

An examination of the Administrative Adjudication Act referred to in the above quoted excerpt shows that that act has no application to municipal procedure. However, it is a universal rule of statutory construction that an absurd or meaningless result will not be given to language used by the legislature.

Marks v. State (1942), 220 Ind. 9, 40 N. E. (2d) 108;

Lee Bros. v. Jones (1944), 114 Ind. App. 688, 54 N. E. (2d) 108;

Groher v. Colgate-Palmolive-Peet Co. (1931), 94 Ind. App. 234, 178 N. E. 242.

Thus it appears that the words used must be construed to mean that the same procedure, provided for state agencies in the Administrative Adjudication Act, should be followed in regard to the governing body of a municipality pursuant to Chapter 280 of the Acts of 1953 when appeals are had from the granting of leases for permanent structures.

OFFICIAL OPINION NO. 28

April 28, 1953.

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

Dear Sir:

Your letter of April 7, 1953 has been received and is in part as follows:

“The following questions have arisen in regard to the election of the county superintendent of schools in May, 1953:

“1. Which official has the responsibility of issuing the call for the meeting of the township trustees for the purpose of appointing the county superintendent of schools?

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"2. If such official fails to call the meeting within the designated time what steps shall be taken to convene such meeting?"

"3. Does the same official have the authority to designate the time and place of such meeting?"

"4. Under Chapter 164 of the 1951 Acts, the county superintendent of schools is designated as the chairman of the board. Does the present county superintendent of schools have a voice or vote in such meeting called for the purpose of appointing the county superintendent of schools?"

"5. Does the county board of education select its own chairman and secretary for this meeting or does the vice-chairman and secretary of the county board of education perform those duties at this meeting?"

"6. Does the county auditor of the county have any responsibilities or duties to perform at this meeting?"

"7. Does a township trustee of a township whose school corporation has been consolidated with another school corporation which consolidated school corporation has selected its own superintendent of schools have a voice or vote in such meeting?"

A consideration of the history of the legislation concerning the office of county superintendent of schools is deemed advisable before there is made a detailed consideration of your questions. The history of certain pertinent statutes is fully considered as of the status of such legislation in effect at the time of the giving of an official opinion of this office found in 1945 Ind. O. A. G., page 212, Official Opinion No. 44. Two general statutes were there considered, being Chapter 25 of the Acts of 1873 as at that time finally amended by Chapter 156 of the Acts of 1945 which is found in Burns' Indiana Statutes Annotated (1945 Supplement) Section 28-801 *et seq.* The other statute was Chapter 143 of the Acts of 1899 which at the time of said opinion had been finally amended by Chapter 258 of the Acts of 1935 which is found in Burns' Indiana Statutes Annotated (1945 Supplement) Section 28-701 *et seq.* The question presented at that time was whether or not the election of the county superintendent of schools was pursuant to

the provision of the 1873 statute as amended or whether it was controlled by the specific provisions of Section 2 of the 1899 statute, same being Burns' Indiana Statutes Annotated 1933, Section 28-802. It was there held that the amendment of the 1873 statute by Chapter 156 of the Acts of 1945, *supra*, only applied to additional employees of the County Board of Education and did not control as to the election of the county superintendent of schools. On page 217 of the opinion the following conclusion is made:

"I am therefore of the opinion Chapter 156 of the Acts of 1945 has no application to the election of a county superintendent of schools but that the election of such county superintendent of schools is solely controlled by the provisions of Section 28-702 Burns' 1933, *supra*, and that a majority vote elects the county superintendent of schools."

Such being the status of such legislation at the time of the writing of said opinion, further statutory enactments must be considered to determine the effect of any of the subsequent changes. The first of these changes was the amendment of Section 28-801 *et seq.*, Burns', *supra*, by Chapter 281 of the Acts of 1947 which so changed the entire wording of Section 1 of the Act as to practically nullify the operation of the office of county superintendent of schools and in truth and in fact constituted a consolidation statute for county-wide school units. In view of this serious effect upon the status of such office a new statute was enacted by the Legislature in 1951, same being Chapter 164 of the Acts of 1951, being Section 28-804a *et seq.*, Burns' Indiana Statutes Annotated (1951 Supplement). Its purpose clearly was to replace Section 28-801 *et seq.*, Burns' *supra*. Section 1 of said act provided in part as follows:

"The township trustees of each and every township of each county shall constitute a county board of education. Said board shall meet monthly at the office of the county superintendent of schools and at such other times as the county superintendent of schools may deem necessary. At the January meeting of each year, the board shall organize by electing a vice-president and a secretary from its membership. The county superin-

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tendent of schools shall be ex-officio the chairman of the board. The secretary of the board shall keep an accurate record of the minutes of the board, which minutes shall be kept at the county superintendent's office. The county superintendent shall act as administrator of the board and shall carry out such acts and duties as shall be designated by the board. A quorum shall consist of a two-thirds majority of the members of the board. Business shall be transacted and the acts of the board shall become effective by a two-thirds majority vote of members present on problems coming before the board. The powers herein granted the county board of education, however, shall not otherwise be construed as granting such board any authority whatsoever over the selection or employment of any of the personnel or employees or the purchase of supplies in any of the schools of the individual townships. * * *

“All authority, rights, powers and duties heretofore performed under the law, by or through meetings or petitions of the trustees of the county, or now enjoyed by county boards of education, are hereby transferred to and vested in the county board of education created by this act. All county boards of education now existing and operating pursuant to the provisions of Section 1, Chapter 156 of the Acts of 1945, as amended by Section 1, Chapter 281 of the Acts of 1947 (Section 28-801), are hereby confirmed and ratified and their status as such county board of education validated and such board shall continue to so operate in accordance with the provisions of this act (Sections 28-804a—28-804d) and until their successors are elected and qualified.”

Section 2 of said act, being Section 28-804b, Burns' Indiana Statutes Annotated (1951 Supplement), reads as follows:

“The county board of education shall appoint a county superintendent of schools who shall serve for a term of four (4) years. The first such appointment under this act (Sections 28-804a—28-804d) shall be made in accordance with law in June nineteen fifty-three, to be effective August sixteenth, nineteen fifty-three, and

the board shall fill vacancies in this office, in accordance with law, by appointment which shall expire at the end of the regular term.

“County superintendents of schools heretofore elected or appointed by county boards of education now in existence as hereinbefore referred to, shall continue to hold such offices until their successors are elected and qualified under the provisions of this act.”

Thereafter, Section 2 of the last referred to act was amended by Chapter 247 of the Acts of 1953, above specifically referred to in your questions, which amendment reads as follows:

“The county board of education by a majority vote of the members of the board shall appoint a county superintendent of schools who shall serve for a term of four (4) years. The first such appointment under this act shall be made in accordance with law during the first fifteen days of May nineteen fifty-three and each four years thereafter, to be effective August sixteenth, nineteen fifty-three, and the board shall fill vacancies in this office, in accordance with law, by appointment which shall expire at the end of the regular term.

“County superintendents of schools heretofore elected or appointed by county boards of education now in existence as hereinbefore referred to, shall continue to hold such offices until their successors are elected and qualified under the provisions of this act.”

The last referred to amendment contained an emergency clause and is in full force and effect.

From the foregoing it is clear that at the time of the writing of the 1945 Official Opinion the election of the county superintendent of schools was to be held pursuant to the provisions of Section 28-702, Burns' Indiana Statutes Annotated 1933 which provides as follows:

“The township trustees of each county of this state shall meet at the office of the auditor of their county on the first Monday in June, 1917, at ten o'clock a. m., and every four (4) years thereafter, and elect by ballot a county superintendent for their county. Such county

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superintendent shall enter upon the duties of his office on August sixteenth following and, unless sooner removed, shall hold his office until his successor is elected and qualified. Before entering upon the duties of his office, he shall subscribe and take an oath to perform faithfully such duties according to law; which oath shall be filed with the county auditor. He shall also execute a bond, to the approval of the county auditor, payable to the State of Indiana, in the penal sum of five thousand dollars (\$5,000), conditioned upon the faithful discharge of his duties according to law, and faithfully to account for and pay over to the proper persons all moneys which may come into his hands by virtue of such office. As soon as such bond be filed, the county auditor shall report the name and postoffice of the person so elected to the state superintendent of public instruction. Whenever a vacancy may occur in the office of county superintendent, the said township trustees, on at least three (3) days' notice given by the county auditor, shall assemble at ten o'clock a. m., on the day designated in such notice, at the office of such auditor, and fill such vacancy by ballot for the unexpired term. In all elections of a county superintendent, the county auditor shall be the clerk of such election; and in case of a tie vote, the auditor shall cast the deciding vote. In case any one (1) candidate shall receive a number of votes equal to one-half of all the trustees of the county, the county auditor shall then and at all subsequent ballots cast his vote with the trustees until some candidate shall receive a majority of all the votes in the county, including the county auditor. Such auditor shall keep a record of such election in a book kept for that purpose."

It is to be readily seen that none of the foregoing provisions of the legislation enacted subsequent to the giving of the 1945 Official Opinion in any way interfered with the procedure for the election or filling of vacancies in the office of the county superintendent of schools as originally prescribed by Section 28-702, Burns' Indiana Statutes Annotated 1933, unless it would be the effect of the 1953 statute above referred to. This is true because in the re-writing of the statute relative to the

office of the county superintendent of schools by the 1951 statute, while it provided who shall constitute the County Board of Education, at the same time, under Section 2 of the act, it provided that the election of the county superintendent "shall be made in accordance with law in June, nineteen fifty-three, to be effective August sixteenth, nineteen fifty-three, and the board shall fill vacancies in this office in accordance with law, by appointment which shall expire at the end of the regular term." In other words, the election of county superintendent of schools was to be made "in accordance with law" which would refer back to the original election statute, Section 28-702, Burns' 1933. Under that statute, at a certain designated date each four (4) years, and at a certain time, the township trustees of the county met at the office of the county auditor and elected a county superintendent of schools. Under such condition it was not necessary that anybody call such a meeting as it was specifically called by statute. Under said original statute, in case of a tie vote the county auditor was authorized to cast the deciding vote.

Under the amendment of 1953, same being Chapter 247 of the Acts of 1953, it is required that the County Board of Education appoint a county superintendent of schools "by a majority vote of the members of the board." This clearly contemplates that no longer the auditor of the county casts a deciding vote as a change of legislative intent will be presumed from a material change in the wording of the statute.

State ex rel. v. Beal (1916), 185 Ind. 192, 197, 113 N. E. 225;

Chism et al. v. State of Indiana (1932), 203 Ind. 241, 244, 179 N. E. 718.

It is further to be observed that the above 1953 amendment of the statute changed the time for the election of the county superintendent of schools. This particular provision reads as follows:

"The first such appointment under this act shall be made in accordance with law during the first fifteen days of May nineteen fifty-three and each four years thereafter, to be effective August sixteenth, nineteen fifty-three. * * *"

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We therefore see that prior to said amendment there was a definite time and date for a meeting of the County Board of Education, at the office of the county auditor, for the election of a county superintendent of schools. Since said amendment the time is some time between the first and fifteenth day of May, 1953, and each four (4) years thereafter. No provision is made as to who shall call the meeting to be held during such fifteen day period.

With the foregoing factors in mind we will proceed to answer your questions in the order presented.

1. In answer to your first question it is to be seen from the foregoing that considerable uncertainty exists as to who shall call the meeting of the County Board of Education in the first fifteen days of May, 1953, for the election of a county superintendent of schools. The only direct authority that exists for the calling of meetings of said board is found in Section 1 of Chapter 164 of the Acts of 1951, same being Burns' Indiana Statutes Annotated (1951 Supplement), Section 28-804a, which in part provides as follows:

“The township trustees of each and every township of each county shall constitute a county board of education. Said board shall meet monthly at the office of the county superintendent of schools and at such other times as the county superintendent of schools may deem necessary. At the January meeting of each year, the board shall organize by electing a vice-president and a secretary from its membership. The county superintendent of schools shall be ex-officio the chairman of the board. The secretary of the board shall keep an accurate record of the minutes of the board, which minutes shall be kept at the county superintendent's office. The county superintendent shall act as administrator of the board and shall carry out such acts and duties as shall be designated by the board. * * *”

On first consideration the foregoing would seem to indicate that the county superintendent of schools should call the meeting for the election of the new county superintendent of schools. However, I do not believe such a result would be obtained for the reasons:

A. The above language clearly refers to meetings at the office of the county superintendent of schools for the transaction of ordinary business of the County Board of Education, rather than at a meeting of said board at the office of the auditor of the county for the election of a county superintendent of schools.

