

Under such facts and circumstances persons residing within the areas referred to, and any other similar areas in the state, retain their right to vote under state laws. See

Johnson v. Morrill, — Calif. —, 126 Pac. (2d) 873;

State ex rel. Parker v. Corcoran, Commissioner, 128 Pac. (2d) 999.

My attention has been called to an opinion of the Attorney General, issued to the State Board of Election Commissioners under date of November 5th, 1938 (see Opinions of the Attorney General, 1938, page 405), holding that inhabitants of C. C. C. camps located in the state of Indiana were not entitled to vote as residents of the precinct, township and county in which the C. C. C. camp was located. As applied to the facts therein involved, I agree with the conclusion therein stated but I do not believe that said opinion is applicable to, or decisive of, the questions presented by your letter.

RULE MAKING POWER OF ADMINISTRATIVE BOARDS.

Standard Rules and Regulations of private or semi-private associations may be adopted by proper reference without copying.

April 3, 1944.

Opinion No. 36

Mr. Joseph L. Quinn, Jr., Acting Director
 Division of Environmental Sanitation,
 Indiana State Board of Health,
 1098 West Michigan Street,
 Indianapolis, Indiana.

Dear Mr. Quinn:

I have your letter of March 21st in which you request an official opinion on the following questions:

“1. Can the Administrative Building Council in its Rules and Regulations refer to recognized standards, such as, the American Society of Testing Materials and the American Standards Association?

"2. May the Administrative Building Council incorporate by reference in its Rules and Regulations a standard code; for example, the National Electric Code?"

In your letter you state that it is standard practice throughout the country to refer to certain materials by their recognized standard designation and give certain examples, and you also state that all men versed in the technical field that are designing, selling or installing material are familiar with these types of specifications.

Your questions involve the rule making power of the Administrative Building Council and the Administrative Committee. The powers and duties of the Administrative Committee are set forth in Section 4 of the Acts of 1923 as amended in 1935. See Section 20-404, Burns' R. S. 1933, Pamphlet Part, which provides as follows:

"It shall be the duty of the administrative committee, and it shall have power, jurisdiction and authority: to administer, execute and enforce any and all laws now in force or hereafter enacted in this state relative to the construction, repair, or maintenance of places of employment, public buildings, tenement-houses, and all other buildings, except:

"(1) Private residences, and out buildings in connection therewith, including barns and private garages;

"(2) Buildings used for agricultural purposes, which are not within the corporate limits of a city or town;

"(3) Temporary buildings or additions used for construction purposes only, so as to render the same safe and sanitary.

"To ascertain, fix and order such reasonable standards, rules, regulations, classifications, approval of plans and specifications of places of employment and public buildings, and other buildings as above set out as shall be necessary to carry out the purpose of this act. The majority of the administrative committee shall constitute a quorum for the exercise of the powers or authority conferred upon it. In case of a vacancy the remaining two (2) members of the administrative committee shall exercise all the powers and authority

of the administrative committee until such vacancy is filled."

The above quoted section of the statute gives the Administrative Committee authority to ascertain, fix and order such reasonable standards, rules, regulations, etc., of places of employment and public buildings and other buildings within the purview of the act as shall be necessary to carry out the purpose of the act. It is apparent that the purpose of the act was to give power, jurisdiction and authority to the committee to administer, execute and enforce all laws in force or thereafter enacted relative to the construction, repair or maintenance of buildings described therein, with the exceptions noted in said section.

The rule is that the Legislature having declared the law and its purpose and provided standards for the exercise of the power, may confer upon an administrative board the authority to enact rules and regulations to promote the purpose and spirit of the legislation and carry it into effect, and such rules and regulations are given the force and effect of law. However, the Legislature can not delegate the power to make laws. The Legislature must fix the legal principles which are to control, declare the policy of the law and prescribe a standard. It may then delegate to boards and administrative officers the determination of facts in order to apply the law and in connection therewith the right to make reasonable rules and regulations to administer it and carry it into effect. Such administrative board may then adopt reasonable rules and regulations to carry out the purpose or object for which it is created, so long as they are confined to administering, enforcing and carrying out the law and policy as enacted by the Legislature and do not enlarge the jurisdiction granted by the Legislature.

42 Am. Jur., Sec. 49, p. 353;

11 Am. Jur., Sec. 240, *et seq.*, p. 955;

Blue v. Beach (1900), 155 Ind. 121, 133;

Hoffman v. Brooks Construction Co. (1942), 41 N. E. (2d) 613, 615;

Financial Aid Corp v. Wallace (1939), 216 Ind. 114;

Fry, Excise Director v. Rosen (1934), 207 Ind. 409;

Hollywood Theatre Corp. v. City of Indianapolis (1940), 218 Ind. 556;
 Hollingsworth v. State Board of Barber Examiners (1940), 217 Ind. 373, 379;
 Fertich v. Michener (1887), 111 Ind. 472, 482.

