

fighting company or association for the use of fire-fighting and fire-extinguishing equipment owned by such volunteer fire-fighting company or association. If it is desirable to permit trustees to contract with volunteer fire-fighting associations who own their own equipment this should be presented to the Legislature.

Since your first question is answered in the negative no answer is required to your questions numbered 2 to 4, both inclusive.

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**STATE BOARD OF ELECTION COMMISSIONERS: Elections—Names of candidates for United States Senator should be placed on national ballots in general elections at which a president and a vice-president are to be elected. STATUTES—Form specified in a statute is controlling—Departmental construction entitled to weight. Constitutional law—presumptions are in favor of validity. Titles should be liberally construed. Purpose of Sec. 19, Art. 4.**

August 4, 1944.

*Opinion No. 71*

Hon. David M. Lewis, Member,  
State Board of Election Commissioners,  
129 East Market Street,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of August 2nd in which you ask the following questions:

1. "A question has arisen as to whether or not the candidates for the office of United States senator should be placed on the national ballot. In view of the above quoted Acts and the opinion of the Attorney General, which is all of the authority that I have been able to find on the subject, I would like to have your opinion as to whether or not the offices of the United States senator should be placed on the national ballot or on the State ballot as provided by the Act of 1933 which your predecessor said was still in full force and effect.
2. "Should it be your opinion that the candidates for the offices of United States senator should appear

on the national ballot along with the candidates for President and Vice-President, then in the election of 1946 when there will be a candidate for United States senator from Indiana and no candidate for President and Vice-President, is it your opinion that the office of United States senator should appear on a separate national ballot?"

The answer to your first question involves the consideration of various provisions of the election laws. Section 29-1106, Burns' R. S. 1933, provides in part as follows:

"The board of election commissioners of the state of Indiana shall cause the names of all candidates for electors for president and vice-president of the United States to be printed on one (1) ballot, in such manner as the laws of Indiana may provide, and the names of all other candidates for whom all of the electors of the state are entitled to vote to be printed on another ballot. The boards of election commissioners of the several counties of the state and the boards of election commissioners of the several cities and towns of the state of Indiana shall cause the names of all candidates of their respective jurisdictions to be printed on one (1) ballot. All nominations of any party or group of petitioners shall be placed under the title and device of such party or petitioners as designated by them in their certificate or petition, or if none be designated, under some suitable title and device. The ballots shall be of uniform size and of the same quality and color of paper, and sufficiently thick that the printing can not be distinguished from the back. The state board of election commissioners shall cause the ballots for electors for president and vice-president to be printed on cherry red color paper, and the state ballot for United States senators and officers on pink paper. \* \* \*." (Acts 1933, Ch. 92, Sec. 1, p. 660.)

Section 2 of Chapter 61 of the Acts of 1937, page 318, provides as follows:

"Upon the left-hand margin of each separate column of the ballot, where ballots are used, immediately

opposite the names of the candidates for president and vice-president of any political party or group of petitioners, a single square shall be printed in front of a bracket inclosing the names of such candidates for president and vice-president. The device named and list of candidates of the party which cast the largest number of votes for secretary of state at the last preceding general election shall be placed in the first column on the left-hand side of said ballot (or) in the first column or row where voting machines are used; and of the party which cast the second largest number of votes for secretary of state at the last preceding general election in the second column or row; and of any other party in the same order. The device, title and names of candidates appearing on any such ballot or voting machine or ballot label, as now provided by law, shall be arranged, as nearly as possible, in the following order:

DEVICE	DEVICE
DEMOCRATIC TICKET	REPUBLICAN TICKET
For presidential electors	For presidential electors
For president,	For president,
F _____ R _____	H _____ H _____
For vice-president,	For vice-president,
J _____ G _____	C _____ C _____
For United States Senator	For United States Senator

(Section 29-113, Burns' R. S. 1933, Pamphlet Part.)

