OPINION 11

OFFICIAL OPINION NO. 11

May 3, 1955

Mr. A. C. Offutt, M. D.
State Health Commissioner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, Indiana

Dear Sir:

Your letter requesting an Official Opinion has been received and reads as follows:

"Section 626, Chapter 157, Acts of 1949, provides that the board of each full-time local health department shall appoint a full-time health officer, and states that such health officer shall serve for a term of four years, unless sooner removed for a cause herein provided.

"I would appreciate an official opinion from your office on the following questions, as they relate to the provisions of the above mentioned law:

"(1) A full-time county health department was established in Shelby County on January 1, 1955. The county board of health appointed a full-time health officer whose term began on the same date. Does the date on which the health department was established fix a permanent commencement and expiration date for the health officer's term of office? In other words, will the health officer be appointed for this health department on the first day of January of each fourth year thereafter?

"(2) In case the health officer who was appointed on January 1, 1955, left his position due to resignation, death or dismissed for cause, on June 30, 1955, would the appointment to fill the vacancy be made for the unexpired term; or would the appointment be of four years from the date on which it was made?"

In 43 Am. Jur., Public Officers, § 155, page 16, it is stated:

"Where the law prescribes the length of the term and designates the person in whom is vested the power to
fill a public office by appointment, but no date is fixed for the beginning or ending of the term, it has been held that the appointive power has the right to fix the commencement of the term; and when the same is fixed by the appointment first made, all subsequent terms of office necessarily have reference to such initial period and each term commences at the end of the preceding term."

"Public interest requires that all possible certainty exist in the election of officers and in the beginning and expiration of terms, and forbids that either be left to the discretion of the person holding office or the body having the appointive power."

Caldwell v. Lyon (1935), 168 Tenn. 607, 80 S. W. (2d) 80, 100 A. L. R. 1152.

"Whether a public officer has a fixed term of office can be determined only by reference to the law creating the office."

Shank v. Howes (1926), 214 Ky. 613, 283 S. W. 966.

"Strict adherence to the letter of the present statute might seem to require the latter conclusion, but among recognized aids to be invoked in statutory construction are the legislative antecedents of the statute, and its practical construction, especially by the governmental agency charged with its administra- tion."


The Acts of 1949, Ch. 157, Sec. 626, as found in Burns' Indiana Statutes (1949 Repl.), Section 35-827, provides:

"The board of each full-time local health department shall appoint a full-time health officer. * * * (qualifications) * * * . The full-time officers in office on the date this act becomes effective shall, unless sooner removed by the state board of health or the appointing authority, continue to serve until their respective terms expire, and until their successors have been appointed and qualified. Such health officers shall serve for a term
of four years unless sooner removed for cause as herein provided.” (Our emphasis)

Local public health officers in office when Section 626 was passed in 1949, were appointed under the Acts of 1935, Ch. 217, page 1027, which provided that such health officers should serve for a term of four years starting January 1, 1938, followed by consecutive four-year terms. When this section was repealed by the Acts of 1949, Ch. 157, supra, the officers then in office were serving definite terms which ended January 1, 1950, when they became vacant and ready for appointments under the Acts of 1949, Ch. 157, Sec. 626, supra.

If we can assume that the Legislature had this fact in mind we may conclude that it provided in said Section 626, supra, for definite four-year terms beginning January 1, 1950 for all those offices then in existence and in which those serving when this Act was passed should complete their unexpired terms. That which can be so readily made certain is certain.

The Legislature in the same Acts of 1949, Ch. 157, supra, provided for definite terms for all other health-department officers in Sections 451, 502, 609, 614 and 618, which gives us further reason to believe that it regarded the term set up in Section 626 to be definite and certain also, so that for all four-year terms then in existence, the terms would end January 1, 1950, and be followed by consecutive four-year terms. In that case any vacancy resulting from removal, death, or resignation would be filled for the unexpired four-year term then running.

We find that the Acts of 1949, Ch. 157, Sec. 218, as found in Burns' Indiana Statutes (1949 Repl.), Section 35-219, says:

“Any health officer removed as herein provided shall be ineligible to hold the position of health officer for four years, and the vacancy shall be filled for the unexpired term in the same manner as the original appointment or employment.” (Our emphasis)

We believe this throws some light on the intent of the Legislature.

