

“Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean, that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.”

Therefore, any expenditures of money made by the town trustees in pursuance of their delegated duties, which expenditures are properly authorized, are valid by virtue of the fact that said trustees hold office until their successors have been elected and qualified.

It is therefore my opinion that:

1. The town trustees have no duties whatsoever in regard to calling of an election at the expiration of their term.
2. Since a town trustee holds office by virtue of a constitutional provision until his successor has been elected and qualified, it is my opinion that any expenditure of money made by them pursuant to their official duties are legal and they incur no obligations therefrom.

OFFICIAL OPINION NO. 52

July 7, 1953.

Mr. Ferdinand Jehle, Secretary,
Indiana State Board of Registration for
Professional Engineers and Land Surveyors,
230 State Capitol,
Indianapolis, Indiana.

Dear Mr. Jehle:

Your letter of June 19, 1953 has been received and reads as follows:

“The Board has requested me to get your official opinion as to whether or not a man who has been granted registration through error (made by the

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Board) can have his license revoked after the error has been discovered and brought to the attention of the Board.

“While the 1935 Act was in force, registration could be granted to an applicant without examination if he had a degree from an accredited Engineering School and four years of experience acceptable to the Board. The 1947 Act which went into effect January 1, 1950 made it necessary for every applicant to take an examination even though he was a college graduate. Naturally, toward the end of 1949 a great number of men applied for registration in the hope that they would be accepted without examination.

“Included in this last minute rush was Mr. Ben H. Seely. He had attended the University of Wisconsin during various periods between 1925 and 1931 but never graduated and in fact was dropped for low scholarship. Our records show that his application was received, together with his fee of \$10.00 on November 2, 1949. The Board acted on it at their meeting December 16, 1949 and marked him up for examination. Through some error, however, he was granted registration without examination as of December 16, 1949 and our records further show that he made his final payment of \$15.00 on December 28, 1949 and was issued Certificate No. 5121 as a Professional Engineer. Our records also disclose that Mr. Seely has paid his renewals promptly and is today in good standing to July 31, 1953.”

The section of the statute governing your Board under which this application for licensure was made is Section 63-1528, Burns' Indiana Statutes Annotated (1951 Repl.) which made the above requirements for licensure in certain instances to be made on or before January 1, 1950. The section of the statute authorizing revocation of certificate is Section 63-1538, Burns' Indiana Statutes Annotated (1951 Repl.), same being Section 22, Chapter 148, Acts 1935, which provides as follows:

“The Board is hereby authorized to refuse to issue a certificate of registration to any applicant therefor, or to revoke or suspend the certificate of registration of

any professional engineer or land surveyor, or to reprimand, censure, or otherwise discipline a professional engineer or land surveyor in accordance with the following provisions and procedure, in any of the following cases:

“(a) Practice in Violation of Act. Upon proof that the holder of, or applicant for such certificate of registration is or has been practicing in violation of any of the provisions of any section of this act (§§ 63-1517—63-1553).

“(b) Certificate Obtained by Fraud. Upon proof that such certificate of registration has been obtained or that the holder thereof has obtained any such certificate of registration by fraud or misrepresentation.

“(c) Bribery. Upon proof that any money was paid or offered to be paid to secure such certificate of registration except the fees prescribed in this act.

“(d) False Impersonation. Upon proof that the holder of any such certificate of registration is or has falsely impersonated a practitioner or former practitioner, or is practicing or has practiced under an assumed or fictitious name.

“(e) Commission of a Felony. Upon proof that the holder of any such certificate of registration is or has been guilty of a felony.

“(f) Aiding and Abetting Unauthorized Practitioner. Upon proof that the holder of any such certificate of registration has aided and abetted, in the practice of professional engineering or land surveying, any person who is not duly authorized to practice professional engineering or land surveying under the provisions of this act.

“(g) Incompetency—Unprofessional Practice. Upon proof that the holder of any such certificate of registration is or has been guilty of fraud or deceit or of gross negligence, incompetency or unprofessional conduct in the practice of professional engineering or land surveying.

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“(h) Improper Use of Seal. Upon proof that the holder of any such certificate of registration has permitted his seal to be affixed to any plans, specifications or drawings which were not prepared by him, or under his personal supervision by his regularly employed subordinates, and/or for which he does not take full responsibility. (Acts 1935, ch. 148, § 22, p. 510.)”

It is to be noted that the above section of the statute limits the cause for revocation of a certificate of registration, as far as cause arising incident to the original granting of a certificate of registration, to fraud or misrepresentation or to bribery in relation to the securing of such certificate. None of these facts are indicated in this case as set out in your letter. On the contrary it seems that your board recognized that this man was not a graduate of engineering school, and therefore, fixed a time for him to take an examination under the statute. Due to some mistake by your board when the time for examination arrived, instead of examining the man your board granted him a certificate of registration. He paid the remainder of his fees for registration and has apparently kept his renewal of registration paid to date. These facts are not within the cause for revocation specified by the legislature for the revocation of such certificates.

From the foregoing, unless, either in your statute or in some other act of the legislature, further authority is given you in the matter, your board would not have such additional revocation authority.

42 Am. Jur., “Public Administrative Law,” Section 174, p. 535.

An examination of the statute governing your board does not reveal any such additional authority.

The Administrative Adjudication Act of Indiana, Chapter 365, Acts 1947, same being Section 63-3001 *et seq.*, Burns' Indiana Statutes Annotated (1951 Repl.), governs your board in administrative procedure. Section 26 of said act, same being Section 63-3026, Burns' Indiana Statutes Annotated (1951 Repl.) provides as follows:

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"In addition to any other power existing by statute or law to modify its order or determination every agency shall have authority to modify any order or determination during the time within which a judicial review could be had thereof. Any person aggrieved by any such modification may have a judicial review thereof as provided herein for reviews of agency determinations."

By the last referred to section of the Administrative Adjudication Act it is clear that authority to modify any final order or determination is limited to that time in which a judicial review may be had thereof. This period of time is limited to fifteen days under the provisions of Section 19 of said Act, same being Section 63-3019, Burns' Indiana Statutes Annotated (1951 Repl.).

From the foregoing I am of the opinion that your board is not now authorized to revoke said certificate of registration for the reasons given in your letter but that revocation can only be had for a statutory reason.

OFFICIAL OPINION NO. 53

July 8, 1953.

Hon. Frank T. Millis,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 9, 1953 in which you request my opinion as follows:

"I respectfully request an official opinion of the Attorney General as to the legality of paying an engineer on a contract basis as a consultant for the Indiana Toll Bridge Commission; and over the same period of time, paying to a firm of engineers, of which the aforementioned engineer is a partner, a fee for the design of the proposed Lawrenceburg bridge."