

in order to protect the furbearing animals, but has not authorized the department or the director to extend the open season.

In order for the director to have the authority to enlarge or extend the statutory closed season, or to except from its provisions the chasing or pursuing of raccoons or other furbearing animals, there should be clear legislative authority to do so. (1933 Ind. O.A.G. p. 518).

In view of the fact that the Legislature has expressly fixed the date for the closed season, and has expressly prohibited the chasing or pursuing of raccoons or other furbearing animals during the closed season, it is my opinion that the department of conservation has no authority to issue rules, regulations or discretionary orders which would enlarge or extend the statutory closed season, or which would except from its provisions the chasing or pursuing of raccoons or other furbearing animals. As already noted in answering your first question, raccoons may be run or chased with dogs at any time except fifteen days before the open season and except that the owner of a dog or dogs shall not permit them to run or chase raccoons between the hours of sunset and sunrise.

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OFFICIAL OPINION NO. 26

March 19, 1946.

Hon. T. C. Mullen, Secretary,  
Board of Trustees of the  
Northern Indiana Children's Hospital,  
Michigan City, Indiana.

Dear Sir:

I have your inquiry of February 28th, in which you make the following inquiry:

"I am writing you as secretary of the Board of Trustees of the Northern Indiana Children's Hospital and at the direction of said Board to respectfully solicit your official opinion as to whether or not such Board

has the right to select such site under Section 2A of Chapter 186 of the Acts of 1945.”

The Northern Indiana Children's Hospital was established by Chapter 279, page 785, of the Acts of 1943 (Sec. 22-3801 et seq., Burns' R. S. 1933). The Act in Section 2 provides for the appointment of a legislative committee “to recommend a suitable site in any county in Northern Indiana.” The same section provides that a report on the “location of site selected” should be made to the Governor at the next regular session. The only appropriation in Chapter 279 was \$3,000.00 for the expenses of the committees. It was, therefore, immediately apparent that another appropriation would be necessary to establish and construct the hospital.

The Act is not clear as to the conclusiveness of the work of the committee; whether it selected the site or only recommended the site.

There have been two previous opinions concerning construction of Chapter 279, *supra*, but neither one is of much assistance upon this particular question. They are Opinions of the Attorney General, 1943, page 657, and Opinions of the Attorney General, 1944, page 456.

In the General Appropriation Act for 1945, Section 2A provides in part as follows:

“There is hereby further appropriated, in addition to the sum last above set out, the sum of five hundred thousand dollars (\$500,000), to be available July 1, 1945, for allocation by the Budget Committee with approval of the governor for any of the purposes contemplated in Chapter 279, Acts of 1943, being an act establishing a hospital for the care and treatment of crippled children. *Provided*, that in making allotments from said fund to the board of trustees provided for in said act that said committee and the governor shall be authorized to include in any such allotments any necessary expense to the board of trustees and superintendent incident to meeting of said board including salaries of said board and superintendent, also any expenses necessary to acquire a site for such hospital, the preparation of plans and

specifications for the construction of any building or buildings in connection therewith; *Provided further*, that any actual construction work contemplated or planned shall not be commenced prior to the close of the war if to do so would be in disregard of restrictions placed on the use of certain so-called critical materials by the government of the United States:

*“Provided further, that the board of trustees in selecting a site for such hospital shall not be restricted or bound by any recommendations of the commission first provided for in the act aforesaid but shall have the power and authority to make investigation and acquire any site in their judgment determined to be most practical, feasible and economical for the purposes sought to be served by such hospital.*

“Such appropriations or any part thereof may be used only upon the authority of the budget committee with the approval of the governor.” (Our Emphasis.)

It has been suggested that the underlined portion of such section is invalid as being in violation of Section 19 of Article 4 of the Indiana Constitution.

“Every act shall embrace but one subject and *mat-  
ters properly connected therewith*; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

The title of the General Appropriation Act (Ch. 186, p. 463, Acts 1945) reads as follows:

“AN ACT making appropriations for the conduct of the state government, its offices, boards, commissions, departments, societies, associations, services, agencies, its penal, benevolent and charitable state institutions, state universities and state teachers colleges, and undertakings including appropriations to the several state agencies engaged in services in cooperation with the United States government under and

pursuant to the several Acts of The General Assembly authorizing and providing for such services and cooperation and to enable the state through said agencies aforesaid to avail itself of the provisions of the several Acts of the Congress of the United States making allotments and grants to the states for such purposes defining certain major classifications of expenditures, and funds, providing penalty, and declaring an emergency.