Under date of August 19, 1940, the then Attorney General gave an opinion in answer to the following question:

“Should one ballot be used containing the names of candidates for both National and State tickets or should two ballots be used, one carrying the National ticket and the other the State ticket?”

In response to said question the then Attorney General replied that, “In my judgment, two ballots should be used, one carrying the National ticket and the other the State ticket.”

The question as to whether the names of the candidates for senator should be on the National or the State ballot was not submitted and was not answered by said opinion.

The Legislature at its special session in 1944 enacted an absent voters' law known as the "Henley-VanNess Act." Section 9 of this law provided:

"\* \* \* 'INDIANA OFFICIAL WAR BALLOT.' In all other respects said ballot shall conform to the laws now in force in this state concerning ballots and elections, excepting weight, color or quality of paper, and the form thereof shall be the same as is provided by law for similar ballots to be used by voters voting in person by ballot."

Section 10 of said Act contains the following provision:

"\* \* \* Each of said war ballots shall have printed or stamped on the lower left corner of the back thereof the words 'National Ballot' if the same be national, and 'State Ballot' if the same be state, \* \* \*."

This last expression of the Legislature clearly indicates that two ballots shall be caused to be printed by the State Board of Election Commissioners, one the "National Ballot" and also a "State Ballot."

The title of Chapter 61 of the Acts of 1937 is as follows:

"AN ACT providing that the names of candidates for president and vice-president of the United States shall be placed on the ballots, voting machines and ballot labels used at general elections when a president and vice-president are to be elected, *prescribing the form of such ballots* and ballot labels, and providing that votes cast or registered for the candidate for president and vice-president of any political party or group of petitioners shall be construed as votes cast for the candidates for presidential electors of such party or group of petitioners." (Our italics.)

Section 19, Article 4 of the Constitution of Indiana, 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."

The above title does state that it is "prescribing the form of such ballots" and the form is set forth in the body of the act. The purpose of the above section of the Constitution is to prevent a combination of non-related subjects. A title is sufficient if it gives such notice as to lead persons interested therein to an inquiry into the body of the act, the title need not be an abstract of the contents of the act. In the case of Lutz, Attorney General v. Arnold, 208 Ind. 480, the court said at page 495:

"\* \* \* It is the purpose of this section to prevent a combination of non-related subjects. \* \* \*

"We do not think anyone could be misled by the title of the act for the reason that it does not give a fair notice of its contents. If the title fairly gives such notice, so as to reasonably lead to an inquiry into the body of the bill, it is all that is necessary. It need not amount to an abstract of its contents. \* \* \*."

See also:

Albert v. Milk Control Board, 210 Ind. 283, 288;  
Kleihege v. State, 206 Ind. 206, 210;  
State v. Closser, 179 Ind. 230.

In the latter case the Supreme Court said at page 235:

"It is also the settled rule that the title of an act is to receive a liberal construction if necessary to sustain the legislative intent. A critical construction will not be made of the title to hold a statute unconstitutional, but on the contrary the language used 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. \* \* \*."

As above pointed out the title to the 1937 Act does state that it is "*prescribing the form of such ballots.*" "Such bal-

lots" refers to ballots "used at general elections when a president and vice-president are to be elected."

Applying these rules it would seem that the above title was sufficient to give notice to the legislators and any person interested that the form of the ballot was being prescribed in cases where "a president and vice-president are to be elected." Where the title relates to a subject which might comprehend various matters the disposition of the courts is to solve doubtful questions as to the relation of a particular matter to the subject in favor of the legislation. Thus an act entitled, "An Act to authorize the formation of new counties," was held sufficient to authorize the establishment of courts therein, although courts were not mentioned in the title. *Brandon v. State*, 16 Ind. 197. An act having for its title, "An act to provide for the incorporation of railroad companies" was held sufficient to cover a provision for stockholders' liability, although stockholders were not mentioned in the title. *Shipley v. City of Terre Haute*, 74 Ind. 297.

