
It is my opinion that as a result of Section 4 of the Acts of 1945 and of Sections 1 and 2 of said act, as amended by the Acts of 1947, supra, the present term of the office of the mayor of the city of Noblesville began at 12:00 noon on the first day of January, 1948, and will not expire until 12:00 noon on the first day of January, 1952, and, therefore, the term of said office will not expire before the next general election; and that Section 29-4801 does not apply in the instant case; and that the position of the city councilman is untenable.

It is my opinion, therefore, that no election shall be held this year for the office of mayor of the city of Noblesville, but that the present incumbent shall hold over until his successor is elected and qualified, subject to the laws pertaining to regular city elections, supra, herein.

OFFICIAL OPINION NO. 18

March 8, 1948.

Mr. Edwin Steers, Sr.,
State Election Board,
108 East Washington Street,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 10th in which my views are requested as to whether a voter may vote on the question of the payment of a soldiers’ bonus without voting on the other questions submitted. The act involved is Chapter 152 of the Acts of 1947.

Section 1 of this act is as follows:

“At the general election to be held on the first Tuesday after the first Monday in November, 1948, there shall be submitted to the electors of the State of Indiana for the information and guidance of the members of the Eighty-sixth General Assembly the following questions: Do you favor the payment of a state soldier’s bonus for veterans of World War II?
"Which of the following methods do you suggest for the financing of bonus payments:

"Sales tax. ☐

"Increase in gross income tax rates. ☐

"Net income tax. ☐

"Exemption from real estate taxation over a period of years. ☐

"Exemption from gross income tax payment over a period of years." ☐

A pertinent section is Section 4, which is as follows:

"Any voter who desires to vote in favor of the enactment of such legislation, shall make a cross (X) mark in the square containing the word ‘Yes’; and any voter who desires to vote against the enactment of such legislation, shall make a cross (X) mark in the square containing the word ‘No’; and each voter shall likewise indicate his vote as to the other questions.” (Our emphasis.)

When the word “shall” is used in a statute, it is presumed to have been used in its imperative sense.

In Board, etc. v. People’s National Bank (1909), 44 Ind. App. 578 at page 581, it is said:

"* * * The word ‘shall’ as used in said act gives said board no discretion in the selection of said banks or trust companies. When said word is used in the statute it is presumed to have been used in its imperative sense. 25 Am. and Eng. Ency. Law (2d ed.), 633; Robertson v. State, ex rel. (1887), 109 Ind. 79."

In State, ex rel. v. Meeker (1914), 182 Ind. 240 at page 243, it is said:

"* * * As a general rule of statutory interpretation the presumption is that the word ‘shall’, as used in any given law, is to be construed in an imperative sense, rather than directory, and this presumption will con-
trol unless it appears clearly from the context or from the manifest purpose of the act as a whole that the legislature intended in the particular instance that a different construction should be given to the word. Morrison v. State, ex rel. (1914), 181 Ind. 544; Robertson v. State, ex rel. (1887), 109 Ind. 79; Board, etc., v. People's Nat. Bank (1909), 44 Ind. App. 578; 25 Am. and Eng. Ency. Law (2d ed.) 633.”

“Shall” as used in election laws has been held to be mandatory. Morrison v. White, et al. (1935), 52 Pac. (2) 263, 266; 10 Cal. App. (2) 266; Flynn v. Cappelli (1934), 175 Atl. 836, 837; 54 R. I. 462.

It is suggested that if an examination of the Journals of the General Assembly be made that such examination will disclose an intent that the voters not be required to answer the other questions submitted.

It is the rule that if a statute is authenticated by the presiding officers of the Legislature, courts can not inquire into the passage of the act to determine its validity. Evans, Auditor of State v. Browne (1869), 30 Ind. 514; Bender v. State (1876), 53 Ind. 254; Western Union Telegraph Co. v. Taggart (1894), 141 Ind. 281.

This does not mean there may be no resort to the journals by a court to aid in the interpretation of a statute which is ambiguous or of doubtful meaning. However, there may be no resort to the legislative history of the enactment of a statute the language of which is plain and unambiguous, as legislative history may only be resorted to for the purpose of solving doubt. It may not be resorted to in order to take from the significance of words employed.

In Section 327, American Jurisprudence, Statutes, page 320, it is said:

“* * * Of course, there may be no resort to the legislative history of the enactment of a statute, the language of which is plain and unambiguous, since such legislative history may only be resorted to for the purpose of solving doubt, not for the purpose of creating it. It has also been declared that such legislative history may not be used to support a construction
which adds to, or takes from, the significance of the words employed. * * *

The above text is supported by a long list of decisions in the notes thereto.

Indiana courts have frequently examined the journals of the General Assembly to obtain aid in construing doubtful or ambiguous language in a statute. In Edgar v. The Board of Commissioners of Randolph County (1880), 70 Ind. 331 at page 338, it is said:

"* * * Where, as in this case, a statute has been enacted, which is susceptible of several widely differing constructions, we know of no better means for ascertaining the will and intention of the Legislature, than that which is afforded, in this case, by the history of the statute, as found in the journals of the two legislative bodies. * * *" (Our emphasis.)

