

OFFICIAL OPINION NO. 112

October 10, 1945.

Mrs. Eleanor B. Snodgrass,
Director of Probation,
State Probation Department,
State House,
Indianapolis 4, Indiana.

Dear Mrs. Snodgrass:

Your letter of October 4, 1945, received requesting an official opinion on the following questions:

"1. May any judge appoint as an 'Acting' Probation Officer any person who is not qualified and cannot qualify under the rules of the Probation Department?

"2. May judges legally appoint at will so called 'Acting' Probation Officers who are not qualified and place them on regular salary for an indefinite period?

"3. I see that H. B. 423 was passed as an emergency Act and became the law April 1, 1945. Paragraph 2 of Section 17 states that, 'In each and every county of this state having a population of less than one hundred thousand (100,000), the judge of the court, having juvenile jurisdiction shall appoint one (1) chief probation officer and may appoint one (1) additional assistant probation officer for every twenty-five thousand (25,000) population.'

"Does this make the appointment of a Probation Officer for each county mandatory?"

Section 9-2904 Burns' 1942 Replacement, same being Section 4, Chapter 260, Acts 1933, being a part of the statute creating the State Probation Department, provides as follows:

"The state probation department shall from time to time conduct competitive examinations to establish lists of persons eligible for appointment as probation officers; shall prescribe the qualifications for entrance to such examinations and shall establish rules for the conduct of such examinations and for the eligibility of candidates for appointment. *No person shall here-*

after be appointed as a probation officer in any court in this state who has not been certified by the department in pursuance of such rules and examinations. The department may recommend to the proper authority the discharge of any probation officer.” (Our emphasis.)

Under the other sections of said statute general supervision of probation work throughout the State is placed in said department including the manner of making records and reports, the arranging of conferences of probation officers, the compilation of statistics on probation and an annual report thereon to the Governor.

Chapter 347 of the Acts of 1945 creates a juvenile court in counties of this State having a population of two hundred fifty thousand (250,000) or more according to the last United States census, and provides that in all other counties the Circuit Court shall possess all the powers by law conferred on the juvenile court and the judge thereof.

Under Section 17 of said Juvenile Act the first paragraph refers to appointment of probation officers in counties having a population of more than two hundred fifty thousand (250,000) and provides that such “probation officer and supervising probation officers who are to receive salaries shall be appointed from eligible lists secured through competitive examination as provided by law.”

The second paragraph of Section 17, *supra*, of said Act, provides for the appointment of such probation officers in counties having less than one hundred thousand (100,000) population, and is silent as to the requirement for appointment from eligible lists provided by law. The third paragraph of said Section 17, *supra*, applies to counties having a population of not less than one hundred thousand (100,000) or more than two hundred fifty thousand (250,000) inhabitants and is silent as to any requirement that probation officers shall be appointed from eligible lists provided by law.

Section 27 of Chapter 347 of the Acts of 1945 reads as follows:

“Nothing contained in this Act shall be so construed as to *repeal, modify or abridge the powers of the*

State Probation Commission as provided in Chapter 260, Acts of 1933." (Our emphasis.)

The aforesaid statutes are subject to the following well recognized rules of statutory construction:

Statutes must be construed as a whole in order to determine the legislative intent.

Snider v. State *ex rel.* Leap (1934), 206 Ind. 474, 478;

State *ex rel.* v. Ritter's Estate (1943), 221 Ind. 456, 469, 470.

In ascertaining the legislative intent as to a statute, the courts may take into consideration other Acts in *pari materia*, whether passed before or after the Act in question.

Sherfey v. City of Brazil (1938), 213 Ind. 493, 497, 498.

1. and 2. In construing the above statutes under the rules announced in the foregoing authorities I am of the opinion in answer to your first and second questions that all courts of this State are required to appoint probation officers from the eligible lists established by the State Probation Commission, provided of course such a list is available from which to make such appointments.

The fact that Section 17 of Chapter 347 of the Acts of 1945 makes a distinction in the number of probation officers to be appointed in counties, separating them into three (3) classes according to population and specifically providing in counties having more than two hundred fifty thousand (250,000) population such probation officers shall be appointed from such eligible lists provided by law, while in the latter two (2) classifications of counties the Act is silent on that question, is not material. This fact could not be construed to constitute an implied repeal of the requirements of Section 4 of Chapter 260 of the Acts of 1933, *supra*, especially in view of the fact that under Section 27 of Chapter 347 of the Acts of 1945 it is provided that said statute shall not be construed to "repeal, modify or abridge the powers of the State Probation Commission as provided in Chapter 260, Acts of 1933."

3. In answer to your third question I wish to advise the second paragraph of Section 17 of Chapter 347 of the Acts of 1945 provides as follows:

“In each and every county of this state having a population of less than one hundred thousand (100,000), the judge of the court having juvenile jurisdiction *shall* appoint one (1) chief probation officer and *may* appoint one (1) additional assistant probation officer for every twenty-five thousand (25,000) population. The chief probation officer shall receive as compensation for his or her services an annual salary not to exceed three thousand dollars (\$3,000.00).” Our emphasis.)

The above quoted statute clearly provides that in counties of less than one hundred thousand (100,000) population the judge of the court having juvenile jurisdiction *shall* appoint one (1) chief probation officer and *may* appoint one (1) additional assistant probation officer for every twenty-five thousand (25,000) population.

Where a statute is clear and unambiguous it is not subject to construction by the court.

Sec. 4502 Sutherland Statutory Construction,
3rd Ed.;

Hord v. State (1907), 167 Ind. 622, 624;

Citizens T. & S. Bank v. Fletcher American Co.
(1934), 207 Ind. 328, 334.

I am therefore of the opinion that in counties of less than one hundred thousand (100,000) population the judge of the court having juvenile jurisdiction is required to appoint one (1) chief probation officer and may in his discretion appoint one (1) additional assistant probation officer for every twenty-five thousand (25,000) population.