

OFFICIAL OPINION NO. 13

February 13, 1951.

Honorable Paul C. Moellering,
House of Representatives,
State Capitol Building,
Indianapolis, Indiana.

Dear Sir:

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

“I would appreciate an official opinion on the uniform law, Acts of 1949, Chapter 14, page 32. The problem arises as to what is included in the wording of ‘uniform, clothing and equipment’. Does this include shoes, gloves, mufflers, sweaters, overshoes or boots all of which are necessary in the performance of his duty? Also in section 1 is stated the city shall furnish all uniform arms and equipment the first year but it doesn’t state what the city shall do thereafter if they elect to furnish the uniforms instead of allowing each officer \$100.00.

“Another question arises to whether the city shall furnish and maintain the uniforms, shall the city stand the expense of having the uniforms dry cleaned, repaired and otherwise maintained so as to pass rigid inspection?”

The question as to what constitutes a “uniform” has been raised on numerous occasions and has been the subject of a number of oral opinions as well as an unofficial opinion to Mrs. M. Helen Nave, City Clerk-Treasurer, Bloomington, Indiana, on February 8, 1949. It is a well established rule of statutory construction that words used in a statute must be construed in their plain, ordinary and usual meaning unless a contrary purpose appears, and that all words used by the Legislature should be given a meaning. Burns 1933 Annotated Statutes 1-201.

Garvin v. Chadwick (1937), 212 Ind. 499, 506;
Dreves v. Oslo School Township (1940), 217 Ind.
388, 397.

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Webster's International Dictionary (2nd Edition) defines "uniform" as follows:

"Dress of a particular style or fashion worn by persons in the same service, order, or the like, by means of which they have a distinctive appearance; as, the uniform of the artillery, of the police, of Knights Templars; also, a suit or garment of which a style; as, a showy uniform."

A careful search of the authorities for the definition of the word "uniform" as applicable to the instant question, reveals only two cases coming to my attention during the period of this legal research. In the case of *Montgomery Light and Traction Company v. J. P. Avant* (1918, Ala. Supreme Court) 3 A. L. R. 384, being an action to recover from a traction company streetcar fares paid by plain clothes policemen of the city of Montgomery, Alabama, under an ordinance providing that the street railway company shall "transport * * * officers and patrolmen of the police force * * * when in uniform," it was held that within the meaning of the ordinance, policemen in plain clothes, and exhibiting a badge, were in uniform, however, the Court held the badge was the only uniform designating such authority. In passing upon this on page 387 of the opinion the Court's said:

"The 'badge' of a detective or 'plain-clothes man' was the only uniform or insignia of authority prescribed by the governing authority of the city having control of such official, required to be worn and exhibited by that official on demand."

The other case was that of *Sackman Bros. Co. v. Hoey, Collector of Internal Revenue* (Circuit Court of Appeals, Second Circuit, 1942), 125 Fed. 2d 490, 492, involving the liability of a manufacturing company to pay a tax on certain garments manufactured and sold by the plaintiff as "baseball play suits", in age sizes 12 to 16. The question at issue was, were they taxable as "baseball uniforms".

The Court after stating that such baseball play suits were designed to imitate uniforms worn by baseball clubs, except that they had names written on the back of them, such as "Dizzy Dean" and "Daffy Dean", were in fact clothes of a

class used to designate as ball players, the Courts announced its finding as follows:

“* * * We entertain no doubt that the plaintiff's suits in the larger sizes which were subjected to tax were taxable as ‘uniforms’ designed for or commonly used in baseball games. Though used by children, they are not within the statutory exception of ‘children's toys and games.’”

Therefore, it is clear that “uniform” as used in the statute to which you refer means distinguishing articles of clothing capable of being used to identify the status of the wearer. It is to be noted that Chapter 320 of the Acts of 1945 provided that the city might aid only in the cost of uniform and equipment while Chapter 14 of the Acts of 1949 specifically includes clothing and arms in addition. Inasmuch as a change in legislative expression must be construed to change the meaning of the statute it is clear that the word “clothing” would include something in addition to what had previously been included under the term “uniform”. However, it is further to be noted that the 1949 Act conditions the term “clothing” by the requirement that it is necessary for the performance of their respective duties. The only reasonable interpretation of this phrase would seem to be a requirement that that which is included under clothing would have to be made necessary by the occupation of the officer, that is, it would have to be something which he would not need if he were not a policeman or something of a type or quality which he would not require if he were not a policeman. Therefore, shoes, mufflers, overshoes or boots would not normally come within the scope of the statute and would only be included if they were so unique as to be required only because of the wearer's occupation as a policeman.

In regard to the election of the city to furnish uniforms see Official Opinion No. 83 of 1949, same being 1949 O. A. G. 311. In regard to cleaning, repairing and otherwise maintaining it is well to examine the wording of the statute. It provides only that cities shall provide uniforms, clothing, arms and equipment and not that the city maintain them, however, in case the city elects to make a clothing allowance in lieu of furnishing uniform clothing, arms and equipment,

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it specifically provides that the officer shall maintain his own clothing and equipment.

Thus, it is my opinion the city has no duty to maintain clothing or uniforms of a police officer.

OFFICIAL OPINION NO. 14

February 15, 1951.

Honorable Leland L. Smith,
Secretary of State,
201 State Capitol Building,
Indianapolis, Indiana.

Dear Sir:

I have your letter dated February 12, 1951, in which you request an opinion regarding the following questions, to-wit:

“Will you please furnish the Division of Safety Responsibility and Driver Improvement of the Bureau of Motor Vehicles of the State of Indiana, with an official opinion as to the legal status of the Firemen and Mechanic’s Insurance Company, insofar as such Division is affected by said Company.”

This company was specially created by an Act of the Thirty-Fourth General Assembly, the same being Chapter CCCXLIII, page 545, approved January 21, 1850, and entitled “An Act to incorporate the Firemen and Mechanic’s Insurance Company.”

The Act is too lengthy to set out in full. However, in substance it recites:

“* * * there is created an insurance company with a capital stock of One Hundred Thousand (\$100,000.00) Dollars, to be divided into shares of twenty-five dollars each. * * * and said stockholders and subscribers and their successors shall be * * * a body politic and corporate with perpetual succession, by the name and style of the Firemen and Mechanic’s Insurance Company for the period of one hundred years, from and after the passage of this act.”