Dear Superintendent Zeis:

This is in answer to your letter dated April 22, 1959 in which you request an Official Opinion on the following questions:

"1. Under the present law does the phrase, 'all fines and costs levied on the basis of such excess weight' include the 'civil penalty' assessed on the basis of the excess weight, thereby making it the duty of the apprehending officer to keep such vehicle impounded until the civil penalty is also paid, or is the action which the prosecuting attorney is authorized to bring in the name of the state the exclusive method by which the collection of the penalty is to be enforced?

"2. Will your answer to question #1 also apply when the 1959 amendment to this section becomes law?"

The statute to which you refer is Acts 1931, Ch. 83, Sec. 8a, as amended, as found in Burns' (1957 Supp.), Section 47-536a, and is quoted as follows:

"Any person who operates or causes to be operated any vehicle or combination of vehicles having a weight in excess of one [1] or more of the limitations set out in section 8 shall be guilty of a misdemeanor and on conviction shall be fined in the sum of five dollars [§5], and shall in addition be assessed the following civil penalties:

"(1) If the total of all excesses of weight under one [1] or more of the limitations in section 8 is less than 1,000 pounds, no fine nor penalty.

"(2) If the total of all excesses of weight under one or more of the limitations in section 8 is less than 2,000 pounds,"
pounds and more than 1,000 pounds, two cents [2¢] a pound for each pound over 1,000 pounds.

“(3) If the total of all excesses of weight under one or more of the limitations in section 8 is 3,000 pounds or less and more than 2,000 pounds, four cents [4¢] a pound for all such excesses.

“(4) If the total of all excesses of weight under one or more of the limitations in section 8 is 4,000 pounds or less and more than 3,000 pounds, six cents [6¢] a pound for all such excesses.

“(5) If the total of all excesses of weight under one or more of the limitations in section 8 is 4,000 pounds or more and less than 5,000 pounds, eight cents [8¢] a pound for all such excesses.

“(6) If the total of all excesses of weight under one or more of the limitations in section 8 is 5,000 pounds or more, ten cents [10¢] a pound for all such excesses.

“All civil penalties so assessed shall be collected and deposited to the credit of the motor vehicle highway account. In the event any civil penalty is not paid the prosecuting attorney of the judicial circuit in which the action is pending is authorized to bring an action in the name of the state of Indiana to enforce the collection of the same.

“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 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."

Acts of 1959, Ch. 362 amended the above act by adding the following:

"If any motor vehicle, impounded under the provisions of this act, is held for a period in excess of sixty days, the impounding officer after giving notice by registered mail to the owner of said vehicle, at his last known address, shall cause such motor vehicle to be advertised for sale by inserting a notice, by one publication, in two newspapers, of general circulation and of opposite political faiths in the county in which the motor vehicle is impounded, and within ten days after the date on which the notice was published, the impounding officer shall sell such motor vehicle to the highest bidder. All expenses which may be incurred in the storage and selling of such motor vehicle, including civil penalties, shall be deducted from the proceeds received from the sale, and any amount remaining shall be forwarded to the owner by registered mail to the address to which original notice was given. The civil penalties shall be covered into the state treasury and shall be credited to the Motor Vehicle Highway Account. The impounding officer is hereby authorized to give a bill of sale to any such purchaser, upon which the bureau of motor vehicles is authorized to issue a certificate of title.

"Provided, however, that nothing herein contained shall affect the rights or remedies of any persons holding prior valid liens on such impounded vehicles and any sale under this act shall be subject to liens of record or recorded on the title and to mechanic’s possessory liens."

In order to properly answer the questions, it is necessary to define the words “penalty,” “fines,” and “costs.”
Corpus Juris defines a penalty as a sum of money of which the law exacts payment by way of punishment for doing some act that is prohibited or omitting to do some act that is required to be done. 70 C. J. S. Penalties, § 1, p. 387. The word has been given a broad meaning encompassing all types of punishment, however, it is generally confined to pecuniary punishment and includes fines. A civil penalty is one which is recoverable in a civil action and goes to the party suing.

City of Hudson v. Granger (1898), 23 Misc. 401, 52 N. Y. S. 9, 10.

A fine is defined by Corpus Juris as a pecuniary penalty imposed on conviction for a misdemeanor or a crime. 36 C. J. S. Fines, § 1, p. 780. A fine is never recoverable in a civil action but only in a criminal case. When recovered it goes to the state.

City of Hudson v. Granger (1898), supra.

While the word “penalty” has a broader meaning than the word “fine,” still a fine, in a judicial sense, is always a penalty although a penalty is not necessarily a fine, nor even a criminal punishment.


The word “costs” is a term of judicial art, and as applied to proceedings in a court of justice, has, in the acceptance of the legal profession, and by the practice of the courts, a well understood, fixed and technical meaning. Costs are certain allowances authorized by statute to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceeding. 7 I. L. E. 138, Costs. They are part of the burden of litigation.

Wilmont v. City of South Bend (1943), 221 Ind. 538, 48 N. E. (2d) 649.

Thus, costs are not a penalty at all but rather the expense incurred in litigation.

From the definitions stated above, it is my opinion that the word “fine” and the phrase “civil penalty” are distinguishable in meaning and are not the same. This also applies to the word “costs” and the phrase “civil penalty.”
Since the statute allows the apprehending officer to impound a “vehicle or combination of vehicles” only until the weight of such “vehicle or combination of vehicles” is so reduced as to comply with the statute and until all fines and costs levied on the basis of such excess weight are paid or stayed, and since civil penalties are neither fines nor costs, non-payment of the civil penalty will not be a ground for keeping such “vehicle or combination of vehicles” impounded.

The prosecuting attorney is thus left with whatever civil remedies he has to enforce the collection of such penalty. It is my opinion that this applies to both Acts 1931, Ch. 83, Sec. 8a, supra, and the 1959 amendments thereto, since the vehicle may not be kept impounded after the fines and costs have been paid. The grounds for keeping the vehicle impounded have not been changed by the 1959 amendment.

In 1953 the Attorney General rendered an Official Opinion on the question involving the action which may be taken by the prosecuting attorney on the civil penalty. I quote it as follows:

“The fine and costs may be collected in the usual manner, and the defendant may be imprisoned for failure to pay or replevy the same and the vehicle or combination of vehicles involved shall be kept impounded until all fines and costs levied on the basis of the excess weight are paid or stayed. If the defendant does not pay the civil penalty assessed, then by the specific terms of Section 47-536a, supra, the prosecuting attorney is authorized to bring an action in the name of the State of Indiana to enforce the collection of the same. Since the conviction of the person charged is a condition precedent to the assessment of the civil penalty, and his liability has already been fixed and determined, the civil action is in the nature of a suit on a judgment, which should be pleaded. A suit to collect a statutory penalty is not ordinarily in the nature of a suit on a judgment.

“* * * * The Statute does not require that the criminal action be pending at the time the civil action is filed.”

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?"