

OFFICIAL OPINION NO. 8

February 9, 1951.

Honorable Charles T. Miser,
Member of House of Representatives,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of February 6, 1951 has been received and reads as follows:

"H. B. 458 provides for the creation of the Eighty-fifth Judicial Circuit of Indiana defining the limits to be that of Steuben County, Indiana, and redefines the Thirty-fifth Judicial Circuit of Indiana as being limited to the County of LaGrange. The Thirty-fifth Judicial Circuit is presently defined as LaGrange and Steuben Counties."

Section 4 Chapter 129 of the Acts of 1949 reads as follows:

'In judicial circuits having a population of fifteen thousand or over and less than twenty thousand, as shown by the census, each judge shall receive an annual salary of six thousand six hundred dollars.'

Section 5 Chapter 129 of the Acts of 1949 reads as follows:

'In judicial circuits having a population of twenty thousand or over and less than thirty-five thousand, as shown by the census, each judge shall receive an annual salary of seven thousand two hundred dollars.'

Section 13 Chapter 129 of the Acts of 1949 reads as follows:

'Where, after the passage of this act, 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

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such judicial circuit shall thereafter be governed as provided by this act for judicial circuits of the population class into which it is so placed.'

The combined population of LaGrange and Steuben Counties as shown by the census in the Thirty-fifth Judicial Circuit as of January 1, 1951 was more than 20,000 and less than 35,000. The population of LaGrange County as shown by the census is more than 15,000 and less than 20,000.

The Constitution of the State of Indiana provides as follows:

Art. 7, § 13.

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

My first question is as follows: If the Thirty-fifth Judicial Circuit as redefined by H. B. 458 is confined to the limits of LaGrange County and the population is more than 15,000 and less than 20,000 as shown by the last census and the incumbent Judge was elected in the general election of 1950, qualified and is acting and commenced serving on his six year term as such Judge of the presently defined circuit on January 1, 1951, would the provisions of H. B. 458 be construed to diminish the incumbent's compensation to \$6,600 during the balance of his elective term after the effective date of the act?

"My second question is this: Would the provisions of Section 13, Art. 7 of the Constitution of the State of Indiana guarantee the incumbent Judge's salary of \$7,200 for the balance of his elected term after the effective date of the act?"

It is to be noted House Bill 458 as shown by the copy attached to your request does not make specific provisions exempting salary of the present Judge of the Joint Circuit Court from the effects of its provision.

1. In answer to your first question it is to be observed the present salary of the now presiding Judge of said Circuit Court is fixed according to population "as shown by the last Census." Except as forbidden by Article 7, Section 13, of the Constitution of Indiana, as hereinafter referred to, the provision of House Bill 458, would require a decrease in such present Judges salary from \$7,200.00 to \$6,600.00 per year on the basis that the law fixing such salary according to population was in effect prior to the election and qualification of the present Judge of said Joint Circuit. The Census would mean the last preceeding United States Census at the time of the effectiveness of such Act. Such Circuit Court Area of Jurisdiction would change as of January 1, 1953, and by that time the new 1950 United States Census will unquestionable have been officially declared.

Crowe v. Board of Commissioners of St. Joseph County 1936, 210 Ind. 404, 408.

2. In answer to your second question I am of the opinion that Section 13 of Article 7 of the Constitution of Indiana would bar a reduction in the salary of the present presiding Judge of such Joint Circuit and would effectively prevent the result stated in the answer to your first question. Sections 13 of Article 7 of the Constitution of Indiana reads 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 continuance in office."

It is clear 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 elected 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;

1935 Ind. O. A. G. Page 224.

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Since the Legislature could not directly by Statute provide for a reduction in such Judges salary under the facts above stated, it could not indirectly do so by its overt Act in enacting a Statute splitting such Judicial Circuit so that in fact the population of the remaining Circuit would accomplish such a reduction in salary. In other words the Legislature could not do indirectly what it is prohibited from doing directly.

I am therefore of the opinion that due to the provisions of Article 7 Section 13 of the Constitution of Indiana, the salary of the present elected, qualified and acting Judge of said Joint Circuit Court would not be effected by the enactment of House Bill 458, now pending in the General Assembly of Indiana.

OFFICIAL OPINION NO. 9

January 25, 1951.

Mr. Leland L. Smith,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your request for an Official Opinion which reads as follows:

“BRS 1933, Section 47-2501, Pocket Supplement, being the Acts of 1915, Chapter 304, Section 11, Page 1308 provides in part as follows:

“* * * if the application for title is for a vehicle brought into this state from another state, said application shall be accompanied by proper certificate of title, if such other state has a certificate of title law, or a sworn bill of sale or dealer's invoice fully describing the vehicle, together with the last or current registration receipt if such other state does not have a certificate of title law * * *”