

1958 O. A. G.

OFFICIAL OPINION NO. 59

December 9, 1958

Hon. J. Howard Hetzler  
Wabash County Representative  
R. F. D. 1  
Wabash, Indiana

Dear Representative Hetzler:

Your letter of November 17, 1958, has been received and requests my Official Opinion relative to the interpretation of Acts of 1945, Ch. 208, as amended, and as found in Burns' (1957 Supp.), Sections 29-4405 and 29-4411. More specifically you desire to know who determines, in the case of a town with a population of three thousand or over, whether the town is to have a primary election or political conventions in which nominees for all town offices are to be selected.

Prior to the 1957 amendment, Burns' 29-4405, *supra*, provided for the calling of town conventions for the purpose of selecting nominees for all town offices, and further provided for the qualifications of the voters at such conventions and for the certification of those persons nominated therein. The 1957 amendment added to this section the following provisos:

"\* \* \* Provided, That towns of this state having a population of three thousand [3,000] and over, according to the last preceding United States census, shall nominate all officers of such town, pursuant to the laws of the state concerning the nomination of officers of cities, at a primary election, if the boundaries of such towns coincide with the boundaries of precincts in which such town is located: Provided further, That each town of three thousand [3,000] or more population, according to the last preceding United States census, shall pay all the expenses incurred in holding such primary in said town as fixed by law for city primary elections: Provided further, That the above provision for holding a primary to nominate officers in a town having a population of three thousand [3,000] or more, according to the last preceding United States census, shall not be construed to change or modify the laws now governing the holding of conventions and the

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nomination of officers in towns having a population of less than three thousand [3,000], according to the last preceding United States census."

You will note that the language in the first proviso is mandatory in that it requires towns with a population of three thousand or more and whose boundaries coincide with the boundaries of the precincts located within the town to nominate their officers at a primary election as is done in the case of cities. However, in a town with the population of three thousand or more and which town includes only a part of a precinct or precincts within its boundaries, there must be political conventions as in the case of towns with a population of under three thousand, pursuant to the provisions in the first part of Burns' 29-4405, *supra*. The town convention was undoubtedly retained in this class of town so as to prevent any confusion as to who might be qualified to vote in the precinct or precincts lying partially within and partially without the town.

Therefore, the question of whether any particular town with a population of three thousand or more is to have a primary election or town conventions is ultimately determined by the physical location of the precincts within or partially within the town. The Acts of 1945, Ch. 208, Sec. 78, as found in Burns' (1949 Repl.), Section 29-3502, provides that the county commissioners of each county have the sole and exclusive right to create and define election precinct boundaries within their counties and in the cities and towns located therein; and the act further provides that the commissioners must exercise this right not later than their February session of the year in which a general election occurs. In the exercise of their powers under Burns' 29-3502, *supra*, the county commissioners determine whether a town with a population of three thousand [3,000] or more is to have a primary election or political conventions, by reason of their right to fix the boundaries of the precincts located within or partially within the town.

Therefore, it is my opinion that if the county commissioners have defined the precinct boundaries in a town with a population of three thousand [3,000] or more as coinciding with the boundaries of the town, it is mandatory that the town have a

primary election governed by the laws concerning primary elections in cities.

It is my further opinion that if the county commissioners have created the precinct boundaries within such a town so that one or more of said precincts lie partly outside said town, the selection of nominees by the two largest political parties must be done by separate conventions, and, pursuant to Burns' 29-4405, *supra*, the town chairman of each of the two political parties casting the highest and next highest number of votes in the last general election must issue a call for the convention.

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OFFICIAL OPINION NO. 60

December 11, 1958

Mr. Joe McCord, Director  
Department of Financial Institutions  
410 State House  
Indianapolis 4, Indiana

Dear Mr. McCord:

I am in receipt of your recent letter requesting my Official Opinion concerning the following:

"This department has been contacted recently with respect to the eligibility of state office building revenue debentures for investment by banks and trust companies, building and loan associations, industrial loan and investment companies, credit unions and fiduciaries.

"It appears that Banks and Trust Companies Regulation No. 9, pertaining to investment securities by banks and trust companies, may be sufficiently broad to permit the investment by banks and trust companies in such securities. A copy of this regulation is attached to this letter and we wish to call your attention to the provisions of Section 2 (a).

"We have no regulation pertaining to investments by state chartered building and loan associations, industrial loan and investment companies, credit unions or fiduciaries. The eligibility of the state office building