall be validated by the bureau of motor vehicles, and the holder of the driver education permit shall be entitled to drive his family car during the daylight hours between sunrise and sunset while accompanied in the front seat by his properly licensed parent or guardian.

“The driver education permit shall become effective upon being issued and shall expire when the holder reaches the age of sixteen [16] years and one [1] month: Provided, however, That in no case shall a driver education permit expire in less than six [6] months: Provided, further, That any holder of a driver education permit shall be eligible to take an examination for an operator’s license within thirty [30] days after the expiration date of such permit.

“All licenses issued to persons under the age of eighteen [18] years shall be probationary licenses. Said license shall bear a notation explaining the meaning of ‘probationary’ as that word is used in this act, and setting forth the fact that all operators’ licenses issued to persons under 18 years of age are designated as ‘probationary’ under the terms of this act, and that the use of the word ‘probationary’ in no wise signifies that the license has been suspended, limited or revoked or is in any wise other than a fully valid operator’s

license under the laws of this state. Such probationary license shall be subject to revocation upon conviction of the probationary licensee of a moving traffic violation involving injury to persons or damage to property at the discretion of the commissioner of motor vehicles. Revocation under this section shall be in addition to all other penalties prescribed by law. Provided, however, that any revocation under this section shall not extend beyond the eighteenth birthday of such probationary licensee.

“Any person aggrieved by an order of revocation under this section may, within fifteen [15] days after notice thereof, file a petition in the circuit or superior court of the county in which such person resides for a review thereof, in which he shall state facts showing wherein he claims the second revocation is wrongful, unlawful or excessive. The filing of such a petition shall suspend the revocation until and unless the court determines that such revocation is not wrongful, unlawful or excessive. The right to appeal to the Supreme Court of the state of Indiana, from the judgment of such court shall be allowed as in civil cases.” (Our emphasis)

The underscored part of clause (b) and clause (c) is the same as appeared in the act prior to the 1957 amendment, but is underscored for the purpose of emphasis; the first rhetorical paragraph of clause (g) has been considerably changed by the new amendment in that in the old act a high school student fifteen [15] years and six [6] months of age, enrolled in an approved driver's training class, could drive a dual control car while accompanied by a certified instructor, while in the present act, it provides that any high school student fifteen [15] years of age, so enrolled, could apply for a driver education permit and upon passing an examination, be issued such permit. Thereafter he is required to be accompanied in the front seat by a certified driver education teacher; the remainder of clause (g) is entirely new legislation and is not underscored.

The primary object of statutory construction is to ascertain and effectuate the intent of the Legislature as shown by the

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whole act, the law existing before its passage, the changes made and the apparent motive for making them.

State ex rel. Rogers v. Davis (1952), 230 Ind. 479, 482, 104 N. E. (2d) 382;

1955 O. A. G., pages 81, 90, No. 23.

Courts will look to the general purpose and scope of a statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567, 24 N. E. (2d) 776;

State ex rel. Bailey v. Webb (1939), 215 Ind. 609, 612, 21 N. E. (2d) 421.

When the above rules of statutory construction are applied to the foregoing amendatory statute it is necessary to determine the legislative intent from a consideration of each of its provisions. When this is done, in the instant case, it is apparent that prior to the new statute, as well as under the new amendatory act, any person more than sixteen [16] years and one [1] month of age, who had successfully passed the examination for an operator's license, after at least thirty days' driving experience as the holder of a beginner's permit, could apply for an operator's license.

It is equally clear that prior to the amendatory statute, no provision was made for a driver education permit. Under the old statute a high school student fifteen [15] years and six [6] months of age could operate a dual control automobile while accompanied by and taking instruction from a certified instructor of driver training. The new act changed this by permitting such a student fifteen [15] years of age, enrolled in such an approved course, certified to by his driver education instructor or principal, to make application for a driver education permit and upon passing the required examination to be issued such permit. The statute states it shall serve as a student beginner's permit and while practicing driving on the public streets or highways, he shall be accompanied in the front seat of a car equipped with dual controls by a certified driver education teacher.

The new act further provides that upon certification on the reverse side of such driver education permit, that the per-

mittee has successfully completed a driver education course and examination by his instructor or principal, such permit shall be validated by the Bureau of Motor Vehicles and the driver education permit shall entitle him to drive his family car during daylight hours between sunrise and sunset while accompanied in the front seat by his properly licensed parent or guardian.

Thereafter, the new statute provides such driver education permit shall become effective upon being issued and shall expire when the holder reaches the age of sixteen years and one month. Had the statute stopped at this point, no ambiguity would have resulted. However, it is thereafter provided "That in no case shall a driver education permit expire in less than six [6] months: Provided, further, That any holder of a driver education permit shall be eligible to take an examination for an operator's license within thirty [30] days after the expiration date of such permit."

From the foregoing it is apparent the Legislature was seeking to provide standards for the issuance of a new type of driver education permit and at the same time it retained the provision that a person sixteen [16] years of age could obtain a beginner's permit and if he was sixteen [16] years and one [1] month of age and had met the other requirements, that he would be given an operator's license. Under this latter provision such an applicant is only required to be of that age and to have had thirty days' driving experience under a beginner's permit. While if a strict construction is given to the provision that the driver education permit must remain in effect for at least six months before he could apply for an examination for an operator's license, it might require an older boy or girl, with a longer period of supervised driver training and experience, to be eligible for application for an operator's permit to await the expiration of such six months' period. This, in my opinion, does not seem to be the legislative intent shown by said act from an examination of all of its parts.

