

This opinion is written with due consideration to the opinions contained in Opinions of the Attorney General 1951, page 38, Official Opinion No. 14 and Opinions of the Attorney General 1952, page 301, Opinion No. 78.

---

OFFICIAL OPINION NO. 14

March 3, 1953.

Hon. Joseph Klein,  
State Representative,  
Lake County  
House of Representatives,  
Indianapolis, Indiana.

Dear Sir:

I have your letter in which you request an opinion upon the "hypothetical facts" as follows:

" 'A' is elected to the legislature. Soon thereafter he is approached by an official of the county that he represents with a request for legislation which calls for increased salaries or augmented appropriations for that county office. Obliging 'A' devotes much of his 61 legislative days to the salary-boosting, appropriation-raising drive and he succeeds in attaining his objectives.

"A day or two after the session of the legislature the efforts of 'A' are gratefully rewarded with a job in the county office.

"Two years later 'A' takes a leave of absence or a '61-day resignation' and returns to the legislature determined inevitably to make a further show of appreciation for the job that he received in return for his legislative activities in behalf of his employer or superior in the prior session.

"The question I raise is whether 'A', and the case is not hypothetical, could continue to participate in the voting on bills which effect his employer or employers or the office in which he is employed when the legislature is not in session."

## OPINION 14

In response thereto I submit the following:

The Indiana Constitution contains the following provisions which concern the question you have posed. Article 4, Section 10 of the Indiana Constitution provides:

“Each house, when assembled, shall choose its own officers, the President of the Senate excepted; *judge the elections, qualifications, and returns of its own members; determine its rules of proceedings*, and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.” (Our emphasis)

And also, Article 4, Section 30:

“No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the People.”

Upon examination of these two provisions it can be seen that the Constitution provides that the Legislature is the sole judge of such matters. Your letter also mentions House Rule No. 18 and you apparently request our application of this rule to the facts stated in your letter. However, we do not feel that this office should attempt to interpret or apply the rules of the General Assembly since that is a matter within the exclusive province of the legislature.

Other cases in Indiana have upheld the principle that the Legislature is the sole judge of the conduct of its members while in session and in matters pertaining to their qualifications for the office.

In the case of *Lucas v. McAfee* (1940), 217 Ind. 534, 539, 542, 29 N. E. (2d) 403, 405, 29 N. E. (2d) 588, the court said:

“The right of legislative bodies to judge the elections, qualifications, and returns of their own mem-

bers is of ancient origin. The history of the doctrine reveals that it was established in the constitutional law of England in the year of 1586, during the reign of Queen Elizabeth \* \* \*.

“Provisions guaranteeing this right are to be found in the federal Constitution and in the organic law of every state in the Union, in language substantially if not identically like that employed in ours.

“\* \* \* The right is deemed essential to the enactment of legislation without interruption and confusion and to maintain a proper balance of authority where the functions of government are divided between coordinate branches. It is no more subject to judicial interference or control, than the judicial functions of this court are subject to the dictates of the legislative or executive departments. The Constitution has defined a domain upon which courts may not tread. *Dinan v. Swig* (1916), 223 Mass. 516, 112 N. E. 91.”

This principle has been affirmed in the subsequent cases:

*State ex rel. Acker et al. v. Reeves*, Judge of the Vanderburgh Circuit Court (1951), 229 Ind. 126, 95 N. E. (2d) 838;

*State ex rel. Beaman v. Circuit Court of Pike County et al.* and *State ex rel. Beaman v. Circuit Court of Gibson County et al.* (1951), 229 Ind. 190, the same being 96 N. E. (2d) 671.

This being the long established principle, we feel that it is improper for this office to render an opinion upon a matter universally recognized to be within the exclusive province of the legislature.

We have not here considered the questions as to whether or not such acts constitute a violation of the State Constitution as to dual office holding or as to members of the Legislature being employees in the Administrative or Judicial branches of State Government as it is not within the purview of your question and would also require a consideration of facts not sufficiently presented in your letter.