OPINION 23

OFFICIAL OPINION NO. 23

March 28, 1958

Hon. Robert E. Gramelspacher
State Representative
515 West 6th Street
Jasper, Indiana

Dear Mr. Gramelspacher:

Your request for an Official Opinion in substance, as indicated by your letter, is as follows:

"The 90th General Assembly passed a new law regarding false advertising which is incorporated in the Statutes as Chapter 270, the Acts of 1957.

"I have been approached with an interesting question regarding the complexity of this statute, and the limitations of its application, if there are any limitations applicable.

"The particular case in my mind is whether it applies both to Labor Unions and Companies in the distribution of false statements in leaflets, letters, or newspaper advertising when it is made to induce, or refrain employees of a company from accepting or rejecting the services of a Labor Union as a collective bargaining agent in the processes set out by the National Labor Relations Act as amended."

The question concerns Acts of 1957, Ch. 270, Secs. 1 to 7 (both inclusive), as found in Burns' (1957 Supp.), Sections 10-2124 through 10-2128. The subject-matter of the act being "False Advertisement."

At the outset, in answer to your question, we call your attention to the statutory definition of the term "person," as used in Ch. 270, Acts of 1957, which is as follows:

"Section 1(a) * * * The term 'person' shall mean any individual, partnership, firm or corporation; * * *."  

The above definition is limited in its scope. A "Labor Union" could not be considered to qualify as an individual, a firm, a partnership, or a corporation, unless said "Labor
"Union" was organized or doing business under the corporate laws of the State of Indiana. In contrast, the term as used in the National Labor Relations Act is defined as follows:

"Section 152 * * * (1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers." (Ch. 372, Sec. 2, 49 Stat. 450, July 5, 1935, as amended; 29 U. S. C. A., § 152.

By Ch. 120, Title 5, Sec. 501, 61 Stat. 161, amended the definition to provide further:

"Section 142 * * * (3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'organization,' 'representative,' 'person,' and 'supervisor' shall have the same meaning as when used in sub-chapter II (quoted above) of this chapter as amended by this chapter." (29 U. S. C. A., § 142.)

It will be noted in the definition above, the term, "Labor Organization," is spelled out in the Code.

It is further noted that Section 2 of Ch. 270, Acts of 1957, concerns the dissemination of false advertising that is to induce or is likely to induce either directly or indirectly the purchase of many items including "the acceptance of employment," describing the media used, to-wit: United States Mail, magazines, newspapers, or other publications, posting in public places, or door to door distribution. Section 3 concerns the same subject-matter, but relates to the dissemination of false advertising in the use of radio and television broadcasts as the media. Section 4 provides for penalties and Section 5 is an exclusion and exception section that excludes the owner, publisher, printer, or agent or employee of a newspaper, etc., or the agent or employer of a radio or television station that broadcasts or causes to be broadcasted, any false advertising from the provisions of the act under certain conditions. Section 6 is a repealer clause and specifically repeals an act to regulate advertising, approved March 5, 1917. Section 7 is the emergency clause.

While this act defines false advertisement and makes it a misdemeanor for any "person," "individual," "partnership,"
"firm," or "corporation" to disseminate or cause to be disseminated, false advertisement and fixes fines, punishment and imprisonment, it is our opinion that "Labor Unions" are not included within the statutory definition.

In further consideration of your question, when the facts in any situation disclose a resulting effect on interstate commerce, any false statements made by a "Labor Union" through any of the media considered in the Acts of 1957, Ch. 270, supra, would be disposed of, pursuant to the Federal Act governing such false advertisements as is shown in two recent cases, to-wit:

Hook Drug Inc., Employer, and Local #725, Retail Clerks' International Assn. (AFL-CIO) Indiana, Case No. 35-RC-1230, reported in 119 NLRB #192, February 12, 1958

and in this present month, in a case entitled:


It is, therefore, our opinion that Ch. 270, Acts of 1957, does not apply to "Labor Unions," unless said "Labor Union" was organized or doing business under the corporate laws of the State of Indiana.

OFFICIAL OPINION NO. 24

April 9, 1958

Hon. Wilbur Young, Superintendent
Department of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Young:

Your letter of March 18, 1958, addressed to the Attorney General, has been received and reads as follows:

"The Steuben County Board of Education at a regular meeting employed clerical help for the County Su-