

in general, as well as specific, terms. It may also be a continuing or fixed appropriation, as well as one for a temporary purpose or a limited period. * * *"

The above case is also authority for the further proposition that any of such persons above-mentioned legally employed for such propositions, could be paid from such election fund on the basis that said statute, at least by implication, necessitates the employing of persons to perform such services.

In addition to the foregoing, it is, in my opinion, equally true that the Governor could pay any such person legally employed by him from his contingency fund. 1945 O. A. G., page 241, No. 53.

The foregoing answers each of your questions. In making such answers, it is thought advisable to point out that such questions are submitted to this office solely on the question of law and not on the question of administrative policy and such answers are accordingly so limited.

OFFICIAL OPINION NO. 25

March 29, 1954

Mr. C. V. Ogborn, Administrator
Store License Division
Indiana Department of State Revenue
141 South Meridian Street
Indianapolis, Indiana

Dear Mr. Ogborn:

Your letter of February 16, 1954 has been received and reads as follows:

"The Store License Division has been requesting and demanding evidence of the payment of Store License applicants personal or poll tax to be submitted with the application. Some attorneys have held that Chapter 124, Acts of 1931, as amended, Burns 42-102 is not applicable to Store License.

"Will you please give this Division an opinion on the application of the above Act to the issuance of Store License?"

OPINION 25

Acts of 1931, Ch. 124, Sec. 1, as amended, as found in Burns' Indiana Statutes (1952 Repl., 1953 Supp.), Section 42-102 reads in part as follows:

"That it shall be unlawful for any board, officer, or person to issue *any* license, *as hereinafter defined*, to any person who is a resident of this state, unless the applicant for such license shall, at the time when he or she applies for such license, and in addition to all other requirements prescribed by law, submit a receipt or other evidence showing that such applicant has paid all his or her poll and personal property taxes in full.
* * *" (Our emphasis)

The same Act, Acts of 1931, Ch. 124, Sec. 2, as found in Burns' Indiana Statutes (1952 Repl.), Section 42-103, defines "license" as follows:

"The term 'license' as used in this act shall be construed to mean and include motor vehicle registration licenses, certificates of title showing the ownership of any motor vehicle, licenses authorizing persons to drive or operate motor vehicles on the public highways, either as chauffeurs or otherwise; *licenses to practice any profession, trade or occupation for the practice of which a state license as (is) required by law.*" (Our emphasis)

Since the first clause of the above section defining the term "license" concerns "motor vehicle registration licenses, certificates of title showing the ownership of any motor vehicle, licenses authorizing persons to drive or operate motor vehicles on the public highways, either as chauffeurs or otherwise," it is clearly not applicable to your question concerning the requirements prerequisite to the issuance of store licenses. The question then is whether a store license is one "to practice any profession, trade or occupation for the practice of which a state license is required by law" as defined in the second clause of the above section of the statute defining the term "license."

Acts of 1929, Ch. 207, as amended, as found in Burns' Indiana Statutes (1952 Repl.), Sections 42-301 to 42-316, com-

monly known as the Store License or Chain Store License Law, is entitled:

“AN ACT requiring licenses for the operation, maintenance, opening or establishment of stores in this state, prescribing the license and filing fees to be paid therefor, and the disposition thereof, and the powers and duties of the state board of tax commissioners in connection therewith, and prescribing penalties for the violation thereof.”

Section 1 of the Store License Law, Acts of 1929, Ch. 207, Sec. 1, as amended, as found in Burns' Indiana Statutes (1952 Repl.), Section 42-301, provides as follows:

“That from and after the first day of July, 1929, *it shall be unlawful* for any person, firm, corporation, association or co-partnership, either foreign or domestic, *to operate, maintain, open or establish any store in this state without first having obtained a license so to do from the Indiana Department of State Revenue, Store License Division, as hereinafter provided.*” (Our emphasis)

The above excerpt from section 1 of the Store License Law clearly demonstrates that a state license is required to operate, maintain, open or establish any store in this state.

The character of the Store License Law is further recognized in the case of State Board of Tax Commissioners of Indiana v. Jackson (1931), 283 U. S. 527, 51 S. Ct. 540, 75 L. ed. 1248, 73 A. L. R. 1464, which upheld the constitutionality of the Indiana Store License Law. In the above case, the United States Supreme Court recognized that the Indiana Store License Law is one requiring a state license to practice an occupation, when in said opinion it quoted from the case of Brown-Forman Co. v. Kentucky (1910), 217 U. S. 563, 573, 30 S. Ct. 578, 54 L. ed. 883, as follows:

“A very wide discretion must be conceded to the legislative power of the State in the classification of trades, callings, businesses or occupations which may be subjected to special forms of regulation or taxation through an excise or license tax. * * *”

OPINION 26

It was upon the above-quoted proposition and the fact that the Indiana Store License Law does require a state license to practice an occupation that the progressively increasing license fees with respect to chain stores was upheld; therefore, both by the title of the Store License Act, its provisions, and the above-cited case, it is clear that the Act is an occupation license Act.

It is therefore my opinion that the Acts of 1931, Ch. 124, Sec. 1 as amended, as found in Burns' Indiana Statutes (1952 Repl., 1953 Supp.), Section 42-102 does apply to the issuance of store licenses and that evidence of the applicant's payment of personal property and poll taxes in full is a requisite to the issuance of a store license, except that evidence of payment of poll taxes should not be required of persons not required to pay poll taxes. See Acts of 1931, Ch. 124, Sec. 3, as amended, as found in Burns' Indiana Statutes (1952 Repl.), Section 42-104.

OFFICIAL OPINION NO. 26

April 2, 1954

Mr. David Hunter
Commissioner of Labor
Division of Labor
Room 225 State House
Indianapolis, Indiana

Dear Mr. Hunter:

I have your request for an Official Opinion which reads in part as follows:

"The Department of Labor has received inquiries concerning the setting of wage scales on Public Works as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 53-301. So that this office may have a standard policy in setting such wage scales, I request your Official Opinion on the following questions:

- "1. What constitutes 'immediate locality'?
- "2. What constitutes 'a legal action of the Committee'?