

INDIANA STATE POLICE: Affirmative vote of 126 out of 356 employee beneficiaries, for amendment of State Police Pension Fund, is not a MAJORITY under such plan.

February 29, 1944.

Opinion No. 20

Mr. Don F. Stiver, Superintendent
Indiana State Police,
State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of January 31, 1944, received as follows:

“Kindly furnish me with an official opinion as to whether or not a vote of 126 in favor of an amendment, 118 opposed, and 109 not voting, out of a total of 356 employee beneficiaries would be considered as a legal adoption of the amendment to the Pension Trust Agreement of the Indiana State Police Department in view of the following wording of the pension agreement:

“At any time after January 1, 1938, the Trust Agreement may be changed, altered, or amended in any particular by the Department with the consent of the Engineers, and a majority of all the Employee Beneficiaries, except that if such change, alteration or amendment shall modify or change the relative rights under the respective pension classifications, the consent shall be required thereof of a majority of the Employee Beneficiaries of each pension classification so affected.”

An examination of the entire contract shows that it establishes a trust for the benefit of the employee beneficiaries, with a vested interest in the beneficiaries in the assets of the pension fund, even in case said trust terminates.

In 65 C. J., page 340, Section 112, the following rules are announced:

“As in the case of contracts, a trust agreement may be modified by consent of all the parties in interest.

After an express trust has been perfectly and completely created, and the rights of the beneficiaries have thus become vested, in the absence of a power of modification reserved, the trust may not be changed, altered, or modified by the settlor without the consent of the beneficiaries, and although the trust is a voluntary one. * * * The right to amend a trust instrument may be exercised in conformity with the power reserved in the instrument. *Under general rules an effective revocation or modification should be made only by pursuing the mode prescribed by the trust instrument.* * * *” (Citing Cases.)

Also see *Hackley Union National Bank v. Farmer* (1931), 252 Mich. 674, 682 to 687, 234 N. W. 135, where the court in upholding a revocation of a trust said such revocation must be made in strict compliance with its terms providing for such revocation.

In 13 C. J., page 591, Section 606, the following rule is stated:

“One party to a contract cannot alter its terms without the assent of the other; the minds of the parties must meet as to the proposed modification; * * *.”

The above text cites, among other authorities, the case of *Carnahan Mfg. Co. v. Beebe-Bowles Co.* (1916), 80 Or. 124, 156 P. 584, where the court reversed the case due to the lower court having instructed the jury in substance—that silence on one party’s part, as to an offer of modification of a building contract by the other party, constituted acceptance of such modification—said on page 128 of the opinion:

“* * * The record shows that the plaintiff proposed certain changes in the contract, but it does not show that the defendant accepted the offer. * * *”

“* * *

“No one receiving an overture to change an agreement to which he is a party is obligated to answer the same. His silence cannot be construed as an acceptance if nothing else is shown. * * *.”

Within the rule announced by the foregoing authorities it is my opinion that each of the employee beneficiaries of such

pension fund has a vested interest therein, which can only be divested in accordance with the provisions of the trust agreement. Therefore, the word "consent" as used in the instant contract provision regarding modification: "by * * * the consent of * * * a majority of all the employee beneficiaries * * *," means actual consent, rather than passive consent.

In the case of *Hamilton v. Meiks* (1936), 210 Ind. 610, the court in construing the word "proceeds" in connection with other provisions of a trust agreement, said such word meant any proceeds from rent, income or sale of the trust property, and on page 616 of the opinion stated the rule to be:

"* * * But rules of construction may only be resorted to to determine the meaning and intention of parties in the use of words in their contracts when the meaning is so ambiguous or obscure that their intention cannot be determined from the language of the contract itself. * * *"

In the case of *Mills v. Hallgren* (1910), 124 N. W. 1077, 1079, 146 Iowa 215, the court in deciding that a petition for revocation of a liquor permit, which under statute must be "signed by a majority of the voters of said city," and in denying an injunction to petitioners and holding this meant a majority of those voting at the last preceding election, announced the following rule:

"* * *, by 'majority' is meant the greater number, more than half of the whole number, or of a given number or group. * * *"

In *Rogers v. Boston Club* (1910), 91 N. E. 321, 325, 205 Mass. 261, the court in dismissing a petition for collection of assessments against members of a social club, said:

"The appeal of the receiver from the dismissal of the second petition rests upon the fact that a quorum of the executive committee were present when the special assessment was made, and the vote was passed by a majority of the quorum. The by-law under which action was taken provides that an assessment may be made by a *majority of the executive committee*. The committee consisted of 20 members, 15 chosen specially, and 5 other officers who were members of the committee

ex officiis. By article 3, section 10, 5 members of the committee constitute a quorum. The question is whether the by-law authorizing a special assessment to be made by a majority of the committee means by a majority of the quorum, or a majority of the whole committee. We are of the opinion that the judge was right in holding that it means *a majority of the whole committee*. It gives an unusual and important power. It uses words which naturally signify more than half of the whole number of the committee. * * *"

I am of the opinion that the words *majority of all the beneficiaries* should be taken in their general accepted meaning; that they are clear and unambiguous and not subject to construction and require the actual consent of more than 50% of the beneficiaries before said pension plan could be modified.

It is, therefore, my opinion that a vote in favor of such modification of such pension plan by 126 out of 356 employee beneficiaries is not equivalent to "the consent of a majority of all the employee beneficiaries" of such fund, regardless of the number failing to vote on such modification.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Department of Financial Institutions has no jurisdiction or control over the management of a trust of unacceptable assets upon reorganization of a bank unless reserved in the trust agreement.

March 3, 1944.

Opinion No. 21

Hon. A. J. Stevenson, Director,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 28th enclosing a Rehabilitation Trust Agreement of the Citizens Trust and Savings Bank of South Bend. Your question is:

"Will you please give us your official opinion as to whether or not, under the terms and conditions of this