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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 said 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'?

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"An example of the problem in No. 2 is this:

"1. A Committee was appointed as provided by law, and all three (3) Members met but only two (2) of the Committee would agree."

The Acts of 1935, Ch. 319, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl.), Section 53-301, provides as to contracts for public works, such contractors:

"* * * shall be required to pay for each class of work on such project a scale of wages which shall in no case be less than the prevailing scale of wages being paid in the immediate locality for such class of work * * *." (Our emphasis)

The statute goes on to set up a committee of three members to determine said scale of wages.

The term "immediate" can be said to have no definite meaning but is elastic. See 42 C. J. S., p. 387 where the term is defined as:

"A comprehensive and elastic term, of no very definite signification, but admitting of many varieties of definition, depending on the context, the connection in which it is used, or on the facts of each case. It is the indicium of a time interval as well as that of an interval of space; is used in ordinary language as a relative and comparative term, of relative signification, and so it is often not construed in its usual meaning. It is not a technical word, for to give the term its literal signification, regardless of the attending situations and circumstances, would defeat meritorious claims, in many cases, on purely technical grounds; and, in construing statutory or other provisions, would strip them of all practical sense and applicability. Generally it may mean close, not separated, with respect to place, by anything intervening, hence proximate; having a close relation; having nothing intervening, either as to place, time or action; nearest; near in kinship; not far apart or distant, as, hidden in the immediate neighborhood, or living in the immediate vicinity of one another."
The term "locality" is defined in the case of United States ex rel. and to Use of Tennessee Valley Authority v. Williams et al. (1944), 56 F. Supp. 514, 516 as:

"The term 'locality' is susceptible to a large number of legal definitions and indefinite meanings. It has at different times, under certain circumstances, been construed to embrace a neighborhood, a community, one or more civil districts, one or more counties, and even one or more states. It cannot be arbitrarily limited to geographic or civil boundaries. It also cannot be said that by using the word 'locality' in the statute in question, Congress intended to limit this disqualifying feature to a resident of any particular county, for a situation could well, and does, exist where residents of the county of Hickman, immediately adjacent to the county of Humphreys, but in which county no lands are being condemned for the particular project, are, as a matter of fact, geographically closer to lands that are being condemned than some of the residents of either Humphreys, Houston, or Stewart Counties. The Court is of the opinion that Congress, in using the term 'locality' in the Act, did not attempt to limit it to county lines, or district lines, or any particular geographical or civil boundary, but that, in construing the Act, the Court should adopt a construction which would best carry out the intent and purpose of the Act. * * *"

In this respect see also Lukens Steel Co. et al. v. Perkins et al. (1939), 107 F. 2d 627.

In the case of Holt et al. v. Barnesville Farmers Elevator Co. (1943), 52 F. Supp. 468, 472, the Court said:

"The terms 'immediate locality' and 'general vicinity' are indefinite and general terms. Therefore, they must be interpreted in the light of the existing facts and circumstances. Holly Hill Fruit Products v. Addison, 5 Cir., 136 F. 2d 323; Fleming v. Farmers Peanut Co., 5 Cir., 128 F. 2d 404."

From the foregoing it would, therefore, seem that the term "immediate locality" would be a rather elastic term depending
on the particular facts in the setting of each wage scale. A large construction in a village of five hundred (500) people possibly could not be handled by the people of that village because of the number of workmen necessary for the project as well as the class of skilled workmen which the particular project may require, but could necessarily include people from surrounding areas. However, a small construction in that same village amounting to the necessity of using only a few workmen having the required degree of skill could necessarily be done by the workmen of the particular village. Further, it must be kept in mind that a liberal construction should be given this legislation in order that the intention of the Legislature will not be defeated.

It is, therefore, my opinion that the answer to your question Number 1 on the interpretation of "immediate locality" would be an immediate locality which may be restricted to a very small area or the entire state depending on the availability of qualified workers for the project as the facts in each particular wage scale setting exist.

The committee decision on a prevailing wage scale of the immediate locality is presumed to have taken into consideration the above factors and, therefore, the decision of the committee if not arbitrarily reached would be acceptable.

State ex rel. Cedar Creek School Township v. Curtin et al. (1940), 217 Ind. 190, 26 N. E. 2d 209.

Your second question asks whether the action of the committee, consisting of three (3) members, is legal where only two (2) members of the committee agree. I refer you to R. S. 1852, Ch. 17, Sec. 1, the same being found in Burns' Indiana Statutes (1946 Repl.), Section 1-201, which provides in part:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

* * *

"Second. Words importing joint authority to three or more persons shall be construed as authority to a majority of such persons, unless otherwise declared in the law giving such authority."
Since the Acts of 1935, Ch. 319, supra, does not contain a provision controlling this situation, a report concurred in by a majority of such committee is valid and binding.

Griffin et al. v. Pearce et al. (1918), 187 Ind. 287, 119 N. E. 8.

From the foregoing authorities, it is my opinion that a prevailing wage scale concurred in by two of the three members of the committee would be the legally established prevailing wage scale.

OFFICIAL OPINION NO. 27

April 2, 1954

Mr. Cecil Bolinger
Executive Secretary
Public Employes' Retirement Fund
707 Board of Trade Building
Indianapolis 4, Indiana

Dear Mr. Bolinger:

Your letter of January 21, 1954 has been received and reads as follows:

"We request your official opinion on certain aspects of Chapter 259, Acts of 1951 which we will illustrate by certain hypothetical cases as follows:

"Miss A is a teacher in the Elkhart City Schools. She is a member of the Indiana State Teachers Retirement Fund with 10 years of service. On January 1, 1954 she leaves the service of the Elkhart City Schools and accepts a clerical position with the Purdue University, which position is covered by the Public Employes' Retirement Fund. The Elkhart School City is not a participating municipality in the Public Employes' Retirement Fund.

"Miss A applies for transfer of membership from the Teachers' Retirement Fund to the Public Employes' Retirement Fund."