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OFFICIAL OPINION NO. 31

April 3, 1952.

Honorable Harold F. Brigham, Director,
Indiana State Library,
140 N. Senate Avenue,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

"It seems unavoidable that we request your office to render an additional official opinion in interpretation of the Library Law of 1947 to enable us to help libraries which must convert to that law this year.

"We ask what construction you put upon Section 8, Acts of 1947, Chapter 321, as it relates to constituting the library board of a *county* library district.

"Specifically, then—

"(1) Can the terms 'board of town trustees' and 'common council' properly be construed to refer to the Board of County Commissioners as the appointing authority for county library purposes?

"(2) Likewise, what corresponding school body of the county can be accepted as inferred by the terms 'school boards', 'boards of school trustees' and 'boards of school commissioners'?

"The terms named in Section 8 refer clearly to cities and towns, yet in the first line the word 'county' is used, indicating that the Section does apply to the constituting of library boards for county library districts.

"Consideration of our second question may bear a relation to Section 11 of the same Act, which provides clearly for the appointment of a county library board when library service is to be extended to the people of a county from an established library district (usually a city). Section 11 designates the 'county superintendent of schools' as the appointing authority for county

library purposes in this situation. Section 8, on the other hand, appears to call for an official body rather than an individual official as the appointing authority, and to this extent is inconsistent with Section 11. In virtually all Indiana counties there is only a nominal county board of education, namely, the township trustees meeting in that capacity very infrequently to elect the county superintendent of schools. It is difficult to see how the township trustees might serve as a school board for the purpose of appointing library trustees for a county library, if indeed such a responsibility can be considered to lodge at all in the hands of the township trustees of a county.

“The opinion we are requesting is needed in order to give advice to county libraries which are immediately faced with the compulsory requirement to convert to the Library Law of 1947. We shall be very grateful for anything you can do to render an early opinion.”

Section 8 of Chapter 321 of the Acts of 1947 to which you refer appears as Section 41-908, Burns' 1951 Supplement which reads in part as follows:

“The library board of a city, town, county or other library district, organized or otherwise coming under the provisions of this act, shall be composed of citizens who have resided for at least two (2) years in the library district and shall consist of the following members: Three (3) members shall be appointed by the judge of the circuit court of the county in which such library district is located, one of whom shall be appointed for one (1) year, one for two (2) years, and one for three (3) years; two (2) members shall be appointed by the board of town trustees or common council, one of whom shall be appointed for one (1) year and one for two (2) years; in all municipalities in which the schools are under the supervision of school boards or boards of school trustees or boards of school commissioners, two (2) members shall be appointed by such school board, one for a term of three (3) years and one for four (4) years. * * *”

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Sections 10 and 11 of that Act appear in Burns' 1951 Supplement 41-910 and 41-911. These sections make provision for the organization of "county libraries." They do not provide that such county libraries shall be "library districts." Rather the term "library district" as used in these two sections is distinguished from the term "county library." It is further to be noted that these two sections are direct quotations and reenactments of Sections 5 and 6 of Chapter 45 of the Acts of 1917, as subsequently amended, which was the act authorizing the creation of such county libraries prior to the enactment of the Library Law of 1947. By its terms Section 8 applies to the conversion or establishment of all library districts and the term "library district" is defined in Section 3 of the Act as follows:

" 'Library district' shall mean any municipal corporation, or combination thereof, organized under this act, or any existing library, or combination thereof, which subsequently shall come under the terms of this act."

Section 8 is the only provision for conversion of any existing library organization to the terms of the 1947 Act. Thus, if county libraries are to convert, they must be governed by the provisions of Section 8. Inasmuch as the wording of Section 8 is sufficiently broad to include the organizations previously known as "county libraries" it would appear that they may convert pursuant to its provisions. As you have pointed out, the terminology throughout Section 8 is applicable to cities and towns rather than to counties or other governmental units.

The cardinal rule of statutory construction in Indiana is that all legislation must be construed to effectuate the intent of the legislature. In applying that rule to omissions and expressions which are inadvertently too narrow, the Supreme Court of Indiana said in the case of *State ex rel. 1625 E. Washington R. Co. v. Markey*, Judge (1936), 212 Ind. 59, 65, 7 N. E. 989:

"It is also said in R. C. L. Sec. 227, p. 978 that:

"Legislative enactments are not more than any other writings to be defeated on account of mistakes, errors or omissions, provided the in-

tention of the legislature can be collected from the whole statute. Where one word has been erroneously used for another, or a word omitted, and the context affords the means of correction, the proper word will be deemed substituted or supplied. This is but making the strict letter of the statute yield to the obvious intent.' 25 R. C. L. Sec. 227, p. 978; *Gustavel v. State* (1899), 153 Ind. 613, 54 N. E. 123.

"As said in the case of *State v. Brodigan* (1914), 37 Nev. 245, 141 Pac. 988:

"Where, from a reading of the entire act, certain words necessary to give it complete sense have manifestly been omitted, courts, under well-established rules of construction, are permitted to read the same into the act in order that the law may express the true legislative intent.'

"Considering the foregoing rules of construction, we are of the opinion that it was the intent of the legislature to include the words 'or civil' in all places in the act where 'criminal' cases are referred to and to include 'the plaintiff' in all places where 'prosecuting attorney and the defendant or defendants' are referred to. Such a construction carries out the clear intent of the legislature as expressed in the title."

Similarly it has been held frequently that grammatical or typographical mistakes may be corrected. See:

Gustavel v. State (1899), 153 Ind. 613, 617, 54 N. E. 123;

Official Opinion No. 25 of 1951;

1949 Opinions of the Attorney General, 384;

1945 Opinions of the Attorney General, 188, 193.

Therefore, the questioned provision of the act should be interpreted to enumerate or provide the appointments by comparable bodies of the county or other governmental unit. From what has previously been said it is apparent the Board

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of County Commissioners most nearly approaches on the county level, the Board of Town Trustees or the Common Council on town or city levels.

Therefore, where the expression Board of Town Trustees or Common Council is used, it should be interpreted to mean Board of Town Trustees or Common Council or Board of County Commissioners. Likewise, in the case of school boards, the County Board of Education would appear to be intended, although it is more difficult to determine which of several educational authorities is most directly comparable. As you point out in your letter, a body rather than a single individual seems to be contemplated and the fact that the county boards of education have only been the nominal county boards would not seem to give a strong indication of a legislative intent to keep that organization purely nominal.

Specifically my answer to your questions is, Yes, county commissioners are the appropriate appointing authority for county library purposes where the act mentions Board of Town Trustees and the common council, and the county board of education is the proper appointing authority where the act mentions similar educational organizations.

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April 3, 1952.

Honorable W. H. Skinner, Director,
Indiana State Personnel Bureau,
311 West Washington Street,
Indianapolis 4, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

“Paragraph H of Section 1 of Chapter 153, Acts of 1945 provides for the re-opening of examinations for persons entitled to ten points’ veterans’ preference.

“We have received our first request for an examination in accordance with this provision of the Act. In