The sole question then, is whether the proviso underlined is germane to the subject matter expressed in the title.

I find no Indiana case specifically in point but I do find the following general expression concerning relation to a specific provision to the title of an act. For instance, in

*DeHaven et al v. Municipal City of South Bend*  
(1937), 212 Ind. 194 at p. 200,

the following statement is made:

“\* \* \* In considering the constitutionality of an act in reference to its title, a very liberal interpretation will be adopted, rather than a critical construction calculated to defeat it. It is pointed out in many cases that the ‘subject’ of an act is the thing about which the legislation is had, and it need not contain an index or an abstract of its various provisions. \* \* \*”

And in

*Home Owners’ Loan Corporation v. Wise et al,*  
(1938), 215 Ind. 445 at 450,

“\* \* \* It has been held numerous times that it is not necessary under that section of the Constitution to recite in the title every detailed matter related to or connected with the particular subject, but only the general subject of the legislation. \* \* \*”

In Volume I *Sutherland Statutory Construction*, page 292, we find the general principle enunciated as follows:

“The constitutional provision on titles is construed liberally to sustain the validity of the title and the statute. Narrow or technical constructions are avoided and the statute will be read fairly and reasonably in order not to thwart reasonable legislative activity. Two purposes must be served: (1) Legislation must be kept free of the abuses against which the provision is directed; and (2) legitimate enactments are not to be invalidated by over-nice distinctions.”

The general subject of Chapter 186, page 463, of the Acts of 1945 concerns “appropriations for the conduct of the state government.” Therein an appropriation is made for the establishment of a hospital for crippled children. The Act further provides that the board of trustees (it is important to bear in mind that the legislative commission is not now being discussed, its functions having ceased) in selecting a site *for which state funds will be expended* are authorized to use their own discretion.

It is not uncommon for the Legislature to attach limitations to an appropriation in a general appropriation act such as approval by the Governor or approval and allocation by the Governor. Since the limitations control the expenditure of funds appropriated they are considered as germane to the subject of the Act. It is difficult to see why a removal of a limitation on the expenditure, as in this case, is any less germane than the imposition of the same.

Giving the title of the act as liberal construction in order to effectuate in so far as possible the legislative intent, I am of the opinion the language of the proviso is germane to the general subject matter of the Act.

There is a further ground upon which the proviso may be sustained. As pointed out at the beginning of this opinion, there is some indefiniteness in Chapter 279 as to whether the recommendation of the site by the legislative committee shall be final. It does appear in the Act that once their recommendation, if it be only a recommendation, is filed with the Governor, the actual construction and operation of the hospital is then entrusted to the board of trustees to be appointed by the Governor. Since there is an uncertainty as to the finality of the recommendation of the legislative commission

a subsequent legislature could undoubtedly resolve that uncertainty by appropriate action. This was done by the proviso to the appropriation for the hospital.

A similar situation arose in *State v. Ash* (1939), 87 Pac. (2d) 270 (Ariz.), and the court said at page 273:

“It is, of course, true that the legislature may not repeal or modify general legislation in a general appropriation bill. \* \* \* But when the meaning of the legislature in a general law is doubtful, we think its action in the appropriation bill may be considered in determining what its true meaning was in the general law. \* \* \*.”

In any event one General Assembly could not bind a subsequent one so as to prevent amendatory, supplemental or repealing legislation.

I am, therefore, of the opinion that the trustees of the Northern Indiana Children's Hospital are empowered to make a final selection of the site.

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OFFICIAL OPINION NO. 27

March 21, 1946.

Col. Austin R. Killian,  
Superintendent, Indiana State Police,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 9, 1946 which reads as follows:

“The Department of Public Safety, during the year 1936, acquired a certain area of land at Columbia City by deed free of cost. The property was provided by the Columbia City Commercial Club with the understanding that a building would be erected on the property to house State Police radio broadcasting facilities. Last fall the radio station was combined with and