

Chapter 241 of the Acts of 1945 need not be published in a newspaper.

OFFICIAL OPINION NO. 80

September 30, 1953.

Mr. Ancil B. Morton, Director,
Bonus Division, State of Indiana,
141 S. Meridian Street,
Indianapolis, Indiana.

Dear Sir:

This is in reply to your letter of July 3, 1953 in which you ask the following question:

“Does House Enrolled Act 194 of the Acts of the General Assembly of 1953 in itself amend or repeal Sections of the 1949 Bonus Law, as amended, other than those sections specifically stated in House Enrolled Act 194 itself?

“If your answer to the above question is in the negative would it be your opinion that the procedure we have outlined, paragraph 3, page 2 of this letter, be correct?”

House Enrolled Act 194, which is Chapter 231 of the Acts of the General Assembly of 1953, as found in Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Section 59-1402, was an act to amend Section 1 of an act to amend Sections 2, 3 and 13 of an act approved March 12, 1949.

Sub-section (c) of Burns' Indiana Statutes Annotated, Section 59-1402, *supra*, prior to amendment provided:

“(c) The term ‘next of kin’ means the widow or widower, who has not remarried, children, persons standing in *loco parentis*, mother, father (however if the mother, or father has abandoned, deserted or failed to exercise parental care to deceased while a minor, she or he will be removed from the line of succession within this definition), of any member of the armed forces of the United States, in the order named: * * *.”

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In 1953 Sub-section (c), *supra*, was further amended by the addition thereto of the following:

“* * * Provided, however, That in the event an applicant for a bonus payment dies before a vested interest to such bonus payment has accrued, such bonus payment shall accrue to the benefit of the next of kin in the order as provided herein: Provided, further, That if there are no next of kin, such bonus payment shall be paid to the estate of such deceased applicant without any further application for such bonus being filed.”

It is the universal rule of statutory construction that the words used by the legislature must have some meaning prescribed to them, and no word, term or phrase shall be construed to be meaningless.

Reed v. Beczkiewicz (1938), 215 Ind. 365, 18 N. E. (2d) 789.

It is a rule of statutory construction that change of phraseology from that of the original act will raise the presumption that a change of meaning was also intended.

State *ex rel.* Goodman v. Peak (1931), 203 Ind. 241, 179 N. E. 720.

In the case of State *ex rel.* Hopper v. Board (1925), 196 Ind. 472, 149 N. E. 69, the court said:

“The court must have regard to all the words used by the legislature in a statute and give effect to them as far as possible; and the introduction of a new word into a statute indicates an intent to cure a defect in and suppress an evil not covered by the former law.”

Where different sections of the same act or different provisions of the same section are in irreconcilable conflict, the court should look to the entire act and to the history of the legislation for the purpose of determining the legislative intent, but if such intent cannot be ascertained the section or provision last in order of time must prevail, and the other be deemed abrogated to the extent of the repugnancy.

Curless v. Watson (1913), 54 Ind. App. 110, 100 N. E. 576.

By looking at the act in question, as amended in 1951, we see that if an applicant for a bonus died after the deadline for filing bonus applications and prior to the date of vesting, his next of kin or estate, although entitled to the payment of his bonus, were not able to collect the same for the reason that the deadline for filing had passed. Therefore the 1953 amendment was intended to cure this defect and give them the right to payment without the necessity of filing an additional application.

In construing the meaning of a statute the courts must look to the intention of the legislature apparent from the entire statute.

Houk v. Barthold (1880), 73 Ind. 21.

To ascertain the intention of the legislature in any section of the act, all of the sections and provisions of the act should be construed together.

State *ex rel.* Michener v. Harrison (1888), 116 Ind. 300, 19 N. E. 146.

Although the section, as amended, affects another section it does not expressly amend or repeal those sections affected. By virtue of the fact that all the sections of an act must be read together in order to ascertain an intent of the legislature, it is axiomatic that each and every section will, as a rule, affect the application of other sections.

Therefore House Enrolled Act 194, *supra*, does not amend or repeal sections other than those specifically stated in House Enrolled Act 194 itself. However, it does affect and modify other sections and must be read along with the other sections to the extent that it might limit or extend rights granted or denied by the other sections of the act.

Paragraph 3, page 2 of your letter states:

“House Enrolled Act No. 5, enacted March 11, 1953, transferred the authority of the Veterans Affairs Commission to the Auditor of State (See O. A. G. 48, 1953). This department requested an opinion as to the estab-

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lishment of vested interest with respect to Category III upon which payment was commenced June 1, 1953. O. A. G. 49, 1953, stated that the applicants acquired a vested interest upon the date that Auditor of State started payment. Under this ruling our procedure would be thus: That if an applicant, in Category III, died prior to June 1, 1953, and left no surviving next of kin, then no payment could be made to the applicant's estate. The theory again was that the right was non-existent and could not accrue to the estate."

As stated beforehand, since House Enrolled Act 194, *supra*, must be given effect, it is my opinion that your present procedure is not correct, and that, in accordance with House Enrolled Act 194, if there are no next of kin, bonus payment should be paid to the estate of such deceased applicant without any further application for such bonus being filed.

It is therefore my opinion that:

1. House Enrolled Act 194, *supra*, in itself does not specifically amend or repeal sections of the 1949 Bonus Law, as amended, other than those sections specifically stated in House Enrolled Act 194 itself. However, being a subsequent amendment to the original act it will control and supersede any other conflicting or irreconcilable provisions and sections of the original act.
2. The procedure you have outlined in paragraph 3, page 2 of your letter is incorrect in so far as it does not take into consideration the provisions of House Enrolled Act 194.