B. It is questionable that the county superintendent of schools, possibly being interested in his own re-election, could qualify for the calling of such meeting or for presiding over such election. This is true for under an official opinion of this office found in 1941 Ind. O. A. G., page 148, in considering Section 28-702, Burns' Indiana Statutes Annotated 1933, *supra*, and concerning the election of a county superintendent of schools, it is held: "it is the duty of the trustees to organize their meetings by electing a chairman from their own number." While no particular reason is there assigned for such conclusion it is probable that the writer had in mind the provision of law as to public policy which prohibits a public official from using his office in order to secure a personal advantage. In this connection attention is called to a decision of the Supreme Court of Indiana, which so far as I can determine has not been superseded, found in the case of *Hornung v. The State ex rel. Gamble* (1888), 116 Ind. 458, 19 N. E. 151, 2 L. R. A. 510, where on pages 462 and 463 of the opinion, the court held in construing a similar statute as to the election of a county superintendent of schools that one of the township trustees comprising the County Board of Education could not vote for himself for election as the same was "contrary to public policy, and for that reason, an utterly illegal vote."

It would therefore seem that the next highest officer of the County Board of Education, elected pursuant to the provision of Section 28-804a, Burns' Indiana Statutes Annotated (1951 Supplement), *supra*, would be the vice-president of said board. Since he is the highest officer qualified to act in such a matter, I am of the opinion he is the proper person to call such meeting at the office of the county auditor for the purpose of the election of a county superintendent.

2. In answer to your second question if such vice-president of said board fails to call said meeting, since the meeting is required to be held between the first and the fifteenth days of

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May, inclusive, said board could meet without a call at the office of the county auditor on the fifteenth day of May, 1953, during the regular afternoon office hours for said office and conduct such meeting for such election. To obviate any question some personal information to each of the members of the board should be available to them of such intention to so meet so that no undue advantage could be had by any so-called secret meeting. If no such meeting is called or held I think the entire County Board of Education could be mandated to meet for such an election.

Wampler v. State *ex rel.* Alexander (1897), 148 Ind. 557, 47 N. E. 1068.

3. In answer to your third question, from the foregoing it is my opinion the vice-president of the board, if he calls such meeting, would have the authority to designate the time of such meeting (during reasonable hours between the first and the fifteenth of May, 1953) and that the place of such meeting would be the office of the auditor of the county.

4. Your fourth question has been answered by the foregoing. The county superintendent of schools does not have a voice in calling such meeting. It is also pointed out that in none of the foregoing statutes does the county superintendent of schools have a vote at such meeting.

5. In answer to your fifth question I am of the opinion that from the foregoing the vice-president of said board should preside at said meeting but that the secretary of the board does not act as the clerk of such election as under the specific provision of Section 28-702, Burns' Indiana Statutes Annotated 1933, *supra*, the county auditor acts as the clerk of such election and he is required to keep a record of such election in a book kept for that purpose.

6. In answer to your sixth question the only duties of the county auditors are to act as the clerk of the election and to keep a record of such election in a book kept for that purpose.

7. In answer to your seventh question it is to be observed that from a consideration of the history of said statutes the above 1873 statute (28-801, Burns' Indiana Statutes Annotated 1933), under its amendment by Section 1, Chapter 79 of the Acts of 1877 [see footnotes Section 28-801, Burns' In-

diana Statutes Annotated (1948 Repl.)] included as members of the County Board of Education not only the township trustees but also included the chairman of the school trustees of each town and city. This provision was omitted by the amendment to the section of the statute by Section 1, Chapter 156 of the Acts of 1945 which provided that the board should be composed of "the township trustees of each and every township of each county." This was probably done for the reason that under our present school laws the county superintendent of schools has few duties in connection with the operation of city school corporations and town school corporations but has many functions connected with township school corporations.

As pointed out in an official opinion of this office, same being 1947 Ind. O. A. G., page 204, Official Opinion No. 41, a number of our present true consolidation statutes (as distinguished from joint school statutes), provide that on consolidation the identity of the local township school ceases to exist as a school corporation and it is merged in the new consolidated units, which in most cases has the characteristics of, and is governed by, the laws relative to city school corporations. This might be a very potent reason why township trustees of a township whose schools have formed a true consolidation with other school corporations, and has selected its own superintendent of schools, would not from a school standpoint be materially concerned with the functions of the County Board of Education, a participation in its meetings, or the identity of the county superintendent of schools. However, regardless of what reasons might be advanced along this line it is my opinion it is a matter for the Legislature to prescribe by law rather than a matter to be determined by construction from this office. Since the statute [Section 28-804a, Burns' Indiana Statutes Annotated (1951 Supplement)] specifically provides "the township trustees of each and every township of each county shall constitute a county board of education," I am of the opinion township trustees, whose schools have been consolidated with other schools, and which consolidated schools have selected their own superintendent, are entitled to membership in the County Board of Education and to vote at an election of a county superintendent of schools.