

“ * * * Any township trustee serving as a member of said board shall serve without additional compensation.”

Therefore, insofar as a township trustee is concerned, there is no compensation to be had from serving as trustee of a “school corporation” as defined by the Act. Since no compensation is provided by the Act for township trustees who are serving also as trustees of “school corporations,” *as to such township trustees*, the office in question is not a lucrative office.

The Legislature has said, in effect, as to township trustees, the office of trustee of school corporations as defined by the Act, is not a lucrative office. It amounts to additional duties imposed upon township trustees when they serve as trustees of school corporations.

To be a lucrative office it must provide compensation, we refer again to the language of the Supreme Court in the case of *Chambers v. State ex rel. Barnard*, to-wit: “* * * if the officer be charged with any duties under the laws of the State, *and for which he is entitled to compensation*, the office is a lucrative office within the meaning of the Constitution. * * *” (Our emphasis.)

Upon the foregoing and the authority of the opinion of the Attorney General rendered April 1, 1935, page 103, it is my opinion that your question should be answered in the affirmative.

WOL:vb

OFFICIAL OPINION NO. 58

June 28, 1949.

Hon. Charles F. Fleming,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

Your request of recent date for an official opinion asks the following questions:

"1. Are 'not for profit corporations', which cannot authorize the issuance of capital stock under their respective incorporating Acts, required to file annual reports under the provisions of this Act?

"2. Do the provision of the Act apply to corporations organized under the laws of any State other than Indiana, which are doing business in the State of Indiana?

"3. Does the wording 'All corporations organized in the State of Indiana and doing business in the State of Indiana', apply to corporations organized in the State of Indiana but which have ceased to be actively engaged in business in the State of Indiana?

"4. If all domestic and foreign 'not for profit' corporations are required to comply with this Act must they also file a report in January of each year as required by Section 29 of Chapter 157 of the Acts of 1935, to-wit:

" 'An annual report accompanied by a filing fee of one dollar shall be filed with the Secretary of State by all non-profit corporations, domestic or foreign, whether incorporated under this or any other act except that if such corporation be incorporated under an Act of this state, which provides that it shall file annual reports with the Secretary of State, this section shall not apply to it. The said fee shall be in lieu of all other annual fees to be paid by such corporation, anything in any other statute to the contrary notwithstanding. The report shall be filed in the month of January of the year 1936 and every year thereafter within the month of January.'

"5. Which of the following corporations should be required to file annual reports under this Act?

"Foreign and domestic, profit corporations, banks and financial institutions, insurance companies, railroad companies, utilities, cooperative associations, not for profit corporations."

The title of Senate Enrolled Act No. 76, same being Chapter 76 of the Acts of the General Assembly of 1949, is as follows:

“An Act requiring all corporations, regardless of the act under which incorporated, to file annual reports in the office of the secretary of state of the State of Indiana, providing fees therefor and penalties for the violation thereof.”

The first paragraph of Section 1 of that Act governs its scope, that is, it defines which corporations shall be required to file the reports provided by this Act. It is in part as follows:

“All corporations *organized* in the State of Indiana *and doing business in* the State of Indiana, regardless of the act under which incorporated and whether said corporation be required to file annual reports in other departments of government, shall be required to file in the office of the secretary of state an annual report within thirty days after the thirtieth day of June of each year * * *.” (Our emphasis.)

In order to ascertain the legislative intent of this enactment it is well to have in mind the requirements existing for filing annual reports at the time of the passage of this Act.

A report at the same time containing the same subject matter as the report provided in this Act is required of domestic corporations for profit under Section 45 of Chapter 215 of the Acts of 1929, same being Burns' Section 25-244. Under Section 62 of the last referred to Act foreign corporations admitted to do business are required to file a similar report at the same date.

Section 29, Chapter 157 of the Acts of 1935 same being Burns' 25-535 requires the filing of an annual report by not-for-profit corporations, whether domestic or foreign. This provides that a report containing materially different information shall be filed in January of each year with the Secretary of State.