In Woessner v. Bullock (1911), 176 Ind. 166, at page 169, it is said:

"* * * If the meaning of a constitutional provision is doubtful, courts may examine the proceedings of the convention that framed the provision, to aid in its interpretation. * * *" (Our emphasis.)

In Stout v. Board of Commissioners of Grant County (1886), 107 Ind. 343 at page 347, it is said:

"It is likewise true that the certificates of the speaker of the House of Representatives and of the president of the Senate, respectively, that an act has passed both Houses of the General Assembly, are conclusive upon the courts, and hence can not be impeached by the production of facts inconsistent with the truth of such certificates. Evans v. Browne, 30 Ind. 514; Bender v. State, 53 Ind. 254; Board, etc., v. Burford, 93 Ind. 383. But where a statute is of doubtful or uncertain meaning, by reason of obscurity in its phraseology, a recurrence to the circumstances under which it was passed may be had with a view of ascertaining the probable intention of the Legislature
in enacting it, and to that end the legislative history of the statute may be inquired into. The Walter A. Wood Mowing, etc., Co. v. Caldwell, 54 Ind. 270 (23 Am. R. 641).

The authorities on the subject of when the court may resort to the journals of the Legislature are collected in 7 A. L. R. 5. At page 14 of the annotation it is said:

"** A statute is not to be read as if open to construction as a matter of course; it is only in the case of ambiguous statutes of uncertain meaning that rules of construction can have any application; and where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself. This doctrine has found frequent application in the class of cases under consideration, it being held that there could be no resort to the legislative history of the enactment of a statute, nor to proceedings of a constitutional convention, because the language of the statute or of the constitution was too plain and unambiguous to permit resort to such outside aids. Legislative debates, or debates in a constitutional convention, committee reports, etc., cannot, under such circumstances, be considered, since they may properly be resorted to only to solve doubt as to the meaning of a statute or constitutional provision,—not to create it, and such legislative history may not be used to support a construction which adds to, or takes from, the significance of the words employed. **"

If we examine only said Chapter 152 it seems clear that "each voter shall likewise indicate his vote as to the other questions." This expression is not ambiguous or of doubtful meaning. One cannot examine the journals in order to create an ambiguity. As held by the many decisions in the annotations referred to, the court cannot look to the journals to first raise a doubt and then impose an interpretation which adds to or takes from the language in the Act as authenticated by the presiding officers of the Legislature.
Section 1-201 of Burns', 1946 Replacement, provides in part:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. * * *"

The title of said act is as follows:

"AN ACT for the submission of questions concerning soldier bonus legislation to the electors of the state at the next general election to be held on the first Tuesday after the first Monday in November, 1948."

It is to be noted that the title calls for the submission "of questions."

I am, therefore, of the opinion that Section 4, as written, requires "each voter" to indicate his vote upon the other questions submitted. There remains, however, the question of the effect of a failure to express a choice upon the other questions (actually just one question, i.e., the method of financing) when he votes favorably or against the payment of a bonus.

Section 5 of said act is as follows:

"The election board of each precinct shall count the votes cast for and against each of such proposed questions, and shall certify the same specifying separately the number of votes cast for and the number of votes cast against each of such proposed questions, to the clerk of the circuit court of the county at the same time that the other election returns are certified. The vote cast for and against each of such proposed questions shall be canvassed and certified to the secretary of state in the same manner as other election returns."

(Our emphasis.)

Under the above section the election board of each precinct certifies the votes and specifies separately the votes "cast for and against each of such proposed questions." I call your attention to the fact that the vote on this ballot does not
constitute a determination of any proposition, it is merely for the information of the Legislature. The results, separately tabulated as to each question, are delivered by the Secretary of State to the presiding officers of the General Assembly. There is nothing in the statute as passed to indicate that a failure to vote upon the method of financing authorizes the election board of the precinct to disregard a vote for or against the payment of a bonus. The duty of the election board is merely to certify the vote on each of the proposed questions. Thus it will ultimately be a question for the Legislature to determine as to the effect to be given to the fact that more electors voted upon the first question than did vote upon the other questions, if such facts should be disclosed by the certification.

In summary, although the statutory language is mandatory that each voter shall vote upon all questions, a failure to vote upon the method of financing does not nullify the whole ballot in so far as precinct election boards are concerned but is for the consideration of the Legislature after certification.

OFFICIAL OPINION NO. 19

March 8, 1948.

Hon. Wm. C. Stalnaker, Director,
Department of Veterans Affairs,
431 N. Meridian Street,
Indianapolis 4, Indiana.

Att: Mr. Harvey B. Stout

Dear Sir:

I have your request for an official opinion on the following: Does Chapter 167 of the Acts of 1947, page 553 overrule the opinion of the Attorney General given in 1942 at pages 56-58 of O. A. G.: and, should the county auditor allow a claim of $75.00 as a burial allowance for a soldier, sailor or marine who dies in actual service.

The opinion of the Attorney General of 1942, to which you refer, was based upon an act, then in force, which was Section 59-1009 of Burns' Indiana Statutes Annotated 1933, and that act is fully set forth in the Opinion at page 57 O. A. G. 1942.