

provision of said statute it was clearly the legislative intent to permit the city to annex a portion of the civil township, or school township, whereupon the civil city becomes liable for such proportion of the indebtedness, outstanding unpaid bonds or other obligations of that part of the annexed civil township or school township as the assessed valuation of property in said annexed or incorporated territory is to the valuation of all property in said township. An exception to the foregoing prevails when there is a school building included in the territory so annexed. In the latter case the "remaining indebtedness on such building" shall be paid by the school city pursuant to the provisions of Section 28-3305a, Burns' 1933, *supra*, under the proviso contained in Section 28-3305a, Burns' 1943 Supplement, *supra*. I am of the opinion these two statutes are not in conflict with each other and may be construed in *pari materia* with each other.

OFFICIAL OPINION NO. 90

August 28, 1945.

Hon. C. E. Ruston, State Examiner,
State House,
Indianapolis 4, Indiana.

Dear Sir:

I am in receipt of your letter of July 13 asking three questions in regard to the election code of Indiana, being Chapter 208 of the Acts of the 1945 Legislature. I will answer these questions separately.

"1. Are the supplies needed by any county for holding elections in any year purchased by the board of county commissioners upon requisitions, specifications, bid and contract prepared and awarded pursuant to the provisions of Section 26-536 Burns' Supplement, 1943?"

Section 20 of the Indiana Election Code provides:

"All materials, supplies and equipment of any and every sort which are to be paid for out of the county

treasury shall be purchased as now provided by law. Payment of same shall be upon claims filed with the county auditor, verified and approved by the county election board, and the county auditor shall draw his warrant or warrants on the county treasurer in payment thereof."

This paragraph does not indicate in itself who is to purchase the election supplies, but does require that they be purchased "As now provided by law." At the time the code was adopted there was in full force and effect, Chapter 199, Section 1, p. 597 of the Acts of 1943 (section 26-336 Burns' Supplement, 1943) which provided by law the method of purchasing materials and supplies. The pertinent parts of that section are as follows:

"The board of county commissioners shall have the exclusive power to purchase materials and supplies of any and every sort which are to be paid for out of the county treasury. Such supplies and materials shall be purchased only upon the written requisition of the officer, employee or department for whom or for whose work such supplies or materials are deemed necessary. The form of such requisition shall be prescribed by the state board of accounts and distributed by the board of county commissioners for the use of the various county officials, employees and departments entitled to make such requisitions. * * * It shall be the duty of the board of commissioners, having required and received such requisition from such officer, employee or department entitled to make the same, to prepare full and definite specifications, bid and contract on or before the first Tuesday after the first Monday of October of each year of the kind and quality of supplies needed for the county for the ensuing calendar year. * * *"

An examination of the election code discloses that the expenses of registration (Section 49) and of Primary elections (Section 96) are to be paid in like manner as the expenses of general elections.

Section 84 of the Election Code provides that "it shall be the duty of county election board to prepare and distribute separate primary ballots * * *."

Section 218 provides that absent voters' ballots "shall be prepared and printed under the direction of the county election board as provided in this act."

Section 240 provides that the county election board "shall cause the names of all candidates * * * to be printed on ballots as hereinafter provided."

Section 245 requires the county election board to deliver to the inspector of each precinct "the local ballots printed under the direction of said county board * * *."

Section 19 imposes the duty on the county election board "to prepare ballots."

These provisions have been consistently interpreted in the past as imposing the duty upon the county election boards to cause the ballots to be printed and the ballots have not been considered as being within the category of supplies which are to be printed by the county commissioners, under contract to be let under Chapter 199 of the Acts of 1943. This was the interpretation of the Legislature when it enacted the Henley-VanNess Act in regard to war ballots in the first special session of 1944, for in Section 11 of that Act, which is Section 229 of the Election Code, with supplied changes, provided "the various county boards of election commissioners *now authorized by law to provide ballots* for any general election, shall * * * cause to be printed a sufficient number of official absent voters' war ballots * * *." The emphasized portion clearly indicates a legislative interpretation that ballots are to be provided in general by the county board of election commissioners and not by the county commissioners.

I can not see that the election code changed this procedure in any way as the sections above cited reenacted previous sections with immaterial changes. I do not believe, therefore, that ballots constitute such supplies as are to be purchased by the county board of commissioners under Chapter 199 of the Acts of 1943.

In answer to your first question it is my opinion that the supplies required by any county for holding elections must be purchased by the board of county commissioners upon

requisition, specification, bid and contract, pursuant to the above quoted provisions of Chapter 199 of the Acts of 1943, while ballots are to be ordered and contracted for by the county board of election commissioners.

“2. If your answer to the foregoing question is in the negative, would the county election board purchase necessary supplies under the provisions of Chapter 99, Acts 1943?”

The answer to question one being in the affirmative, it is unnecessary to consider this question.

“3. Section 17, of Chapter 208, Acts 1945 provides for the appointment of members of the county election board at least 60 days prior to each primary election. Would it be legal if such members were appointed prior to January 1st of the year in which elections are held?”

Section 17 of the election code to which you refer provides in part as follows:

“* * * Such appointments shall be made at least sixty (60) days prior to each primary election, and if prior to that time, the chairman of the county central committee of either of such parties shall nominate in writing a member of his own party for such appointment, the clerk of the circuit court shall appoint such nominee. Such appointees shall serve until their successors are appointed and qualified. * * *”

It will be noticed from this extract that the members of the board of election commissioners are not given any fixed term of office, and that the only limitation upon the appointment of their successors is that such appointment be made at least 60 days prior to each primary election.

It is a settled rule of statutory construction that the express mention of one thing is the exclusion of all others.

Branson v. Studabaker (1892), 133 Ind. 147, 153;
 Princeton Coal Co. v. Fettingor (1916), 185 Ind. 675, 677;
 Evansville v. State (1888), 116 Ind. 426, 442.

It would appear therefore, that the express mention of the 60-day limitation would exclude any other limitation and that the intent of the law was that the election board be newly appointed for each primary and general election. There is certainly no authority to warrant the insertion in this statute of a limitation requiring the board to be appointed after January 1 of an election year.

It is, therefore, my opinion that it is legal to appoint members of the election board prior to January 1 of the year in which elections are held.

OFFICIAL OPINION NO. 91

August 28, 1945.

Hon. Clement T. Malan,
State Superintendent of Public Instruction,
Room 227 State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter in which you ask an official opinion upon the following questions:

"1. Must every city and every county having fifteen hundred or more children in average daily attendance employ an attendance officer?"

"2. In determining the average daily attendance of an attendance district, is the school corporation permitted to include the average daily attendance of children in parochial schools?"

"3. Are school attendance officers 'teachers' as defined in S. B. No. 130, Chapter 231, Acts of 1945?"

"4. Must the public school corporation which employs and pays a substitute teacher hold a contract with such substitute teacher?"

"5. Is a substitute teacher entitled to the minimum rate of pay as determined by training and experience?"

1. In answering your first question reference must be made to Section 1 of Chapter 171 of the Acts of 1945, which