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OFFICIAL OPINION NO. 56

August 13, 1952.

Hon. Thomas R. Hutson,
Commissioner of Labor,
Department of Labor, State of Indiana,
Room 225, State House,
Indianapolis 4, Indiana.

Dear Sir:

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

“Chapter 232, Acts of 1951, Section 19 reads as follows:

“All laws or parts of laws in conflict herewith are hereby repealed.

“1. Are all other laws and regulations of the State of Indiana pertaining to elevators, dumbwaiters, and moving stairways still in effect, and, can they be enforced if they do not conflict with Chapter 232, Acts of 1951?

“2. Prior to the effective date of Chapter 232, Acts of 1951, if a new installation was installed in violation of any law or regulation, or laws or regulations of the State of Indiana pertaining to elevators, dumbwaiters, and moving stairways then in effect, and, such installation was not approved by the State of Indiana at the time it was installed, does the Elevator Safety Subdivision of Division of Labor have the right to consider such an installation as a new installation which must therefore conform with Chapter 232, Acts of 1951?”

There were a number of statutes authorizing certain controls on the operation and construction of elevators prior to the adoption of Chapter 232 of the Acts of 1951 (Sec. 20-1201 *et seq.*, Burns' 1951 Supplement). For example, Section 5 of Chapter 142 of the Acts of 1899, same being Burns' 40-1001, provided for certain types of inspection and required the

enclosure of elevator shafts. Section 4 of Chapter 142 of the Acts of 1899 as last amended by Chapter 223 of the Acts of 1947, same being Burns' 40-904, restricted the operation of elevators by children. It would also appear that under the duties of the Department of Labor relating to factory inspection, etc., that general powers were granted which were applicable to elevators as well as other mechanical devices.

An examination of Chapter 232 of the Acts of 1951, same being Burns' 20-1201, *et seq.*, shows that this Act is a comprehensive and exhaustive piece of legislation on the subject of elevators and related devices, their installation, repair, maintenance and inspection. This Act covers all aspects of previous Acts and regulations adopted pursuant thereto pertaining to elevators, dumbwaiters, and moving stairs with the possible exception of the section previously mentioned concerning children. Having fully dealt with subjects of prior legislation, all prior legislation on the subject, whether in conflict or not, is impliedly repealed.

Hamilton County Council v. State *ex rel.* Groff
(1949), 227 Ind. 608, 87 N. E. (2d) 811;

DeHaven v. City of South Bend (1937), 212 Ind.
194, 7 N. E. (2d) 184;

City of Elkhart v. Pribble (1937), 212 Ind. 702, 7
N. E. (2d) 192.

Therefore, to answer your question specifically, all other laws and regulations cease to exist at the effective date of Chapter 232 and can no longer be enforced.

In regard to your second question, Chapter 232 contains no savings clause and, thus, supposed violations of prior statutes or rules will not affect the operation of this Act. The term "new installation" is specifically defined in Subsection (j) of Section 1, Chapter 232 of the Acts of 1951 to include solely installations for which a permit for installation or relocation is filed after the effective date of the 1951 Act. Thus, the Division of Labor or the Elevator Safety Subdivision may not treat prior installations as new installations.

Inasmuch as the type of elevator installation about which you inquire is under the provisions of Chapter 232 and an existing elevator, no action or remedy is available to bring

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such an elevator up to standard, except as the remedy exists as to all existing elevators regardless of the time or conditions under which they were originally installed.

OFFICIAL OPINION NO. 58

August 20, 1952.

Mr. Edwin K. Steers, Sr.,
108 East Washington St.,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion on the term of an appointee to fill a vacancy as Clerk of the Circuit Court. You accompany your request with a letter from same appointee which states the facts as follows:

"At the general election of 1950, Carl A. Smith was elected on the Republican ballot to the office of Clerk of the Jay Circuit Court and on January 1, 1952, Carl A. Smith qualified and acted as Clerk for approximately twenty-four hours. On January 2, 1952, he gave his resignation to the Board of Commissioners of Jay County.

"I, Dohrman Brotherton, on January 2, 1952, made application for the Office of Clerk of the 58th Judicial Circuit of the State of Indiana, and received my appointment and commission as Clerk of the 58th Judicial Circuit of the State of Indiana comprising Jay County dated January 7, 1952, to serve as such until my successor is duly elected and qualified, signed by Governor Henry F. Schricker and Secretary of State Leland L. Smith."

In the case of *Enmeier v. Blaze* (1931), 203 Ind. 475, 481, 181 N. E. 1, the Supreme Court of this state had before it the question of the validity of the statute seeking to delay the beginning of the term of certain constitutional offices in order to provide uniformity of succession of office.