“The search is for the intent of the law makers, and when it is clearly ascertainable it prevails over the literal and precise letter of the statute.”
Bridgeman v. Derby (1925), 104 Conn. 1, 132 A. 25, 45 A. L. R. 728;

State ex rel. City of Stamford v. Board of Purchase and Supplies (1930), 111 Conn. 147, 149 A. 410;

People ex rel. Mason v. McClare (1885), 99 N. Y. 83, 1 N. E. 235.

It has been held that even where there is no indication in a statute as to when a four-year term shall begin or end, the appointive power sets the beginning and consequently the ending of a newly created term and each similar consecutive term thereafter by the original appointment.

43 Am. Jur., Public Officers, § 155;

State ex rel. Eberle v. Clark (1913), 87 Conn. 537, 89 A. 172, 50 L. R. A. (N. S.) 912;


46 C. J. Officers § 104d.

In Brown, State's Attorney, ex rel. Gray v. Quintilian (1936), 121 Conn. 300, 184 A. 382, Ch. 145, Sec. 2405 of the General Statutes of Connecticut provided that a health officer could be appointed by the Common Council within thirty days after a vacancy occurred but thereafter only by the county health officer. Appointment was to be for four years but no time was set for beginning or ending the term. The first appointment was made October 5, 1931 to end October 1, 1935. On November 4, 1935, the county health officer appointed Dr. Gray to a four-year term considering October 1, 1935 as the date of vacancy and since the Common Council had not acted within thirty days. The Common Council assuming that the first term ran from the day of appointment, October 5, 1931, assumed on November 4, 1935 that the thirty days had not run and accordingly, appointed Quintilian for a term of four years. On quo warranto proceedings the Upper Court on Appeal held that the first appointment and the terms thereof set the date for beginning and ending the term, and the
dates for all subsequent terms, and held that the "date of appointment" was the date set in the appointment rather than the exact date of the appointment. It held that under the initial appointment the term was fixed to run from October 1, 1931 to October 1, 1935; that the office had been vacant over thirty days on November 4, 1935, regardless of the fact that the incumbent legally held over as de facto health officer; holding that this did not extend the term. The health officer, after thirty days of vacancy, appointed Dr. Gray which was a valid appointment. The Common Council had lost power to act on November 1, 1935.

To the same effect is State ex rel. Sikes v. Williams (1909), 222 Mo. 268, 121 S. W. 64, in which the Court said:

"This reasoning leads us to this result: That the date of the appointment first made by the Governor for the office in question, initiated the official term of the first appointee, and that all subsequent appointments necessarily had reference to such initial period, and so far as lawful, conformed thereto."

The Court held that the law gave the Governor power to initiate the first four-year term for a factory inspector where no time had been set for a term to begin or end, and that when he once established the beginning and ending of the first four-year term, consecutive terms thereafter became fixed in that respect and that holding over de facto under provisions therefore did not affect the term as fixed.

In view of the foregoing, my answer to your questions is as follows:

(1) The local health officers about whom you inquire will be appointed for this health department on the first day of January of each fourth year hereafter.

(2) In case of a vacancy, the appointment would be to fill the balance of the unexpired term; not for a period of four years from the date on which it was made.

Further, as to full-time local health officers being appointed for the first time the office has existed, the term is fixed by the terms of the initial appointment, and the date then set for the
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four-year term to begin, sets the beginning and ending date for all subsequent terms, and all vacancies would be filled for unexpired terms.

OFFICIAL OPINION NO. 12

May 11, 1955

Mr. Arnold H. Meister
State Fire Marshal
231 State House
Indianapolis, Indiana

Dear Sir:

This will acknowledge receipt of your letter of May 9, 1955, in which you request my opinion as follows:

"Chapter 154 of the Acts of 1939 concerns the sale and regulation of fireworks in the State of Indiana, and the Act provides a penalty for the violation thereof. The Title to the 1939 Act specifically referred to the fact that penalties were provided therein.

"The 1939 Act was amended by Chapter 251 of the Acts of 1951, and the 1951 Act, also, amended the Title to the 1939 Act, but did not refer to the imposition of penalties for the violation thereof.

"Your official opinion is respectfully requested as to whether the Penalty Section of 1939 Act is still in force."

Article 4, Sec. 19 of the Indiana Constitution provides as follows:

"Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

The title of the Acts of 1939, Ch. 154, as found in Burns' Indiana Statutes (1950 Repl.), Section 20-1101 et seq., is as follows: