

OFFICIAL OPINION NO. 56

June 25, 1945.

Hon. A. V. Burch,
Auditor of State,
State of Indiana.
Indianapolis 9, Indiana.

Dear Sir:

I have your letter dated June 8, 1945, requesting an official opinion upon the following question:

"Chapter 226, Acts 1945, page 491 of emergency printed Acts, entitled 'An Act Concerning the salary of the State Superintendent of Public Instructions' (approved March 7, 1945). Section 2 of said act reads as follows:

"Sec. 2. For additional personal expense necessarily incurred by the state superintendent of public instruction in the administration of additional duties required by law of him, the sum of three dollars per day shall be allowed and paid to the state superintendent of public instruction. The provisions of this section shall expire by limitation on March 15, 1947.

"As the title of said act fails to mention the subject matter of Section 2, I am asking your official opinion. Can the Auditor of State pay to the Superintendent of Public Instruction the personal expenses authorized by Section 2 since the title to said act fails to mention this subject?"

Article 4, Section 19, of the Indiana Constitution provides as follows:

"Every act shall embrace but one subject and matters 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."

This provision of the Constitution has been construed many times by our courts in applying it to the titles of numerous

statutes, although I have not been able to find any case directly in point either in this state or other states with similar constitutional limitations. Therefore, it will be necessary to rely on decisions of this state where different titles and subject matters are involved. In the case of Board of Commissioners of Marion County v. Scanlan (1912), 178 Ind. 142, the court construed this constitutional provision as follows, (p. 147) :

“The word ‘subject’ in the Constitution (article 4, Sec. 19) indicates the thing about which the legislation is had, and the word ‘matters’ the incident or secondary things necessary to provide for its complete enforcement. (Citing cases.)”

In that same case the Court also set forth certain settled principles concerning the interpretation of statutes to determine whether the *matters* included within the body of the statutes were within the *subjects* expressed in the titles. The Court in that case said at page 145 :

“It is not necessary that all matters connected with, or germane to the subject of an act shall be embraced in the title. It is sufficient that the title shall ‘embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title’ (Const. Art. 4, Sec. 19), and that it is of such character as fairly to apprise the legislators and the public in general of the subject-matter of the legislation, so as to lead to inquiry into the body of the bill, or indicate some particular branch of legislation as a head under which the particular provisions of the act may reasonably be looked for, and it need not set out all the matters properly connected with, or germane to the subject-matter of the act. (Citing many cases.)”

Likewise, the court in the case of Steinkamp v. Board of Commissioners, Decatur County (1935), 209 Ind. 614 at 616 stated the general rules as follows :

“The following rules of construction are well established: ‘The title of an act is to receive liberal construction if necessary to sustain the legislative intent.

If the words used in a title, taken in any sense or meaning they will bear, are sufficient to cover the provisions of the act, the act will be sustained even though such meaning may not be the most common meaning of such words. These rules, however, are to be used to effectuate, not to defeat, the legislative intent.' *Hargis v. Board of Commissioners of the County of Perry* (1905), 165 Ind. 194, 195, 73 N. E. 915. 'The courts will not resort to a critical construction of the title in order to hold a statute unconstitutional. On the contrary the language of the title is in all cases given a liberal interpretation, and the largest scope accorded the words employed that reason will permit in order to bring within the purview of the title all the provisions of the act.' *Board of Commissioners, etc., et al. v. Albright et al.* (1907), 168 Ind. 564, 569, 81 N. E. 578."

Also, in the case of *Oliver, Auditor v. State, ex rel. Lahr* (1924), 195 Ind. 65, the court held that a provision of a statute providing for the salary of judges of juvenile courts in the State was valid as properly being within the title of the Act, namely, "An Act Fixing the Salaries of Circuit, Superior, Criminal and Probate Judges, Providing traveling Expenses in Certain Cases and for the Payment of Such Salaries and Traveling Expenses, and Repealing all Laws and Parts of Laws in Conflict therewith." In that case the court said at page 69:

"* * * On the other hand, it is uniformly held that when a title shall 'express' a 'subject,' any provisions of the act which relate to that subject, or to 'matters properly connected therewith,' are within such title. And in determining what is the general subject to which the act relates the court will look from the title to the body of the act and from the body of the act to the title, and from a consideration of all the provisions of both, will determine whether or not the provisions are all fairly referable to one general subject expressed in the title, and matters properly connected therewith. (Citing cases.)"

In Sutherland, Statutory Construction, (3rd Edition) Vol. 1, Sec. 1711, p. 302, the rule is stated as follows:

“The general test used to determine whether the inclusion in an act of numerous provisions violates the constitutional prohibition against plurality of subject matter is that of determining whether the various provisions are germane to the subject expressed in the title.

“ ‘Germane’ is defined as meaning in close relationship, appropriate, relevant, or pertinent to the general subject, and no portion of a bill not germane to the general subject can be given the force of law.
* * *”

From the foregoing authorities it is clear that a liberal construction will be given titles to statutes and if the provisions of a statute are germane and relevant to the subject expressed in the title, the statute will be held to be valid.

The title of the Act in question states that it is an act concerning the salary of State Superintendent of Public Instruction. This title would be sufficient notice to anyone that the subject of the statute concerned the salary or compensation of the Superintendent of Public Instruction. Anyone interested in this general subject would certainly examine its provisions to determine their content. Section 2 of the Act provides for a per diem allowance for the Superintendent to compensate him for additional duties. This matter of additional compensation for additional duties would certainly seem relevant and germane to the subject matter of his salary as expressed in the title.

In view of the liberal construction that is given by the courts to the titles of statutes in order to sustain their validity, and in view of the fact that the matters set out in Section 2 of the statute certainly seem germane and relevant to the subject matter of the title, it is my opinion that the Auditor of State may pay to the Superintendent of Public Instruction the personal expenses authorized by Section 2 of said statute.