

membership cards to its members containing a bail bond guarantee up to \$1000. By those provisions it does not seem that the legislature regarded such bonds as being included in insurance. While there are included matters not constituting insurance, it is my opinion that the arrangement set out in the papers, whereby the club undertakes to pay the members money for expenses incurred by them for road services including "emergency mechanical aid and tire changing," "tow-in service," and "accident expense aid," constitute the making of insurance and such undertakings on the part of the automobile club are insurance contracts apart from the other things which the club undertook to do for its members.

The statement in the brochure as follows: "not an insurance policy" can have no legal effect if the arrangement as set out in the papers does in fact and in law, as we have concluded, constitute an insurance contract. Whether it is actually an insurance contract is determined by the effect under the law of the provisions of the contract and not by the name or characteristics attributed to it by the club.

OFFICIAL OPINION NO. 11

January 30, 1952.

Honorable Frank T. Millis
Auditor of State of Indiana
State House
Indianapolis, Indiana

Dear Sir:

Your letter of January 19, 1952, has been received requesting an opinion on the following question:

"I respectfully request your official opinion as to whether or not a salary change to a lesser amount for a judge of the circuit court pursuant to Chapter 129 Acts 1949 is in conflict with Section 13, Article 7 of the Constitution. This question is raised because three judges are in circuits where the population has decreased to the extent that according to Chapter 129 Acts 1949 the circuit is in the next lower pay bracket."

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Article 7, section 13, of the Constitution of Indiana provides as follows:

“The Judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuation in office.”

It is true the legislature in fixing salaries is required to comply with the provisions of article 4, section 22, of the Constitution of Indiana, which in part provides:

“The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

“* * *

“(14) In relation to fees or salaries: except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required. (As amended March 14, 1881.)”

However, the last quoted constitutional provision is general as to all salaries and the provisions of article 7, section 13, of the Constitution of Indiana, *supra*, is special and specific and applies only to the salary of judges of the Supreme Court and Circuit Courts of Indiana and limits the application of article 4, section 22, clause 14.

Chapter 129 of the Acts of 1949, referred to in your question, is section 4-3229 et seq., Burns' 1951 Supplement.

Under section 1 of the statute, the word “judge” as included in the statute is defined to include a circuit court judge. Thereafter, various classifications according to population are made with a salary provision for each classification.

Section 12 of the Act (4-3240 Burns' Supp.) makes provisions for judges in office at the time of the taking effect of said act.

Section 13 of the Act, same being section 4-3241, reads as follows:

“Where, after the passage of this act (§§ 4-3229—4-3243), the classification of any judicial circuit is

changed by reason of change in the population as determined by census, the salaries of the judges of such judicial circuits shall thereafter be governed as provided by this act for judicial circuits of the population class into which it is so placed."

The last referred to section of the statute seems to contemplate a change in the salary of any judge whose judicial circuit is placed in a different population classification by virtue of any census taken after the effective date of said act.

It has been held the above constitutional provision prevents the legislature from enacting any law which would reduce the salary of a circuit court judge of this state during the remainder of his present elective term of office in an amount less than such salary was as of the date of his assuming such office.

State *ex rel.* Wadsworth v. Wright (1937), 211 Ind. 41, 45, 5 N. E. (2d) 504;

1951 Ind. O.A.G., Official Opinion No. 8;

1935 Ind. O.A.G., p. 224.

While the provision of the Constitution has been passed on by our Supreme Court with relation to a diminution in salary of a circuit court judge during his term by virtue of some action of the legislature, I do not find any case passing on the meaning of such constitutional provision on a change of a judge's salary resulting from a change of classification due to a census.

It is to be noted the above constitutional provision simply states such salary shall not be diminished and does not say such salary shall not be diminished by the legislature. This is more inclusive and it is reasonable to assume that, if the framers of the Constitution desired such language to be restricted to a diminishing of such salary by virtue of an act of the legislature, they would have said so. It should also be considered such diminution in salary during term results from a prior act of the legislature.

I am therefore of the opinion that part of the above statute, to the extent that it attempts to diminish the salary of a judge of a circuit court of this state during the term for which he

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was elected, by virtue of a change of population, as shown by a new census, is void because it violates article 7, section 13, of the Constitution of Indiana.

This opinion is limited to the effect of the statute insofar as it would decrease the salary of incumbent judges and does not affect the force or validity of the statute in increasing the salary of an incumbent judge, when application of the statute has that effect by virtue of a change of population as determined by the last census.

OFFICIAL OPINION NO. 12

January 30, 1952.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House
Indianapolis 4, Indiana

Dear Sir:

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

“The compiler of Burns’ Indiana Statutes has inserted a compilers note in Volume 4 of the 1951 cumulative pocket supplement following title and section numbers pertaining to probation officers to the effect that the salary provisions in each of the sections has been superseded by the provisions of Ch. 316, Acts 1951, regular session.

“Ch. 316, Acts 1951 appears to provide for a possible maximum salary for chief adult probation officers and assistant adult probation officers.

“The only authority we have been able to find for the chief adult probation officers is the Juvenile Court Act, Ch. 347, Acts 1945, Sec. 17, paragraph 3, Burns’ 1951 Supp. 9-3117.

“The digest of House Bill 180 which became Ch. 316, Acts 1951 indicates the purpose of the bill, to establish