In *Sutherland on Statutory Construction*, 3rd Ed., Section 4510, it is said:

"A statute is a solemn enactment of the state acting through its legislature and it must be assumed that this process achieves an effective and operative result. It cannot be presumed that the legislature would do a futile thing. Thus, legislative language will be interpreted on the assumption that the legislature was aware of existing statutes, the rules of statutory construction, and the judicial decisions and that if a change occurs in legislative language a change was intended in legislative result."

Here a change was made in the form of the national ballot and it is apparent the Legislature intended to put the names of the candidates for United States senator, a national office, on the national ballot. This is shown both by the form set forth and the text of the Act.

A form prescribed by statute is an essential and controlling part of the statute. In the case of *Wasson v. The First National Bank of Indianapolis*, 107 Ind. 206, a form of schedule was set forth in a tax law and the court held that the schedule provided by the statute was controlling in case of conflict

with any other provision of law. The court said, at page 209:

“\* \* \* The statute also provides the form of the schedule to be furnished by the assessor to the taxpayer. Section 6336. That schedule is full and specific, and was intended to, and does, provide in detail the place and manner of listing for taxation all articles and items of personal property, including moneyed capital and credits of every description. \* \* \*

“\* \* \*

“\* \* \* If ‘money at interest,’ as used in the section, means anything different from ‘money loaned’, if, in other words, it means that because accounts, notes, judgments, etc., may draw interest, they are ‘money at interest’, then clearly the section, that far, is in conflict with the schedule and section 6332, *supra*.

“\* \* \*

“The schedule is the summing up and putting in shape for practical use what is provided in the preceding sections. The schedule has heretofore been regarded as controlling. It was so regarded under the tax law of 1852, as amended in 1869. *Clark v. Carter*, 40 Ind. 190. It was so under the tax law of 1872. *Matter v. Campbell*, 71 Ind. 512. It may be observed in passing that the act of 1872 is materially different from the act of 1881. And so the Supreme Court of the United States, in construing the tax law of 1872, placed its decision upon the schedule. *Evansville Bank v. Britton*, 105 U. S. 322.”

In the case of *Orr v. Meek*, Admr., 111 Ind. 40, at page 41, the court said:

“It was held in *Wasson v. First Nat'l Bank*, 107 Ind. 206, *that a form prescribed by statute is an essential and controlling part of the statute*, and it must be so held here. \* \* \*” (Our italics)

See also:

*Mayfield v. Nale*, 26 Ind. App. 240, 242.

The form enclosed in the 1937 Act plainly provides that the names of the candidates for United States senator should

go on the ballot with the candidates for president and vice-president. It would seem clear that the Legislature intended for the names of the candidates for president, vice-president and United States senator to be on the ballot in the form provided. This intent as expressed in the provisions of the act should be given effect and upheld unless found clearly to conflict with the Constitution. Any doubt must be solved in favor of the validity of the act.

In the case of *State, ex rel. Duensing v. Roby, et al.*, 142 Ind. 168, at page 180, the court said:

“On the other hand acts of the Legislature come to us as the expression of the will of the sovereign people clothed with the majesty of law, imposing upon the judiciary the solemn duty of upholding the same, unless found to clearly conflict with the Constitution, State or Federal. There is the best of reasons why doubts should be solved in favor of the validity of the act of the Legislature. In case of doubt there might be a mistake in declaring the act unconstitutional by the court. To declare an act void for unconstitutionality in a doubtful case through a mistake of a court of last resort would have the effect not only of paralyzing one of the co-ordinate departments of the State government, but it would be an usurpation of power by the court, a power withheld from it by the people in the constitution.

“The dangerous consequences liable to result from a possible mistake in declaring an act of the Legislature void for unconstitutionality, are sufficient alone to inspire the judiciary with the greatest caution in that respect, and furnish ample justification for the rule that no statute will be declared unconstitutional unless its conflict with the constitution is beyond reasonable doubt. \* \* \*.”