There are a number of special types of corporations which have not come under the general requirements for filing annual reports with the Secretary of State. An example is to be found in Section 3 of Chapter 83 of the Acts of 1897 found in the Burns' 39-2626 which provides for the filing

of an annual report by mutual insurance associations in the month of January with the Auditor of State. There are a large number of other insurance, banking and other special corporations which do not come within the general provisions of the for-profit or not-for-profit corporation Acts previously cited. In the light of the situation as it existed when Senate Enrolled Act number 76 was passed it becomes apparent that this Act requires nothing new of corporations for profit organized and doing business in this State.

The words of the statute should be taken in their ordinary and common usage unless from the context another meaning is apparent.

“* * * it is the duty of the court to construe legislative enactments according to the natural and most obvious import of the language and without resorting to refined distinctions or forced constructions for the purpose either of limiting or extending their operations, and with an eye to the evils they are intended to remedy. * * *”

State v. Shanks (1912), 178 Ind. 330, 335, 99 N. E. 481.

“In giving force to a statute, courts should look to the language used by the lawmaking power as expressive of its will; and where this language is plain and free from ambiguity, and the meaning expressed is definite, a literal interpretation of the statute should be adopted. Black, *Interp. of Laws*, p. 35. It is not within the province of the court to take from or to enlarge the meaning of a statute by reading into it language which will, in the opinion of the court, correct any supposed omissions or defects therein. * * *”

Pere Marquette R. Co. v. Laertz (1905), 36 Ind. App. 408, 414, 74 N. E. 51.

“* * * The words of a statute will be construed in their plain, ordinary and usual sense, unless such construction will defeat the manifest intent of the legislature. * * *”

Booth v. State (1913), 179 Ind. 405, 409, 100 N. E. 563.

The key words in this Act seem to be "All corporations organized in the State of Indiana and doing business in the State of Indiana, regardless of the act under which incorporated"—the normal meaning of these words is to include only corporations which are both organized in Indiana and doing business in Indiana and not exclude from that classification any corporation on the basis of whether or not it is filing a report under another Act. Considering this apparent meaning in connection with the existing Acts requiring filing of annual reports it becomes apparent that the legislative intent in this enactment was to require that a report from all corporations organized and doing business in this State be filed in one place and at one time.

On the basis of this I answer your specific questions as follows:

1. Not-for-profit corporations organized and doing business in this State are required to file a report under this Act although not all the questions required to be answered are applicable.

2. In answer to your question number 2, this Act specifically excludes corporations organized in states other than Indiana in that it applies only to corporations organized and doing business in Indiana.

3. In answer to your question number 3, corporations organized in the State of Indiana which do not file the report required by this Act are subject to forfeiture of their corporate franchise.

4. Domestic and foreign corporations not for profit are still required to make the report required by the 1935 not-for-profit Act. In this connection it is well to note that repeals by implication are not favored in Indiana.

"While the repeal of statutes by implication is recognized, this is not favored and that conclusion will not be indulged unless the later act is so repugnant to the earlier as to render the repugnancy or conflict between them irreconcilable. A court will always, if possible, adopt that conclusion which, under the par-

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ticular circumstances in a given case, will permit both laws to stand and be operative.

Medias v. City of Indianapolis (1939), 216 Ind. 155, 162, 23 N. E. (2) 590.

“* * * But repeals by implication are disfavored, and are never recognized in the absence of irreconcilable repugnancy.’ * * *”

Goldsmith v. City of Indianapolis (1935), 208 Ind. 465, 469, 196 Ind. 525.

If two Acts can be construed together without conflicting directly one will not be construed to repeal the other one by implication. The 1935 Act requires this information to be filed at a different time. No conflict arises because the result of the two Acts together is to require the filing of two annual reports.

5. In answer to your question number 5, domestic corporations doing business in the State of Indiana whether they are for-profit corporations, not-for-profit corporations, banks and financial institutions, insurance companies, railroad companies, utilities, and cooperative associations, *are required by this Act to file reports*. Foreign corporations or corporations not doing business in the State of Indiana will be required to make only the reports required by previous legislation and no additional report is required of them by virtue of this act.

JCA:vb

OFFICIAL OPINION NO. 59

July 6, 1949.

Mr. Noble W. Hollar,
Chairman State Board of Tax Commissioners,
Room 301, State House,
Indianapolis, Indiana.

Dear Sir:

I have your request of July 1, 1949 for an official opinion on the following statement of facts: