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“* * * the powers, duties and authorities of said boards and said officers *shall not be affected in any manner by the provisions of this act.*” (Our emphasis.)

Consequently, they are not affected by Section 713 of said Act, *supra*, but are controlled by the laws relating to said boards and officers, and Chapter 263 of the Acts of the General Assembly of 1953 as found in Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Sections 49-143 and 49-144.

OFFICIAL OPINION NO. 84

October 7, 1953.

Hon. Harold W. Handley,
Lieutenant Governor of Indiana,
331 State House,
Indianapolis, Indiana.

Dear Mr. Handley:

This is in reply to your letter of September 15, 1953, which is as follows:

“A question has arisen relative to the interpretation of the new State Fair Board Law, namely Senate Enrolled Act Number 160.

“We would appreciate if you could obtain for us, at your earliest convenience, (1) an opinion as to the date of our annual reorganization meeting, which this year would fall on Wednesday, November 11th—a legal holiday; and (2) an opinion as to whether the current offices appointed by the Governor and due to expire this year, would terminate November 1, 1953 or December 31, 1953.

“Your early attention to this matter will be appreciated.”

Section 5 of the Acts of the General Assembly of 1947, Chapter 214, as amended by the Acts of the General Assembly of 1953, Chapter 86 as found in Burns' Indiana Statutes Annotated (1950 Repl., 1953 Supp.), Section 15-220 provides:

“The state fair board shall meet the second Wednesday, after the first Monday in November of each year, for its annual reorganization.* * *”

The Acts of the General Assembly of 1947, Chapter 236 as found in Burns' Indiana Statutes Annotated (1950 Repl.), Section 19-1916 (b) provides in part as follows:

“The * * * eleventh day of November, commonly called Armistice Day; * * * shall be legal holidays within the State of Indiana for all purposes. * * * Provided, however, That the provisions of this act shall not affect any action taken by the general assembly while in regular or special session and any action taken by the general assembly on any such holiday shall be valid for all purposes.”

This Act, *supra*, although providing that the 11th of November, commonly known as Armistice Day, shall be a legal holiday does not in itself place any legal prohibitions against the doing of an act.

It has been held that at common law ministerial or judicial acts might be lawfully performed on Sunday in the absence of a prohibitory statute.

Hadley *et al.* v. Musselman (1885), 104 Ind. 459, 3 N. E. 122.

The Court said as to Christmas:

“* * * Our statute makes Christmas a holiday in one respect, and in one only, and that is in regard to commercial paper, and we can find no rule of our common law making it a legal holiday as to any other matter.”

In the case of State v. Shelton (1905), 38 Ind. App. 80, 77 N. E. 1052 the Court said:

“This is an age of progress. The public conscience is quickened. We are tending to a higher civilization. The lines are tightening about those who in any manner would corrupt private and public morals. When any day is set apart for public rejoicing, harmless festivi-

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ties, and celebrations, and the people congregate for such purposes, they are entitled to every protection that the law can throw about them, to the end that they may devote themselves to the purposes of the day, uninfluenced by anything that may tend to deprive them of their rights, or inflame their passions. * * *

In the case of *Bowser v. Tobin et al.* (1939), 215 Ind. 99, 18 N. E. (2d) 773 the Court, in construing the validity of a divorce granted on a legal holiday said:

“While it is true that July 5, 1909, under the terms of the statutes then in force in Indiana, was a legal holiday, there was no statute then in force which prohibited the transaction of judicial business on that day or expressly made that day *dies non*. In the absence of a mandatory provision of a statute prohibiting such action, the interested parties and the court could legally conduct such divorce trial on July 5, 1909 and the resulting decree was valid and binding on the parties.”

In the case of *Freimann v. Gallmeier* (1945), 116 Ind. App. 170, 63 N. E. (2d) 150 the Court held that the setting and holding trial on a legal holiday was irregular and perhaps erroneous, but concluded that that action in and of itself was not sufficient to justify reversal.

While the establishment of a day as a legal holiday does not make that day a non-judicial day so as to render invalid or void judicial acts performed on that day in many jurisdictions the statutes by their terms or by necessary implication prohibited the transaction of judicial business on legal holidays.

50 Am. Jur., page 862, Section 78, “Sundays and Holidays.”

A statute making certain days legal holidays “for all purposes” has, however, been declared to import a *dies non juridicus*.

Occumpaugh v. Norton (1904), 24 App. D. C. 296, 68 L. R. A. 272, 2 Ann. Cas. 133;

Vidal v. Backs (1933), 218 Cal. 99, 21 P. (2d) 952, 86 A. L. R. 1134.

In the absence of statutory prohibition either expressed or reasonably implied official acts of business such as the meeting or transacting of business by a public board, commission, municipality or local subdivision of the city may validly take place on a holiday. Where there is a statute governing the matter of validity *vel non* of official acts performed on a legal holiday depends on the terms of the statute, and statutes having for their object the suspension of official transactions on holidays will be construed as prohibitive of such acts and only such acts as are in express terms or by clear implication prescribed.

Smith v. Robertson (1942), 155 Kan. 706, 128 P. (2d) 260.

A Wisconsin court has held that on a legal holiday no authority exists on that day to do any official acts although no express prohibition is contained in the act. A prohibition is implied in the term "holiday."

Lampe v. Manning (1875), 38 Wis. 673.

Taking into consideration the present statute making Armistice Day a holiday for all purposes and various cases cited under comparable statutes, it is my belief you are prohibited from meeting on November 11th, it being a legal holiday for all purposes and that the day of your annual meeting should be the following day.

Senate Enrolled Act 160 which was enacted into law by the General Assembly of Indiana of 1953 in Chapter 86 as found in Burns' Indiana Statutes Annotated (1950 Repl., 1953 Supp.), Sections 15-218 through 15-220 provide in part as follows:

"Sec. 3. The terms of all board members shall be for two years beginning at the time of the first annual meeting following their appointment, except as herein-after provided. * * *

"The members representing agricultural districts numbered 2, 4, 6, 8 and 10, and three of the members appointed by the governor are those whose terms expire on the last day of December, 1950.

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“The members of said board representing agricultural districts numbered 1, 3, 5, 7, 9 and 11, and the other two members appointed by the governor shall be those whose terms expire on the last day of December, 1949. At the time of appointment the governor shall designate the terms of the appointees.

* * *

“Sec. 2. Section 4 of the above entitled act is amended to read as follows: Sec. 4. The governor shall, prior to the annual meeting of the board in 1948, appoint five members of the state fair board, who shall be representative of the various agricultural interests of the state, preferably from those agricultural interests not represented in the elected member group. No more than three of the governor’s appointees shall be members of the same political party.

* * *

“* * * Each agricultural district conference, by majority vote, shall nominate a resident of the district, for the position of member of the Indiana State Fair Board representing such district and the governor shall, prior to the next annual meeting of the board, appoint the person so nominated by said conference: * * * That should any vacancy occur prior to the date of any regular meeting of said conference or by a death, resignation or otherwise, the governor shall have the power to appoint a successor who shall possess the qualifications set out above and the appointee shall serve for the unexpired term. All district conferences shall be held annually during the month of October.

* * *

“Sec. 3. * * * The state fair board shall meet the second Wednesday, after the first Monday in November of each year, for its annual reorganization. Ten members present shall constitute a quorum. * * *”

Prior to the 1953 Amendment the Act creating the Indiana State Fair Board, the Acts of the General Assembly of 1947, Chapter 214 as found in Burns’ Indiana Statutes Annotated (1950 Repl.), Sections 15-218 through 15-220 provide in part as follows:

"Sec. 15-218. The terms of all board members shall be for two (2) years beginning at the time of the first annual meeting following their appointment, except as hereinafter provided. Hereafter no member of the board shall continue longer than for four (4) successive terms, provided that membership on the present board shall not prevent any member of the new board from serving four (4) terms on such new board. * * *

"The members representing agricultural districts numbered 2, 4, 6, 8 and 10, and three (3) of the members appointed by the governor are those whose terms expire on the last day of December, 1950.

"The members of said board representing agricultural districts numbered 1, 3, 5, 7, 9 and 11, and the other two (2) members appointed by the governor, shall be those whose terms expire on the last day of December, 1949. At the time of appointment, the governor shall designate the terms of the appointees.

"Sec. 15-219. The governor shall, prior to the annual meeting of the board in 1948, appoint five (5) members of the state fair board, who shall be representative of the various agricultural interests of the state, preferably from those agricultural interests not represented in the elected member group. No more than three (3) of the governor's appointees shall be members of the same political party.

"Eleven (11) members shall be nominated, one from each agricultural district as herein set forth, to be selected by the following agricultural interests within said district as represented by county organizations of breeders of swine, sheep, dairy cattle, beef cattle, light horses, draft horses, poultry, and horticulturists, vegetable growers, grain growers, home economics clubs, organized agriculture as represented by the farm bureau and grange, and county and other regularly organized agricultural fairs.

"Such organizations within the county representing each such agricultural interest shall meet and select a county delegate to represent that interest in the agri-

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cultural district conference. Said county delegates shall meet in district conference, as herein provided, and select a nominee for appointment to the state fair board.

* * *

“Sec. 15-220. The state fair board shall meet the first Wednesday, after the first Monday in January of each year, for its annual reorganization. Twelve (12) members present shall constitute a quorum.”

As shown above the statute as amended creating the state fair board, setting out its members and terms of office, provided that the said state fair board members serve for a period of two (2) years. The portion of the statute in Section 3 which speaks of the express date on the last day of December of 1949 established staggered terms and was applicable only to those who were incumbents in 1949. The present statute, *supra*, provides that the terms of the board members shall begin at the date of the annual meeting which by the 1947 law, *supra*, was held in January. When the meeting was held in January, the terms of said state fair board members expired in December by virtue of the appointment of a new board. The 1953 amendment, *supra*, provides that the district conferences are to be held in October and that the Governor shall appoint the persons so nominated to the state fair board prior to the annual meeting of the board which is now to be held in November.

It is therefore my opinion :

1. That since the date of your annual reorganization meeting falls on Wednesday, November 11th, which is a legal holiday, it should be set for the following day.

2. Current offices appointed by the Governor and due to expire this year would terminate the day before the day of the annual meeting and the new appointees' terms begin the day of the annual meeting.