In *Sutherland on Statutory Construction*, 3rd Ed., Section 1706, it is said:

“In deciding the constitutionality of a statute alleged to be defectively titled, every presumption favors the validity of the act. As is true in cases presenting other constitutional issues, the courts avoid declaring

an act unconstitutional whenever possible. Where there is any doubt as to the insufficiency of either the title, or the act, the legislation should be sustained."

In the case of State v. District Court (Mont.), 64 P. (2d) 115, at page 119, the court said:

"But it is said that the title of the act limits its scope to county officers. True, the title does not refer to any unsuccessful candidate for any public office, but this deficiency is insufficient to condemn the act under the provisions of section 23 of article 5 of our Constitution. \* \* \*"

It is a matter of record that the State Board of Election Commissioners, after receipt of the opinion of the then Attorney General above referred to did cause to be printed two ballots, a national ballot and a state ballot and caused the names of the candidates for United States senator to be placed on the national ballot.

The minutes of the meeting of the State Board of Election Commissioners held August 30, 1940, show the following:

"Judge Smith: I move that we have separate ballots, one for the national ticket including president, vice-president and United States senator and another including governor, lieutenant governor and all other offices for which the State electorate will vote.

"The vote on the above motion was two ayes: Governor Townsend and Judge Smith; one dissenting vote by Judge Gause."

Since then the Legislature has met twice in regular session and once in Special Session at which latter session it gave special attention to the election laws, but by inaction on the question of the form of the ballot has acquiesced in the ruling and determination of the State Board of Election Commissioners in using the form prescribed by the 1937 law and placing the names of the candidates for United States senator on the national ballot. No contention was made that the

form of the national ballot so prescribed in 1940 was illegal if there were to be two ballots. The law is the same now as it was then.

In fact, as late as November 16, 1943, the Minutes of the meeting of the State Board of Election Commissioners show that it considered the names of the candidates for United States senator should go on the national ballot. The minutes of their meeting held November 16, 1943, show the following:

“Next November there will be two ballots: the State ticket and the National ticket. The State ballot will contain two more names than the last one did, and altogether both ballots will take approximately 30 tons of paper. Also, there is the possibility that Congress may pass a law relative to absentee voting which might necessitate a change in the set-up of ballots for absent voters.

“Governor Schricker asked why the Senator’s names should appear on the National ticket instead of with those of Representatives on the County ticket, and Judge Gause explained that it is the result of an amendment passed six or eight years ago setting forth the actual physical make-up of the National ballot.”

The record shows no dissent from this pronouncement of the rule at that time.

In the recent case of Department of Welfare v. Scott’s Estate, 55 N. E. (2d) 337, at 338, it is said:

“Pursuant to an opinion of the Attorney General of the State of Indiana rendered on the 28th day of October, 1936 (Opinions of Attorney General of Indiana, 1936, p. 395), to the effect that the County Departments of Public Welfare should collect the amounts paid as old age pensions after the passage of the 1936 Act, they have since continued to do so, and the amounts so collected have been equally divided between them and the State Department of Public Welfare. The opinion of the Attorney General is not controlling, yet the practical construction given to legislation by the public officers of the state and acted upon by those interested and by the people is influential, Zoercher v. Indiana Associated Telephone Corp., 1937, 211 Ind. 447,

7 N. E. 2d 282, particularly where the legislature, by inaction continuing through several sessions, has indicated satisfaction with that construction. *Hindman et al. v. State*, Ind. Sup. 1943, 50 N. E. 2d 913; 50 Am. Jur. Statutes, § 326, p. 318. We feel in fact that the opinion of the Attorney General was right in the respect under consideration and that the County Departments did have the right and were charged with the duty of making the collections after the passage of the 1936 Act."

See also:

*Groher, Treas. v. Colgate-Palmolive-Peet Co.*, 94 Ind. App. 234, 245;

*Marvin v. Bike Webb Mfg. Co.*, 52 N. E. (2d) 360, 363;

*Zoercher v. Indiana Associated Telephone Co.*, 211 Ind. 447, 456.

If there be considered any doubt about the placing of the names of the candidates for United States senator on the national ballots to be used at a general election when a president and vice-president are to be elected on the form prescribed by the 1937 Act, this ruling by the Board of Election Commissioners must be given weight under the above authorities.

The said 1937 Act contained as Section 5 a provision repealing all laws or parts of laws in conflict. But it is not necessary to consider it from the standpoint of repeal as it only purports to supersede the other law in general elections when a president and vice-president are to be elected.

If two statutes relate to the same subject-matter and can stand together it is the duty of the courts to construe them together and so that they can both stand. In *Fleenor v. State*, 200 Ind. 165, at page 170, the court said:

"\* \* \* where two statutes may well stand together, and being related to the same subject-matter, one is in aid of the other to the extent that it is the duty of the courts, if possible, to construe them in *pari materia*; are applicable here. \* \* \*"

The 1937 Act both by its title and its provisions applies only to general elections when a president and vice-president are

to be elected, leaving the 1933 Act otherwise intact. This construction would carry out the very apparent intent of the Legislature.

It has been held that the Legislature may specify the form of the ballot and when that is done the officials in charge of the preparation of the ballot must follow the form prescribed by the Legislature.

Burr v. Voorhis, 128 N. E. 220, 221; 229 N. Y. 382;

Davidowitz v. Philadelphia County, 324 Pa. 17, 187 A. 585.

In the case of Burr v. Voorhis, *supra*, at page 221, the court said:

“\* \* \* The regulation of elections, the description of the ballots, the prescription of the conditions upon which and the manner in which the names of candidates or nominees may appear upon the official ballots, the method of voting, and all cognate matters are legislative and not justiciable unless the Constitution is violated. \* \* \*”

In Davidowitz v. Philadelphia County, *supra*, the court said:

“\* \* \* Where the legislature has regulated the form of a ballot, it does not lie within the power of any officer to change that form. \* \* \*”

As shown by the case cited above, in Indiana a form provided in a statute is controlling even where in conflict with other provisions. The form set forth is plain and clear.

It is therefore my opinion that in a general election at which a president and vice-president are to be elected the names of the candidates for United States senator should be placed on the national ballot. Even if there were any doubt about this conclusion, then under the authorities cited the doubt is to be resolved in favor of the form prescribed by the Legislature in the Act of 1937, particularly where in the 1940 presidential election held thereafter this form was used and that use has been acquiesced in by the Legislature through inaction for three sessions.

Your second question is purely hypothetical and directed to the election of 1946 and therefore to a date possibly beyond

your present term of office and it is not presently "touching any question or point of law concerning the duties of" your office. By then the election laws will be recodified as a result of the work of the present commission to recodify the election laws. It is entirely moot and for these reasons it is not answered.

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**STATE LIBRARY: Public libraries—Library Certification Act does not apply to employee of federal instrumentality.**

August 7, 1944.

*Opinion No. 72*

Hon. Harold F. Brigham,  
 Director, State Library,  
 140 North Senate Avenue,  
 Indianapolis, Indiana.

Dear Mr. Brigham:

You have asked my opinion concerning the following question:

"A woman who was a district supervisor for the W.P.A. State Library project has asked for a librarian's certificate on the basis of her position at the time the Certification Act took effect. We wish your interpretation on whether a librarian paid by federal funds is eligible for a certificate because of the position she held at the time the Act went into effect (i.e., a professional position). It might be noted that the W.P.A. project was sponsored by the State Library. This sponsorship was largely a nominal consideration but it did entail some contributions by the State Library in the form of working space and supplies. W.P.A. salaries, as you know, were paid entirely by the Federal Government including salaries of non-relief supervisors."

In addition to the facts stated in your letter, I am informed the woman in question was employed by W.P.A., subject to its rules and regulations and paid wholly through W.P.A. funds. The particular employment was supervisor of a