In view of the fact that the section of the statute above quoted gives the administrative committee power to administer, execute and enforce all laws in force and thereafter enacted, with the exceptions noted, we have briefly examined the statutes to ascertain what laws are in force relating to plumbing and electricity and find the following to which we refer you:

Section 35-1801, Burns' R. S. 1933, which relates to drainage, plumbing, lighting and other matters, and is a part of the Health laws. This law is known as the law relating to "Dwellings Unfit for Human Habitation." We also call your attention to Section 35-106, Burns' R. S. 1933, which is a part of the Health laws and relates to "drainage, water supplies, disposal of sewage, lighting, heating and ventilation and all sanitary features of all public buildings and institutions." We also call your attention to Section 20-532 to Section 20-536, both inclusive, Burns' R. S. 1933, which relate to plumbing and connected matters in tenements. Section 40-1006, Burns' R. S. 1940 Replacement, is a part of the safety and sanitary laws administered by the Industrial Board.

For laws relating to electricity in addition to the foregoing, we refer you to Section 20-304, Burns' R. S. 1933, which is a part of the building safety regulations and directed primarily to electricity of high voltage, Section 40-1013, Burns' R. S., 1940 Replacement, which is a part of the safety and sanitary regulations, and Section 20-807, Burns' R. S. 1933, which is a part of the Fire Marshal Law. In addition to the above statutes, Section 6 of the Act of 1923 which created the Administrative Building Council, being Section 20-406, Burns' R. S. 1933, provides as follows:

"Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building, and every architect, engineer or any one who designs a building shall so prepare the plans and specifications for the construc-

tion of such place of employment or public building, as to render the same safe and sanitary, in accordance with the rules and regulations as promulgated by the administrative committee."

There may be other statutory provisions related to plumbing or electricity which we have not as yet located.

It is my opinion that if your rule is valid within the principles and authorities above set forth that it would not be rendered invalid by reason of the fact that, in the rule, you refer to recognized standards as mentioned in your first question. Subject to the same requirements and limitations you may adopt a standard code by due and proper reference and without copying the same in full in your rule. In this connection you must bear in mind that the provisions of that code so adopted must be reasonably calculated to further the administration, execution and enforcement of a valid legislative enactment and purpose adopted by the Legislature.

A valid rule adopted by an administrative or executive board or officer has the force and effect of law and its validity and requirements as to clearness, conciseness and subject matter is to be tested by the same principles as applied to statutes and ordinances. In 42 American Jurisprudence at page 427 it is said:

"An act of an administrative body which is legislative in character and has the force of a statute is subject to the same tests as to its validity as an act of the legislature intended to accomplish the same purpose."

In the case of *Fertich v. Michener* (1887), 111 Ind. 472 at page 482, the court said:

"Construing these general statutory provisions in connection with the incidental powers of corporations to which we have referred, this court has frequently, either expressly or impliedly, held that the various school boards and other educational authorities of the State have the power to adopt appropriate rules and regulations for the government of the schools under their control, and that when so adopted such rules and regulations are analogous to by-laws and ordinances, and are tested by the same general principles. *Danen-hoffer v. State*, 69 Ind. 295 (35 Am. R. 216); *State, ex*

rel., v. White, supra; State, ex rel., v. Webber, 108 Ind. 31 (58 Am. R. 30)."

Applying this test we find that it has not been uncommon in the drafting of statutes to adopt, particularly in the fields of health and safety, the rules and regulations of private associations. In Sutherland on Statutory Construction, 3rd Ed., Vol. 1, at page 67 it is said:

"* * * And apparently where the legislature adopts in the fields of health and safety the rules and regulations of private associations, there has been little challenge on the basis of an illegal delegation, * * *"

and examples are given of the widespread state adoption of the National Formulary and the United States Pharmacopoeia as standards for pure food and drug legislation and the Uniform classification of Accounts of the National Association of Railway and Utility Commissioners, the National Electrical Safety Code, the regulations of the National Board of Fire Underwriters, etc.

In Indiana the Legislature in the Acts of 1925 adopted by reference the Standard Weights and Measures furnished by the Government of the United States in accordance with a joint resolution of Congress and certified to by the United States Bureau of Standards. (Section 69-102 Burns' R. S., 1943 Replacement.) The Indiana Legislature in the Acts of 1907 in the Food and Drug Law, adopted standards and definitions in the "United States Pharmacopoeia or National Formulary." This section was afterwards apparently superseded by the Act of 1939, which also adopts the definitions in the "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary." (Section 35-1230 (g), Burns' R. S. 1933, Pamphlet Part.)

The answer to each of your questions is therefore in the affirmative, subject to the rule in question otherwise complying with the requirements and limitations of your rule making power. In this connection we believe that the standard referred to should be one in existence at the time and should not include amendments which may thereafter be made thereto to avoid the question of delegation of your power to a private or quasi private association or organization.