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Survey of Recent Developments in Indiana Law

The staff of the *Indiana Law Review* is pleased to publish its second annual Survey of Recent Developments in Indiana Law. This survey, combining a scholarly and practical approach to recent cases and statutes, emphasizes new developments in Indiana law. No attempt has been made to consider all cases decided or statutes enacted during the survey period. This survey covers the period from June 1, 1973, through May 31, 1974.

I. Foreword: Indiana Justice of the Peace Courts—Problems and Alternatives for Reform

*David C. Campbell**

> *The weakness of local courts of limited jurisdiction is perhaps the most persistently identified failing of American court systems, and one that is long overdue for remedial action.*[1]

The second annual *Survey of Recent Developments in Indiana Law* brings to the bench and bar enlightening discussion of the most important cases recently decided by the Indiana Supreme Court and Indiana Court of Appeals. Although the treated cases reflect the most significant developments in the substantive law, they represent an insignificant percentage of the total number of cases handled by Indiana courts. The majority of cases handled in Indiana consist of small civil claims, traffic offenses and minor criminal offenses which rarely, if ever, rise to the status of cases deserving treatment in the *Survey*. Yet these cases and the manner in which they are adjudicated are significant and deserving of comment.

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*Executive Secretary, Indiana Judicial Study Commission. J.D., Indiana University, 1974. The views expressed herein are those of the author and should not be construed as either those of the Indiana Judicial Study Commission or of the *Indiana Law Review*.

[1] ABA Comm'n on Standards of Judicial Administration, Standards Relating to Court Organization 19 (Tent. Draft, 1973).

Small claims, traffic offenses and minor criminal offenses are handled in Indiana by a category of courts designated as courts of limited jurisdiction. Within this category are municipal, city, town and justice of the peace courts.[2] The municipal court exists only in Marion county and consists of a single multi-judge court operating under the administration of a chief judge. Although there are approximately eighty-seven city courts now operating, their impact on the judicial process is most significant in the urban area of Lake county and in moderately urban areas such as Vigo and Delaware counties. Town courts have a relatively minor impact on the judicial system and there are currently only seventeen in operation. Consequently, excluding Lake and Marion counties, the majority of minor cases are handled by justice of the peace courts. In 1970 alone, justice courts processed an estimated 210,000 cases.[3]

The importance of justice courts to the entire judicial system cannot be underestimated. Merely by handling a high volume of cases, they free the general trial courts for more complex cases. Further, they are charged with adjudicating small claims and enforcing the traffic safety laws of the state. Justice courts are also important in a sense that is often overlooked. The majority of citizens of Indiana rarely become involved in judicial proceedings and, when they do, the case normally involves a minor civil, traffic or criminal matter docketed into a justice court. How that matter is handled determines the litigant's first and possibly only impression of the judicial process. Therefore, justice courts contribute to the development of public attitudes regarding the entire judicial system.[4]

Justice courts have a long history as part of the Indiana judicial system. The predecessor of the justice court was established under the Laws of the Northwest Territories in the late eighteenth century[5] and evolved into the current system organized under the Constitution of 1852.[6] As early as 1845, one commentator noted that the purpose of the Indiana justice court was "to give the suitor a cheap and easy method of obtaining a remedy in the smaller class of actions, without the embarrassment of legal forms, and generally

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[2]IND. CODE § 33-6-1-1 (IND. ANN. STAT. § 4-5801, Burns 1968) (municipal courts); *id.* § 33-10-2-1 (IND. ANN. STAT. § 4-6006) (city and town courts); *id.* § 33-11-1-1 (IND. ANN. STAT. § 5-102) (justice of the peace courts).

[3]STAFF OF INDIANA JUDICIAL STUDY COMM'N, REPORT NO. 1—JUSTICE OF THE PEACE SYSTEM 29 (1971).

[4]*See generally* Weinshienk, *Limited and Special Jurisdiction*, in JUSTICE IN THE STATES 125 (W.F. Swindler ed. 1971); Note, *Small Claims in Indiana*, 3 IND. LEGAL F. 517 (1970).

[5]LAWS OF THE NORTHWEST TERRITORY 1788-1800, at 4 (T.C. Peace ed. 1925).

