and discharge the duties thereof, be interested, directly or indirectly, in any contract for the construction of any state-house, court-house, schoolhouse, bridge, public building or work of any kind, erected or built for the use of the state, or any county, township, town or city in the state in which he exercises any official jurisdiction, or who shall bargain for or receive any percentage, drawback, premium, or profit or money whatever, on any contract, or for the letting of any contract, or making any appointment wherein the state or any county, township, town or city is concerned, on conviction, shall be fined not less than three hundred dollars ($300) nor more than five thousand dollars ($5,000), and be imprisoned in the state prison not less than two (2) years nor more than fourteen (14) years, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.”

For those reasons, I think it is very doubtful whether it would be within the laws of the State of Indiana or within the powers of the Board of Trustees to appoint one of its members as a member of the active staff. I am unable to ascertain any “usual custom” in this regard.

HGW/aa

OFFICIAL OPINION NO. 99

October 14, 1949.

Mr. Edwin Steers, Sr.,
Member of State Election Board,
102 N. Senate Avenue,
Indianapolis, Indiana.

Dear Sir:

Your letter has been received requesting an official opinion on the following question:

“Some controversy has arisen with reference to the construction of the constitutional amendment increasing the term of sheriffs as found in the Acts of 1947, Chapter 294.
"To say the least this amendment is very ambiguous and we would like to have your construction as to the sheriffs of what counties are to hold over after January 1, 1950."

The amendment to the Constitution in question is as follows:

"Sec. 11. Notwithstanding any other provision hereof, the sheriff of each county shall be elected in the general election held in the year 1950 and each four years thereafter. The term of office of each such sheriff shall be four years beginning upon the first day of January next following his election and no person shall be eligible to such office more than eight years in any period of twelve years: Provided, however, That any elected sheriff who shall hold said office on December 31, 1950, and who shall have been elected to said office for a period of less than two consecutive years immediately preceding, shall continue in said office for the four year term commencing January 1, 1951."

In the effort to answer your question it first becomes necessary to separate the various specific provisions of the amendment, after which it becomes clear and most understandable.

The amendment states:

1. That the sheriff of each county shall be elected in the general election held in the year 1950 and each four years thereafter.

2. That the term of office of each sheriff shall be four years.

3. That the term shall begin on the first day of January next following his election.

4. That no person shall be eligible to such office more than eight years in any period of twelve years. (This has been interpreted to mean eight consecutive years.)

Carson v. McPhetridge (1860), 15 Ind. 327;
Gasman v. State (1885), 106 Ind. 203;
State ex rel. Culbert v. Linkhauer (1895), 142 Ind. 94:
5. "Proviso" or exception—That any elected sheriff who holds office on December 31, 1950 and who has been elected to said office for a period of less than two consecutive years immediately preceding shall continue in said office for the four years commencing January 1, 1951.

In construing the constitution, words are to be given their ordinary meaning and where language is plain and unambiguous there exists no room for construction.


As I read the amendment it is plain and unambiguous. In support of the argument to the contrary, it may be said that prior to this amendment that under the constitution and laws of our state one could not be elected to the office of sheriff for a period of less than two years, (Article 6, Section 2, Constitution of Indiana), and thus the "proviso" is meaningless in that it has no actual application, and therefore the courts would be warranted in changing its language to give it a practical meaning or a meaning in a court's opinion of what was intended by those who adopted it. To say that the people intended, or under the proviso meant, "who shall have served for a period of less than two years," we then have a conflict with the first part or main body of the amendment. For we know as a matter of fact that all will have served less than two years immediately preceding December 31, 1950, as no term of any present sheriff will have expired before midnight of December 31, 1950 and therefore no need of the mandatory provision—that in each county there will be held
an election for the office of sheriff in the general election in the year 1950. But then again, if a court be permitted to change the word "elected" to "served," why not in the endeavor to express the meaning of the people change the phraseology "for a period of less than two consecutive years" to "for a period of two consecutive terms."

The remarks of Mr. Justice Bronson in People v. Purdy, 2 Hill 35 (Cooleys Constitutional Limitations, page 125) are very forcible in showing the impolicy and danger of looking beyond the instrument itself to ascertain its meaning when the terms employed are positive and free from all ambiguity.

"It is said that the Constitution does not extend to public corporations, and therefore a majority vote was sufficient. I do not so read the Constitution. The language of the clause is * * *. But it is said we may look beyond the instrument for the purpose of ascertaining the mischief against which the clause was directed and thus restrict its operation. But who shall tell us what that mischief was? Although most men in public life are old enough to remember the time when the Constitution was framed and adopted, they are not agreed concerning the particular evils against which this clause was directed. Some are of the opinion that it * * * while others suppose that it only * * *. In this way a solemn instrument—for I think the Constitution should be considered—is made to mean one thing by one man and something else by another, until, in the end, it is in danger of being rendered a more dead letter and that, too, where the language is so plain and explicit that it is impossible to mean more than one thing, unless we first lose sight of the instrument itself, and allow ourselves to roam at large in the boundless fields of speculation. For one, I dare not venture upon such a course. Written constitutions of government will soon come to be regarded as of little value if their injunctions may be thus lightly overlooked; and the experiment of setting a boundary to power will prove a failure. We are not at liberty to presume that the framers of the Constitution, or the people who adopted it, did not understand the force of language."
See also Spencer v. State, 5 Ind. 41 at page 46 wherein Perkins, J. said:

"* * * This power of construction in Courts is a mighty one, and, unrestrained by settled rules, would tend to throw a painful uncertainty over the effect that might be given to the most plainly-worded statutes, and render Courts, in reality, the legislative power of the state. * * * Judge-made law has overrode the legislative department. It was the boast of Chief Justice Pemberton, one of the judges of the despot Charles the second, and not the worst one even of those times, that he had entirely outdone the parliament in making law. We think that system of jurisprudence best and safest, which controls most by fixed rules and leaves least to the discretion of the judge—* * *.

"Judge-made law" as the phrase is here employed, is that made by judicial decisions which construe away the meanings of statutes, or find meanings in them the legislature never held. (Cooleys Constitutional Limitation, supra.)

It is my belief that the contrary argument is faulty and the rephrasing is inadmissable. A cardinal rule of constitutional construction is:

"That which the words declare is the meaning of the instrument, and neither courts nor legislatures have a right to add or take away from that meaning. Possible or even probable meanings when one is plainly declared in the instrument itself, the courts are not at liberty to search for elsewhere." (Colleys Constitutional Limitation, p. 127.)

Greencastle Township v. Black, 5 Ind. 566.

And in the case of Chadwick, Treasurer, v. City of Crawfordsville, 216 Ind. 399, 24 N. E. (2d) 937 it was said:

"In construing the language of the Constitution we seek the meaning intended by those who adopted it, and not by those who drafted it. And ordinarily, words are treated as used in their ordinary sense."
In the case of Indiana State Board of Medical Registration and Examination v. Sealean, 219 Ind. 321, 37 N. E. (2d) 935, we have a holding by the court that the "proviso" of a valid statute relating to the practice of podiatry was impossible of compliance and that this fact could not have any other effect, than to strike said proviso from the statute and though the same is null and void and inoperative the rest of the act is not affected by this deletion, and is sensible and can be enforced against all alike.

In the case of Keane v. Remy (1929), 201 Ind. 286 it was said, at page 293:

"* * * and further if the act provides no sufficient means whereby it may be enforced, the act or the section of the act which fails in that particular should be declared judicially invalid and void. A legislative act is still-born, without life, though it be attended at its inception with all the official function necessary to give it life, unless it contains within it a delegation and grant of power by which it may be carried into effect. * * *"

See also 1944 O. A. G., 81, 84, in which the Attorney General ruled on a similar problem in connection with the State Personnel Act as follows:

"If certain provisions of an act make it unworkable and impossible of performance, such provisions are void and of no effect. Keane v. Remy (1929), 201 Ind. 286. If such provisions later become possible of performance, they come into effect at such later time, but during the time of impossibility they are suspended or held in abeyance. Board of Education v. Morgan (1925), 147 N. E. 34 (Ill.)"

The General Assembly is prohibited by the Constitution from creating any office, the tenure of which shall be longer than four years. Article 15, Section 2. True, the adoption of this amendment was by the people nevertheless it had its inception in the legislature. Article 16, Section 1. In the light of this I find it impossible to believe that the legislature ever intended or thought that they were setting up the ma-
It not only is my obligation to determine the intent of the Legislature in enacting a law but to determine what the people accept and understand to be intended by the Legislative Act.

This is particularly applicable to the discussed amendment and it must have been the thought of the people in their adoption of the amendment that it would result in statewide uniformity in the terms of all sheriffs and that communities could be best served by a four year rather than a two year term of office. If the alternative were accepted as being the intention of the Legislature it would result in five year terms for some and two years for others, although elected at the same time, all for the previous constitutional term of two years.

It must be held that it could not be logical in accomplishment if the entire voting public in Indiana, could, in referendum, act in what would result in the imposition of an officer of the law on just certain communities for a longer period than even the amended constitutional limitations. This could only result if we accepted the words "elected" and "served" as being synonymous. Therefore, we must opine that no such intention is expressed in this amendment.

In view of the foregoing in my opinion the mere fact that no one will come within the provisions of the "proviso" and therefore inoperative will not make room for construction and permit any rephrasing. That the language being plain and unambiguous the courts are not allowed to search elsewhere for possible or even probable meaning other than that set out in the "proviso." That the body of the amendment is sensible and workable and can be enforced against all alike. Therefore, in answer to your question it is my opinion there shall be elected in each and every county of the state in the general election to be held in 1950, a sheriff. This, notwithstanding that fact that some of the present sheriffs were elected in 1948 for a period of two years and whose terms began January 1, 1950. See Carson v. McPhetridge, 15 Ind. 327 at —.

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