Act of 1945, in that, the Governor now has the final power of approval or disapproval of rules and regulations as to all state agencies.

OFFICIAL OPINION NO. 40

May 11, 1951.

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

Dear Sir:

Your letter of May 4, 1951, asking an official opinion concerning certain questions arising with reference to House Enrolled Act 82, being Chapter 287, Acts 1951, reads as follows:

"House Enrolled Act 82 being Chapter 287, Acts 1951, creates a Health and Hospital Corporation in counties having a population in excess of 500,000 and abolishes the existing department of Public Health and Hospitals in such counties.

"Due to certain date discrepancies in Sections 7, 27, 52 and 55, the Act appears to be ambiguous. Without proper construction to avoid absurdity there will be difficulty of compliance and performance.

"We have been asked to request your official opinion upon the following:

"1. Is Section 55 considered the last expression of the legislature?

"2. If the answer is in the affirmative, are the dates therein set out controlling over conflicting dates in Sections 27 and 52?

"3. When is the present Department of Public Health and Hospitals dissolved?

"4. When do members of the new corporation assume their duties?"
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"5. If members of the new corporation are appointed on or about the date fixed in Section 7, do they prepare an operating budget for the year 1953?

"6. What is the date for the execution of the requirements of Section 52?"

Section 55 of Chapter 287, which purports to be an emergency clause, is worded as follows:

"Whereas an emergency exists for the more immediate taking effect of this Act, it shall take effect from and after the first day of July, 1952 except that those provisions of the Act providing for the transfer of any appropriations, records, property or other matters or things, those provisions causing this corporation to supersede any rights, powers or duties of any county, township, city or town or any existing board or department, shall not become effective until midnight the 31st day of December, 1952. All provisions for making a budget or appropriations shall take effect July 1, 1952. It is the intent of all provisions relating to the formation and organization of the corporation, making appropriations, obtaining personnel and making necessary arrangements for the corporation to function including making any temporary loans shall take effect July 1, 1952 and that the corporation shall start functioning in all things at midnight December 31, 1952 and until such later date the functions vested in present hospital and health departments, boards and officers shall be continued to be exercised by them."

Section 27 of Chapter 287 has to do with the powers and duties of the Board of Health and Hospital Corporation created by the act and expressly provides as follows:

"* * * it shall supersede all other local boards of health within the territorial limits of such county and all other local health boards and departments of any other political subdivision within the county whether full or part-time are dissolved as of January 1, 1952."
Section 52 of the act concerns the transfer of funds of various agencies whose duties are taken over by the Health and Hospital Corporation, making such a transfer effective as of January 1, 1952.

Thus it appears that there is a conflict between Sections 55, 27 and 52 with reference to dates when certain things are to occur or are to be done.

Under such circumstances it is proper and necessary to resort to established rules of construction. It is fundamental that it is the intention of the Legislature which controls. The words, terms and provisions in a legislative enactment are simply the means for expressing legislative intent. When, as here, in the act there are conflicting provisions, that act must be read and studied as a whole in an effort to ascertain the legislative intent.

Moreover, the records of the legislative bodies may be looked to as a help in determining legislative intent. Judge Ewbank said in the case of City of New Albany v. Lemon (1926), 198 Ind. 127, 133; 149 N. E. 350:

"The court may resort to the journals of the two legislative bodies and read therein the history of these laws, from their first introduction to their final passage as an aid in their interpretation with a view to ascertaining the legislative intent in passing them."

The journal for the 1951 session of the Indiana Senate at pages 1292-1293 shows that on March 5, 1951, the Senate concurred in a conference committee report in which the dates as they had been in Engrossed Bill No. 82 were changed as to the dates set out in Sections 7 and 55. In those instances where Section 7 read "July 1, 1951" it was changed to read "July 1, 1952;" where Section 55 read "July 1, 1951" it was changed to read "July 1, 1952;" and where it read "December, 1951" it was changed to read "December, 1952." The Senate enacted House Enrolled Act No. 82 with those changes.

The House journal is not at this time available, but it is safe to assume that it will show a similar action by the House, as the House Enrolled Act No. 82 as amended was passed by both houses on March 5, 1951.

When those records are taken into consideration, it is apparent that it was the intention of the Legislature to defer
the respective dates by one year. In accordance with such clear legislative intent, it was obviously the intention of the Legislature to change the date correspondingly set out in Sections 27 and 52. However, such changes were not actually made.

In view of the obvious intention of the Legislature and especially of the language of Section 55, it is my opinion that Section 27 and Section 52 should be regarded as amended to correspond with changes as to dates made in Sections 7 and 55.

By Section 7 as thus changed, the terms of the Board of Trustees provided for do not begin until July 1, 1952. Obviously, therefore, local boards of health within the territorial limits of the county concerned could not be superseded on January 1, 1952.

Consistent with provisions of Sections 7 and 55, obviously it was the intention of the Legislature that local boards of health should be superseded by the Health and Hospital Corporation created by the act as of January 1, 1953, instead of January 1, 1952.

The same can be said with reference to dates set out in Section 52, to-wit, that it was the intention of the Legislature to change the date from January 1, 1952, to January 1, 1953.

Such effect seems to be the clear import of the language of Section 55 of the act in which it is provided that the act shall take effect from and after the 1st day of July, 1952, except that those provisions of the act providing for the transfer of any appropriations, records or property or other matters or things, those provisions causing this corporation to supersede any rights, powers or duties of any county, township, city or town, or any existing board of department shall not become effective until midnight, the 31st day of December, 1952. It is made even more clear by the language of the last sentence in Section 55 reading as follows:

"It is the intent that all provisions relating to the formation and organization of the corporation, making appropriations, obtaining personnel and making necessary arrangements for the corporation to function including making any temporary loans shall take effect July 1, 1952 and that the corporation shall start functioning in all things at midnight December
31, 1952 and until such later date the functions vested in present hospital and health departments, boards and officers shall be continued to be exercised by them.”

In the light of the foregoing considerations, I shall undertake to answer specifically the questions propounded in your letter:

“1. Is Section 55 considered the last expression of the legislature?”

Section 55, together with all other provisions of this act, should be considered as the last expression of the Legislature on the matter covered in the title.

“2. If the answer is in the affirmative, are the dates therein set out controlling over conflicting dates in Sections 27 and 52?”

The dates set out in Sections 7 and 55 of the act are in my opinion controlling over the contradicting dates set out in Sections 27 and 52.

“3. When is the present Department of Public Health and Hospitals dissolved?”

The present Department of Public Health and Hospitals is to be dissolved in my opinion at midnight on the 31st day of December, 1952.

“4. When do members of the new corporation assume their duties?”

Members of the new corporation, I believe, assume their duties July 1, 1952.

“5. If members of the new corporation are appointed on or about the date fixed in Section 7, do they prepare an operating budget for the year 1953?”

Answer, yes.

“6. What is the date for the execution of the requirements of Section 52?”

January 1, 1953.