[6]IND. CONST. art. 7, § 14 (1852).

without the aid of professional assistance."[7] The justice court remained relatively unchanged until removed from the constitution by the new judicial article of 1970.[8] Although the purpose and philosophy underlying the justice courts has not been challenged, the effectiveness of justice courts in fulfilling that purpose has come under severe criticism. Generally, critics argue that concepts of judicial organization and administration adapted to meet eighteenth and nineteenth-century problems are not capable of solving twentieth-century problems. The Indiana General Assembly has reacted to this criticism and has limited the life of the justice of the peace system to January 1, 1976.[9] For a number of sessions, the Assembly has been concerned with justice courts and has considered and rejected proposals ranging from retention of the current system with minor cosmetic changes to creation of a new statewide system of courts of limited jurisdiction. Because the 1976 deadline is rapidly approaching, the fate of the justice system and the method by which the Indiana judicial system will adjudicate small claims and enforce traffic laws rests with the 1975 General Assembly.

There are several problems inherent in the justice of the peace system which the legislature must address in addition to the problem of the structure or organization of any replacement system. One such problem is the fee system. Most justices retain a portion of the filing fee or costs as their personal compensation for presiding.[10] In 1927, the United States Supreme Court held that, in a case in which charges are litigated, it is a denial of due process under the fourteenth amendment to subject the defendant's liberty or property to the judgment of a court having a direct personal or pecuniary interest in finding against a defendant.[11] Recently, the Court reaffirmed this position and also held that a trial de novo on appeal does not provide the defendant with the due process of law he should have received in the first instance.[12] The Indiana fee system has avoided constitutional attack because of a little recognized

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[7]G. VAN SANTVOORD, THE INDIANA JUSTICE 10 (1845).

[8]Since the amendment of article 7 of the Indiana Constitution, approved on November 3, 1970, no constitutional provision is made for justice of the peace courts. However, as provided in IND. CONST. art. 7, § 20, such courts are to remain in existence "unless and until such courts are abolished or altered or such laws repealed or amended by an act of the General Assembly . . . ." IND. CODE § 33-11-21-1 (IND. ANN. STAT. § 5-123, Burns Supp. 1974) provides for the continued existence of the justice of the peace system until January 1, 1976.

[9]See note 8 *supra.*

[10]IND. CODE §§ 33-11-18-12, -13 (IND. ANN. STAT. §§ 5-1702, -1703, Burns 1968).

[11]Tumey v. Ohio, 273 U.S. 510 (1927).

[12]Ward v. Village of Monroeville, 409 U.S. 57 (1972).

statute providing for the justice's fee to be paid by the township in any criminal case in which the defendant is discharged.[13] However, because many justices are encouraged to dispense justice for profit, it is doubtful whether the statute in fact assures due process. Nonetheless, beyond the constitutional complications of the fee system, and even beyond the potential for unscrupulous fee collection, lies the appearance of impropriety. By its nature the fee system creates an attitude of presumed prejudice.

Apparently to offset any inherent prejudice in the fee system, Indiana has established an annual fee retention maximum of $4,500.[14] However, any supposed benefit resulting from the limitation is offset by the negative effect the maximum has on the justice's desire to hear cases. With a $4,500 maximum, once a justice hears 1,125 cases, the pecuniary incentive is removed. The only available study in Indiana correlating maximum fee retention with caseload indicated that the caseload of sixty percent of the justices surveyed substantially declined after the maximum caseload was reached.[15]

Further, there are no educational qualifications for the office of justice of the peace. The General Assembly has been concerned with this problem since 1957 when it attempted to limit the office either to attorneys, to justices who have completed a full term, or to persons who have successfully completed a supreme court examination.[16] Since at that time the justice court was a constitutional office, the legislative qualifications were held unconstitutional.[17] There are, therefore, no educational requirements for the office, and additionally there are no mandatory, and few voluntary, opportunities for a justice to obtain any legal education after assuming office. A 1970 survey revealed that only four percent of all justices were attorneys.[18] However, since the justice is a judicial officer exercising judicial functions, it is clear that he should be knowledgeable in the law. In the context of a small claims civil case in which neither side is represented by counsel, it is the duty and function of the justice to protect the legal rights of both parties and to base his decision on the substantive law. Consequently, a working knowledge of the law is required. It is conceivable that a small claim in a justice court may involve a consumer dispute requiring the application of the Indiana Deceptive Sales Act, the Uniform Commercial Code,

[13] IND. CODE § 33-11-18-12 (IND. ANN. STAT. § 5-1702, Burns 1968).

[14] *Id.* § 33-11-18-3 (IND. ANN. STAT. § 5-106, Burns Supp. 1974).

[15] STAFF OF INDIANA JUDICIAL STUDY COMM'N, *supra* note 3, at 25. Twenty-eight percent of the justices surveyed reached the statutory maximum.

[16] *See* IND. CODE § 33-11-18-5 (IND. ANN. STAT. § 5-108, Burns 1968).

[17] *In re* Petition of the Justice of the Peace Ass'n, 237 Ind. 436, 147 N.E.2d 16 (1958).

[18] STAFF OF INDIANA JUDICIAL STUDY COMM'N, *supra* note 3, at 28.

the Uniform Consumer Credit Code, and the Federal Truth in Lending Regulations, as well as numerous other statutory and common law doctrines. Further, when one party is represented by counsel, a justice with inadequate legal training is often unable to grasp specific legal arguments or to adequately protect the legal rights of the non-represented party. This problem is as equally applicable to criminal cases as to search or arrest warrants issued by justices.[19]

Much of the legislative discussion in regard to reform of the justice courts has been concerned with the educational qualifications of justices. Under one proposal, judges of courts of limited jurisdiction would be required to be attorneys while, under another, a person would be qualified to serve if he passed a supreme court examination and attended an annual educational conference.[20] From the practical standpoint of avoiding the time and expense of examinations and conferences, the attorney requirement is clearly preferable. Further, since the goal of any educational requirement is to assure that the judge is trained in the law, that goal is better served by requiring that the judge be an attorney. The most effective way to obtain a trained judiciary is to require a solid formal legal education.

An additional category of problems associated with the current justice system concerns facilities and resources. It is the duty of the township trustee and township advisory board to provide a suitable courtroom and adequate supplies for the operation of the justice court.[21] All too often, however, the courtroom is in the justice's home and the supplies consist of minimal necessities.[22]

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[19]Note, *Small Claims in Indiana*, 3 IND. LEGAL F. 517, 521 (1970), states: "This lack of legal training is reflected in the work of lay Justices and inclines them to look to the prosecuting officer for guidance in imposing sentence . . . ." The use of non-attorney justices in criminal cases has been held a violation of due process. Gordon v. Justice Court, 12 Cal. 3d 323, 525 P.2d 72, 115 Cal. Rptr. 632 (1974). *Contra*, Ditty v. Hampton, 490 S.W.2d 772 (Ky. 1972), *appeal dismissed*, 414 U.S. 885 (1973).

[20]*Compare* Ind. S. 40, 98th Gen. Assembly, 1st Sess. (1973), *with* Ind. H.R. 1065, 98th Gen. Assembly, 2d Sess. (1974).

[21]IND. CODE § 33-11-18-11 (IND. ANN. STAT. § 5-113, Burns 1968). The statute is mandatory; it requires the township trustee and advisory board to make provision for suitable facilities and supplies. The circuit judge is given authority to enforce the provision by mandate.

[22]A recent survey of justices of the peace reported the following responses to a question regarding the location of courtrooms:

Type of Building Where Court Located	*Number of Responses*
Private Home	79
Office Building	54
City Hall	26

The problem of "kitchen justice" or lack of adequate facilities is primarily attributable to the failure of local support rather than to an absence of concern by local justices.[23] As long as justice courts are operated with the philosophy of making a profit for the township, rather than of servicing the people, the problem will remain.

Although the problems of compensation, qualifications and lack of adequate support pose serious obstacles to efficient and effective operation of justice courts, a clear failure of the system is apparent when subjected to traditional notions of judicial organization and administration. One perpetual problem plaguing the system is the absence of uniformity.[24] The system is designed to handle small civil claims and traffic cases. However, a large number of justice courts never hear civil cases and most devote little time to them. In conjunction with other factors, the failure of justice courts to exercise a uniform civil jurisdiction often leaves the small claimant without a remedy. The Indiana Judicial Study Commission directed the problem to the General Assembly in 1973, noting:

> Presently, there is no readily accessible small claims court in Indiana. Justice of the Peace courts handle traffic cases as a general rule. The civil cases which are heard in JP court are generally of the collection variety. Thus, the litigant dissatisfied with consumer goods or involved in a dis-

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Public Office Building	17
Police Station	7
Courthouse	7
Storefront	4
Other	4

STAFF OF INDIANA JUDICIAL STUDY COMM'N, REPORT NO. 2—JUSTICE OF THE PEACE SYSTEM, in INDIANA JUDICIAL STUDY COMM'N ANNUAL REPORT (1974) (based on 182 responses; discrepancies due to multiple responses).

