In conclusion, it is my opinion that the apprehending officer may not keep a vehicle impounded after all fines and costs have been paid despite the fact that the civil penalties remain unpaid. The exclusive remedy to enforce judgment rendered, so far as it concerns the civil penalty, is the civil action brought by the prosecuting attorney as provided in the statute. This has not been changed by the 1959 amendment to Section 47-536a, supra.

OFFICIAL OPINION NO. 21
June 10, 1959

Honorable G. Robert Kirby
State Representative
R. R. No. 2
New Castle, Indiana

Dear Representative Kirby:

Your letter of May 8, 1959, has been received and reads as follows:

"A question has arisen as to the rights, duties and obligations of members of the school board of a consolidated school system composed of all city and township schools. These schools were consolidated under the Acts of 1947, Chapter 123. I respectfully request an official opinion on the following questions:

"A. Concerning transportation to school:

"1. May the school board establish pick-up centers for children whom the law requires to be furnished transportation, and require children to walk to such centers if they desire transportation?

"2. If a child lives nine-tenths (.9) of a mile from his designated grade school and this school is part of the city-township school corporation but outside the city limits one mile, must the school corporation furnish free transportation?"
"3. If a child attending junior or senior high school lives two and one-half miles from the city corporation line, and three miles from his designated school, is he entitled to free transportation from his home to his school? Both of the above mentioned schools are within the city limits."

It has been held in construing township transportation statutes that vehicles need not go to the home of each pupil, but pupils may be required to travel a reasonable distance to meet a vehicle.


It has been held that Courts will not undertake any mandate to direct the route that a school bus is to take.

State ex rel. Stewart v. Miller (1923), 193 Ind. 492, 141 N. E. 60.

From the foregoing and in answer to your question No. 1, I am of the opinion these children could be picked up at established pick-up centers for transportation. The establishment of such pick-up centers would be a discretionary matter within the authority of the school officials and could be reversed by a Court if under the particular circumstances in that case the Court determined the school officials had abused their discretion in the establishment of such centers.

Concerning your second and third questions, I wish to advise that a consolidation of schools under Acts of 1947, Ch. 123, as amended, as found in Burns' (1948 Repl., 1957 Supp.), Section 28-5901 et seq. gives such consolidated school the classification of a city school corporation. Under Section 10 of said Act, as found in Burns' (1948 Repl.), Section 28-5910, concerning transportation, it is provided:

"Said school board of such consolidated school corporation shall be governed by the laws of the state now in force for transportation of pupils to such consolidated schools: Provided, That if a consolidated school is maintained within the corporate limits of a city or town, then the said school board shall provide and main-
tain means of transportation for all pupils in elementary or high schools, or both, that live more than one-half mile outside the city or town limit: and, Provided further, That if by reason of condition of roads or streams, or distance, it would not be advantageous for certain children of school age to be transported to any consolidated school established and maintained under this act, the said school board may maintain separate schools and provide schoolhouses for such children so affected by condition of roads, streams, or distance to consolidated schools."

Under the clear provisions of the foregoing statute, the child referred to in your third question would be entitled to transportation since your question states the child lives two and one-half miles from the city corporation line, three miles from designated school and that the school is located within the city limits.

However, the answer to your second question is more difficult, for there the child lives nine-tenths of a mile from his designated grade school which is located outside the city corporate limits. While the foregoing section of the statute states that such school corporation shall be governed by the laws of the state now in force for transportation of pupils, there is no uniformity in our transportation statutes and no general statute governing such situation. The nearest approach to the question is contained in Acts of 1907, Ch. 233, Sec. 2, as amended, as found in Burns’ (1948 Repl.), Section 28-2804 where, on discontinuance of schools, it is provided, in part, as follows:

“...It shall be the duty of the township trustees to provide for the education of such pupils as are affected by such or any former discontinuance in other schools, and they shall provide and maintain means of transportation for all such pupils that live at a greater distance than two [2] miles and for all pupils between the ages of six [6] and twelve [12] that live less than two [2] miles and more than one [1] mile from the schools to which they may be transferred, either within the township or in an adjoining township or school corporation, as a result of such discontinuance. In all townships
where a school has been abandoned under the provisions of this act, the trustee shall provide for the transportation of all pupils of any other school of such township who live more than two [2] miles and all pupils between the ages of six and twelve [6 and 12] that live more than one [1] mile from the school to which they are attached, whenever a majority of the patrons of such school petition the trustee to provide such transportation. * * *”

Also, the Acts of 1921, Ch. 253, Sec. 2, as amended, as found in Burns’ (1948 Repl.), Section 28-2805, concerns transportation in school corporations where a school has been abandoned, and, in part, provides:

“...In all school corporations of this state, where a school has been abandoned within the last twenty [20] years, or may hereafter be abandoned, the school trustees shall provide and maintain means of transportation for all pupils of such abandoned school who live a greater distance than one and one-half [1½] miles from the schools to which they are assigned; Provided, That township school trustees, boards of school trustees and boards of school commissioners may provide means of transportation for any pupils in any school district or school corporation, if the conditions in the school district or school corporation, in the judgment of the township trustee, board of school trustees or board of school commissioners warrant the same; * * *”

It is my opinion under the quoted statutes concerning abandoned schools and other statutes of a similar nature, transportation would not be mandatory for a child attending a consolidated school located outside the city and nine-tenths of a mile from the child’s home. However, we are confronted with the possibility that a Court considering the lack of uniformity in our transportation statutes and taking into consideration the age of the child concerned, the type of territory and terrain in question as well as the hazards of traffic, might determine that refusal of transportation constituted an abuse of discretion. Especially would this be true if any discrimination were made in the transporting of children for comparable distances in other parts of the school corporation.