

OPINION 18

OFFICIAL OPINION NO. 18

June 9, 1955

Mr. Curtis E. Rardin
Auditor of State
238 State House
Indianapolis, Indiana

Dear Mr. Rardin:

This will acknowledge receipt of your letter of May 27, 1955 which reads as follows:

“We respectfully request your official opinion on the following question:

“Can the Auditor of State, as of this date, legally issue a state payroll warrant to a Judge of the Supreme Court who may have been a member of the State Legislature and may have been paid a full year’s salary for 1955 as a legislator?

“We would appreciate your opinion on this matter as quickly as possible since the payroll period for this month is about over.”

I would direct your attention to the Acts of 1953, Ch. 102, Sec. 1, as found in Burns’ Indiana Statutes (1949 Repl., 1953 Supp.), Section 34-201d, which provides as follows:

“In the event of the death or resignation of any member of the general assembly between periods of payments herein, the compensation already received shall be considered payment in full, up to and including the date of death or resignation. And no claim shall be made by the state of Indiana for any refund of payments herein, by reason of the death or resignation of any member of the general assembly for the period of time until the next payment due under this act.”

Under this statute, legislators are entitled to retain their full year’s salary even though they resign after receiving same and I do not believe the fact that a full year’s salary has been paid, as stated in your question, would affect your right to issue the warrant.

The only other factor affecting your right to issue the warrant would be concerned with the question of right of title to public office, and the jurisdiction to determine these matters rests exclusively with the judicial department of the State Government.

Your letter does not refer to any particular judge of the Supreme Court; however, all of the judges now acting and performing their duties as judges of the Supreme Court have either been elected or appointed, have received their commissions and have filed and presented said commissions to the Court together with their written oath and acceptance thereon.

Under these circumstances, I believe you can legally issue a state payroll warrant as stated in your question since you are not required to withhold the pay of a public officer pending a judicial determination of his title to the office. See *City of Peru et al. v. State ex rel. McGuire* (1935), 210 Ind. 668, 673, 199 N. E. 151.

OFFICIAL OPINION NO. 19

June 8, 1955

Dr. Virgil A. McCleary, Secretary
Indiana State Board of Registration and Examination
in Optometry
116 North Buffalo Street
Warsaw, Indiana

Dear Doctor McCleary:

Your letter of May 27, 1955 has been received requesting an Official Opinion as to the legality and constitutionality of certain sections of the Optometry Law of the State of Indiana. In your first question you desire to know if under the Acts of 1907, Ch. 187, Secs. 9, 10 and 11 where it is found a licensee licensed to practice optometry is practicing in more than one county in the state, "does the Board of Optometry have the authority to act in such a case if the defendant is found practicing in two different counties?"

Your request on your second question is as follows:

"The second question that arises concerns Section 18, 'Unlawful Practice,' part f—Certain Types of Adver-