[23] *Id.* The following questions and responses generally indicate the degree of township support.

Question. Does the township assume the cost of providing a courtroom?

Yes	91
No	89
No Response	2
Total	182

Question. Does the township make suitable provision, and appropriate sufficient money, for the purchase of necessary supplies and equipment for the maintenance of your courtroom and conducting of business in your court?

Yes	91
No	89
No Response	2
Total	182

[24] One example of the absence of uniformity is illustrated by the variance in township support of resident courts. *See* note 23 *supra.*

> pute with a merchant or other citizen is in a precarious position. Attorneys are unwilling to accept the cases due to the small monetary return. If they do accept the case, the fee would dissipate a large amount of the damages. If the claimant resorts to JP court the justice of the peace in all probability is untrained in the law and incapable of rendering justice although he may strongly desire to do so. . . . Thus the sad fact is that although great inroads have been made in the area of consumer protection laws, their protection is largely nothing more than window dressing due to the fact that the present court system is not set up to serve the public.[25]

The justice court, the "people's court," fails to provide Indiana citizens with a uniform small claims forum.

In addition to the problem of exercise of uniform jurisdiction, the justice of the peace system is characterized by an extreme caseload imbalance between courts and a perpetuation of courts on an arbitrary basis rather than on a demand basis.[26] In essence, the system is not responsive to local demand for court services and cannot efficiently satisfy that demand.

The problems inherent in the current justice of the peace system are known. The real question concerns the solution of those problems and the ramifications of the solution on the entire judicial system. There are three available general alternatives for reform of the justice of the peace system. These are to retain the current system with minor modification in selected areas, to replace the current minor courts with a more sophisticated, statewide, and uniform tier of courts of limited jurisdiction, or to abolish the existing minor courts and expand the general trial courts to absorb the litigation.

The success of the first alternative would depend entirely upon the degree of modification undertaken.[27] At the least, the fee system must be abolished, qualifications for justices must be required and adequate financial support must be provided. Such modifications, while adding a degree of legitimacy to justice courts, cannot without significant structural change insure the uniform exercise of civil jurisdiction or the efficient distribution of judicial manpower, or render the system susceptible to modern techniques of court administration. In short, minor modifications would work only cosmetic rather than substantive changes. Therefore, since

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[25]INDIANA JUDICIAL STUDY COMM'N, EXPLANATION AND FULL TEXT OF THE COUNTY COURT BILL 8 (1973).

[26]*See generally* STAFF OF INDIANA JUDICIAL STUDY COMM'N, *supra* note 3.

[27]*See generally* Ind. H.R. 1065, 98th Gen. Assembly, 2d Sess. (1974); Ind. S. 81, 98th Gen. Assembly, 2d Sess. (1974).

one basic failure of the justice of the peace system is its inability to provide an adequate and uniform small claims service to the public, basic structural and functional changes are required.

To achieve necessary reform of the justice of the peace system, the system should be abolished and either be replaced by a modern system of courts of limited jurisdiction or have its work assumed by the general trial courts. The most recently proposed replacement system, the County Court System, was introduced into the legislature in 1973.[28] The County Court System incorporated a statewide structure broken down into multi-county districts for the purposes of administration. Judges were required to be attorneys and to serve full time and were to be selected under a merit rather than an election system. Each judge would be assigned a county or counties depending on the need for his services and would be subject to temporary transfer to any other county in the district to compensate for caseload variance. This system, under the direction of a chief judge, was designed to promote equal distribution of services and efficient distribution of resources. The county courts' jurisdiction extended to minor criminal, traffic, and small claims matters. A special small claims procedure was included which would dispense with the technical rules of pleading, practice and evidence, would direct judgment on the basis of substantive law rather than procedural irregularities, and would encourage the simple, expeditious litigation of a small claim without the aid of an attorney. As were the proposals urging selective modification of the present system, the county court proposal was rejected by the legislature.[29]

The county court proposal represented the clearest alternative to the current system of courts of limited jurisdiction. It presented a modern and comprehensive approach to judicial reform. The proposal, however, was not without critics who challenged the workability, cost, availability of judges and, of course, the philosophy of merit selection. Currently, one of the principal criticisms of the county court proposal is that it perpetuates a two-tier system of trial courts. Maintaining two levels of trial courts, one of general and one of limited jurisdiction, encourages duplication of effort, facilities, administration and costs and, at the same time, inhibits potential flexibility in the system. While the county court

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[28]Ind. S. 40, 98th Gen. Assembly, 1st Sess. (1973). *See* INDIANA JUDICIAL STUDY COMM'N, EXPLANATION AND FULL TEXT OF THE COUNTY COURT BILL (1973).