The first Proviso concerning the driver education permit added by the 1957 amendment merely states such driver education permit shall not "expire" in less than six months.

It is considered the words "expire" and "expiration" are synonymous and their true legal meaning is shown from the authorities hereinafter referred to.

Black's Law Dictionary, 3d Ed., defines the word "expiration" as "Cessation; termination from mere lapse of time; as the expiration of a lease, statute, and the like. (Citing cases)."

In Words and Phrases, Vol. 15A, p. 472, "Expiration of Lease," a number of cases are cited and referred to on that proposition including the following holding in the case of *Kramer v. Amberg* (1889), 4 N. Y. S. 613, 15 Daly 205, as follows:

"'Expiration of the lease,' as used in Code Civ. Proc. § 2231, authorizing summary proceedings against a defendant who holds over 'after the expiration of the lease,' means that the lease has come to an end either by effluxion of time or its own limitation. The ending of the lease by the exercise of the landlord's option after condition broken is the termination, not the expiration, of the lease."

In the same volume and page of Words and Phrases under the caption "Expiration of License Period" it is stated:

"That action by the People on the bond issue by surety under the Alcoholic Beverage Control Law was not commenced within four months after bond was surrendered by principals would not absolve principals from indemnifying the surety on ground that surety paid the state without having legal duty to do so, where the action by the People was commenced 'within four months after the expiration of the license period' as provided in the bond, since the 'surrender of the license' did not constitute the 'expiration of the license period.' *American Employers' Ins. Co. v. Radzeweluk*, Sup., 4 N. Y. S. 2d 74, 76, 167 Misc. 447."

In 53 C. J. S. Licenses, p. 646, § 43 (a), it is, in part, stated:

"A license terminates by lapse of time on the date which is fixed by statute or ordinance or by the licensing authorities acting within their statutory powers, and the licensee may exercise the rights and privileges granted by the license only for the term specified. A license or permit may also be voluntarily abandoned or surrendered, * * *."

The last referred to authority cites the case of *Shemeth v. Selectmen of Holden et al.* (1944), 317 Mass. 278, 58 N. E. (2d) 6, at page 7 where it is said:

“* * * A license or permit granted by public authority to perform acts which would otherwise be illegal may be voluntarily abandoned or surrendered. See *Wilde, J.*, in *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 467; *Tracy v. Ginzberg*, 189 Mass. 260, 75 N. E. 637; *Jubinville v. Jubinville*, 313 Mass. 103, 108, 46 N. E. 2d 533, 144 A. L. R. 1008.”

From the foregoing it is clear that the use of the word “expire” in connection with a license or lease generally refers to the time of its expiration by lapse of time. That as an ordinary rule a person has a right to surrender a license for cancellation or conversion and in such event the license has not expired, but has terminated by a surrender, conversion or by some other means than lapse of time.

I am of the opinion this is the true meaning of the first Proviso to the driver education permit provision here being considered. Since the office of a Proviso is merely to qualify or affect the language immediately preceding it, its purpose in converting the same to an operator’s license when he becomes this case is merely a qualification of the immediate preceding language that the driver education permit “shall expire when the holder reaches the age of sixteen [16] years and one [1] month,” to make possible such driver education permit to continue in existence beyond such age of sixteen years and one month, for a total existence of six months, without “expiring” of its own accord. However, such language does not prohibit or restrict the holder of a driver education permit from sixteen years and one month of age. This is true because the statute under clause (g) provides that such driver education permit “shall serve as a student’s beginner’s permit.”

Summarizing the foregoing, I am of the opinion the holder of a driver education permit who has reached the age of sixteen years and one month and who meets the other requirements for application for an operator’s license as required for a person of like age then holding a beginner’s permit acquired at the age of sixteen years and older may convert the same by

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applying for and being issued an operator's license under the same conditions prescribed for a beginner's license permittee.

I am, further, of the opinion that the holder of a driver education permit is not required to convert or surrender such permit on becoming sixteen years and one month of age. He may retain the same, and use the same until such permit has been in effect for a six months' period, and within a period of thirty days thereafter he is eligible to take an examination for a probationary operator's license.

OFFICIAL OPINION NO. 52

September 21, 1959

Honorable William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter of August 26, 1959, has been received and reads as follows:

"May I have an Official Opinion concerning the two questions in reference to an interpretation of the provisions of the 1959 Teachers' Sick Leave Act?

"1. Is a teacher who resigns from a school corporation in Indiana and later is reemployed by the same system entitled to ten or seven days sick leave upon her reemployment? There seems to be a question about the meaning of ten days the first year and seven days in each succeeding year. Shall we interpret the provision to mean that a reemployed teacher is not entitled to ten days upon her return because she has already served her first year in the corporation?

"2. Does teaching service in another school corporation in Indiana or elsewhere limit the eligibility of a teacher for ten days sick leave during the first year in our school system? Some people have advanced the idea that any teacher who has served in an Indiana