[29]The county court proposal passed the senate in both sessions of the 98th General Assembly. However, in the first session it was not reported out of the house committee and, in the second, the substantive portion of the bill was not reported out of the conference committee.

proposal recognized and encouraged transfer of judges along geographic lines, it potentially inhibited temporary transfer from one jurisdictional level to another. Thus, a county court judge temporarily inundated with work could not call upon a less busy circuit judge in the same county for assistance. Further, a two-tier trial court system creates, in effect, a judicial pecking order in trial courts with lower status being accorded to those judges hearing the less glamorous cases. According to a recent analysis of trial court organization:

> Perhaps most important, the differentiation of the trial court of limited jurisdiction expresses an implicit differentiation in the quality of justice to be administered. It induces a sense of isolation and inferiority among the judges and court personnel who are called upon to perform one of the judiciary's most difficult and frustrating tasks—individualizing justice in the unending stream of undramatic cases that constitute the bulk of the court system's work.[30]

The county court proposal is a viable alternative for reform of the justice of the peace system. It faces directly the problems of justice courts and attempts to work a lasting solution. Although initially costly, the expense is reasonable in light of additional services provided. As with any new system of this significance, there would be some practical problems of implementation. However, through the district administration technique, the system has a built-in mechanism for adaptation and problem-solving which encourages, at the least, a response to problems that may arise.

The debate over the county court proposal, however, should center upon whether Indiana, because of the immediacy of the justice of the peace problem, should adopt the proposal and accept a two-tier trial court organization or seek a short term solution and work toward eventual unification of all trial courts into one tier. The argument that Indiana could adopt the county court proposal and still work toward eventual unification of the trial courts into a single tier ignores the lesson to be learned from the lengthy reform process of the justice of the peace system. The lesson is that once a system is adopted it tends to become institutionalized and entrenched to the degree that it creates a momentum for self preservation, rejecting pressures for change, even pressures from the same source that initially created it. To adopt the county court system with the intention of later replacing it with a single tier of trial courts might create political barriers similar to those

[30] ABA Comm'n on Standards of Judicial Administration, *supra* note 1, at 9.

encountered in the process of reforming the justice courts. Therefore, the better approach is to decide now whether Indiana should accept a two-tier trial court system for the foreseeable future or should attempt, in the immediate future, the unification of all courts below the appellate level. By making that decision in regard to reforming justice courts, future similar problems encountered in reforming court systems can be mitigated or alleviated entirely.

A recent proposal, termed the docket-commissioner system, involving general trial court assumption of all of the work of courts of limited jurisdiction, would eliminate many of the problems associated with the justice of the peace courts and would preserve the trial court system for eventual unification into a single level. However, the obvious problem with this alternative is assuring adequate judicial service in the areas of small claims, traffic enforcement and misdemeanors without overburdening existing circuit and superior courts. The proposed solution, currently being studied, is to provide existing trial courts with additional resources, specialized procedures for small claims and traffic cases, and additional personnel in the form of commissioners or referees and clerical assistants. Small claims cases would be handled in a manner similar to the county court proposal with the emphasis on allowing an individual to litigate his own claim in a simple, inexpensive and expeditious manner. Most traffic cases would be handled through a traffic violations bureau and a defendant who desired to plead guilty could pay the applicable fine without having to appear in court.[31] The use of the traffic violations bureau and specialized procedures for expediting small claims would, in the smaller counties, reduce the caseload to manageable proportions.

Most courts, however, will find it necessary to obtain additional staff support for efficient disposition of the increased caseload. The docket-commissioner system envisions giving the circuit or superior court judge the discretion to hire a commissioner to assist in the disposition of small claims, traffic and misdemeanor cases. The commissioner would be supervised by the judge and should serve at the judge's pleasure. His duties should be discretionary with the appointing judge but limited to the specialized dockets. Thus, by providing the judge with the proper tools and the discretion to adapt them to local needs, the general trial courts theoretically should be able to assume the workload of the courts of limited jurisdiction with minimal implementation problems.

The docket-commissioner system would be advantageous in that it would eliminate many of the problems inherent in the

[31] *See* IND. CODE § 9-4-7-10 (Burns 1973).

justice of the peace system and encourage a one-tier trial court system in Indiana. It would be more economical than the county court proposal since an entirely new system would not be necessitated and duplication in many areas could be avoided. Also, all dockets and commissioners would be supervised by the appointing judge who would have the discretion and flexibility to provide necessary judicial services in response to local demand. Further, the proposal falls politically in the middle of the road between cosmetic change of the present system and the county court proposal. Thus it may be more successful in the legislature.

The county court proposal and the docket-commissioner system pose clear and reasonable alternatives to the present system of courts of limited jurisdiction.[32] Their relative advantages and disadvantages are apparent but, given the period of implementation distortions, each should work into a smooth system for adjudicating the "less glamorous" cases. Regardless of which system is adopted, or even if only minor changes in the current system are enacted by the General Assembly, the foremost consideration should be how to best provide necessary judicial service to all Indiana citizens. The incorporation of a viable small claims forum in which a claimant may litigate his own claim in a simple, inexpensive and expeditious manner is essential. Almost of equal importance is the consideration that Indiana's traffic safety program should be enhanced through the efficient and uniform disposition of traffic cases. The county court proposal and the docket-commissioner proposal could provide the structure for operation of these important judicial functions. The combination of qualified judges, increased support, adequate facilities, and a competent administration removed from the taint of inadequacy associated with many courts in the existing system, would promote the development of a highly respected process for the adjudication of minor cases.

This discussion has focused, in a general way, upon some of the problems associated with Indiana's current practice of handling minor cases and has highlighted some of the suggested alternatives for reform. This general approach is required because all the arguments advanced, theories proposed, and great quotations made in reference to justice of the peace courts are too numerous to include. In conclusion, however, there is one specific concept which should

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[32]Both the county court proposal and the specialized docket approach are currently utilized to a limited degree in Indiana. A county court has been in operation in Hancock county since 1972, and one will begin operation in Hendricks county in 1975. *Id.* § 33-5.5-1-1 (IND ANN. STAT. § 4-6401, Burns Supp. 1974) (Hancock); *id.* § 33-5.5-2-1 (IND. ANN. STAT. § 4-6501) (Hendricks). A specialized docket for small claims currently is in operation in the Brown circuit court. *Id.* § 33-4-1-7.1 (IND. ANN. STAT. § 4-335).

be remembered. The courts that handle the "less glamerous" cases, the everyday cases, are the courts closest to the people. These courts should be designed to serve the people and to handle their complaints because the people deserve no less.

II. Administrative Law

*Rodney Taylor**

A. Administrative Findings of Fact

Transport Motor Express, Inc. v. Smith[1] was the most significant administrative law case decided in the past year. The Indiana Supreme Court reversed the court of appeals[2] and sustained an award of workmen's compensation benefits by the Industrial Board. The significance of *Transport Motor III* is its effect on the determination of the proper scope of judicial review of administrative action. Although the supreme court noted that the court of appeals "correctly stated the law, but . . . failed to apply the law in the case at bar,"[3] the decision can be more accurately described as a relaxation of the standard, developed by the court of appeals in *Transport Motor II*, regarding review of agency findings of fact.

The court of appeals, in *Transport Motor II*, sought to establish a minimum level of specificity with regard to the findings of disputed issues of fact made by state administrative agencies.[4] The thrust of the opinion was that the agency should state "all relevant and underlying or basic facts."[5] For example, in a workmen's compensation case, if the Industrial Board awards benefits to the claimant, "minimum specificity"[6] would require that the Board explain why the claimant's evidence tends to show facts which prove the

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[1]311 N.E.2d 424 (Ind. 1974) [hereinafter referred to as *Transport Motor III*].

[2]289 N.E.2d 737 (Ind. Ct. App. 1972) [hereinafter referred to as *Transport Motor II*]. In Transport Motor Express, Inc. v. Smith, 279 N.E.2d 262 (Ind. Ct. App. 1972) [hereinafter referred to as *Transport Motor I*], the court of appeals remanded the case to the Industrial Board, stating that its findings of fact were insufficient, and directed that additional findings of fact be made so that the court could intelligently review the award.

[3]311 N.E.2d at 425.

[4]See *Administrative Law, 1973 Survey of Indiana Law*, 7 IND. L. REV. 2, 6-11 (1973) [hereinafter cited as *1973 Survey of Indiana Law*], in which *Transport Motor I* and *II* are extensively discussed.

[5]289 N.E.2d at 747.

[6]*Id.* at 746.