

When the intention of the Legislature has been clearly and definitely expressed in an act, such a construction must be given the act as will give full force and effect to the language employed and contained in the act.

Zoercher v. Indiana etc., 211 Ind. 447;

Lutz v. Arnold, 208 Ind. 480;

Gustavel v. State, 153 Ind. 613.

Again, words and phrases contained in a statute must be taken in their plain, or ordinary and usual sense.

Burns' R. S. 1933, Section 1-201.

Applying these rules to the language "*in lieu of all salaries, fees, and per diem now provided by statute for the officials therein designated*", we find no exception made for allowing the clerk additional salary as registration officer or for any other services. Such an exception cannot be made without nullifying and ignoring the meaning, force and effect of the plain, comprehensive and unambiguous language contained in Section 2 of Chapter 234, Acts 1941.

Therefore, it is my opinion that the clerk of the Circuit Court of Marion County, Indiana, is not entitled to receive and retain as his personal property any compensation as a registration officer in addition to the statutory salary provided by the acts above cited.

STATE TAX BOARD: Whether taxpayers have a right to appeal from county council action on the budget for the county department of public welfare.

September 24, 1943.

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated September 23rd, 1943, which reads as follows:

“We would appreciate an official opinion upon the following question:

“Do ten or more taxpayers under the provisions of Chapter 150, Section 1, page 532 of the Acts of 1935 (Burns’ R. S. 1933 Supp; Sec. 64-1331) have the right to appeal, not later than the fourth Monday of September, from the action of the County Council upon the budget of the County Department of Public Welfare?”

Burns’ R. S. 1933, Pocket Supplement, Section 64-1331, being a part of Section 1 of Chapter 150, Acts of 1935, referred to in your letter, is a part of what is commonly known and referred to as the Budget Law. Under the provisions of this Act the several tax levies and rates were established, fixed and determined by the various county officers, the county councils, and reviewed by the State Board of Tax Commissioners, and the provision for an appeal by ten or more taxpayers to the State Board of Tax Commissioners from the action of the county council in fixing and determining the several tax levies and rates, was a part of the Budget Act. In 1937 the Legislature enacted Chapter 119, Acts of 1937, which is commonly known as the tax limitation law and created the County Board of Tax Adjustment to review, establish, fix and determine the several tax rates and levies in the various taxing units of the state.

Section 8 of Chapter 119, Acts of 1937, being Burns’ Supplement, Section 64-314, contains the following provisions:

“* * * On or before the fifteenth day of October ten (10) or more taxpayers in any municipal corporation, other than those who pay poll tax only, and who are affected by any budget, levy or rate of any such municipal corporation as fixed by the county board of tax adjustment or county auditor, and feel aggrieved thereby, may appeal therefrom or any part thereof to the state board of tax commissioners as now provided by the Acts of the General Assembly of the state of Indiana 1919, chapter 59 and amendments thereto.”

Section 11 of said Chapter 119, Acts 1937, being Burns' Pocket Supplement, Section 64-317, provides:

"All acts and parts of acts in conflict herewith and all acts and parts of acts relating to the limitation of taxes for the payment of municipal obligations are hereby repealed. * * *"

It will be observed that the language quoted from Section 8 of Chapter 119, Acts of 1937, *supra*, is identical with that contained in Section 64-1331, *supra*, except as to the date within which such appeal by ten or more taxpayers may be taken. In Section 64-1331, *supra*, the appeal must be taken not later than the fourth Monday of September of any calendar year, which is immediately following the action taken by the county council in fixing and determining the various tax rates and levies; whereas under the provisions of Section 8 of Chapter 119, Acts 1937, Burns' Section 64-314, the appeal by ten or more taxpayers may be taken on or before the fifteenth day of October of any calendar year, which is immediately following the action provided to be taken by the County Board of Tax Adjustment.

Therefore, it is my opinion that the appeal by ten or more taxpayers, under the provisions of Section 1, Chapter 150, Acts 1935, Burns' Section 64-1331, referred to in your letter, has been repealed and superseded by the provisions of Section 8 of Chapter 119, Acts 1937, being Burns' Supplement, Section 64-314, and that any appeals taken by ten or more taxpayers must be taken pursuant to this later statute and not under the former.

With reference to the right by ten or more taxpayers to appeal to the State Board of Tax Commissioners from the actions of the county council or the County Board of Tax Adjustment upon the budget submitted by the County Department of Public Welfare, I call your attention to the provisions of Section 10, Chapter 119, Acts 1937, being Burns' Pocket Supplement, Section 64-316, which reads as follows.

"None of the provisions of this act shall be deemed or construed to limit, modify, amend, restrict or repeal any of the provisions of chapter 3 of the Acts of the Special Session of the 79th General Assembly of 1936

or any act amendatory thereof or supplementary thereto, and the provisions of this act shall not restrict or modify or in any way apply to the fixing of tax levies, making of appropriations and providing of funds and the right of appeal or ordering of an appeal in connection therewith."

The above language of Section 10, aforesaid, expressly excludes the budget tax levy as prepared and submitted by the County Department of Public Welfare, from the provisions of the tax limitation law, and necessarily leaves the fixing of the tax levy and rate for public welfare within the exclusive jurisdiction of the County Department of Public Welfare, without any right of appeal except as provided by the provisions of the public welfare act.

See Burns Pocket Supplement, Sections 52-1304 and 52-1308.

In this connection I call your attention to an opinion of the Attorney General dated October 15th, 1942, addressed to the Honorable Henry S. Murray, Chairman, State Tax Board, upon the right to appeal to the State Board of Tax Commissioners from the action of the County Board of Tax Adjustment, upon the budget and rates submitted by the County Department of Public Welfare, which fully answers this question, and I hereby reaffirm the law as stated in this opinion, and it is further my opinion that the interpretation applied to the provisions of the tax limitation act and the public welfare act, with reference to the right of appeal, is correctly stated in said opinion.

See Opinions of the Attorney General, 1942, page 233.

In conclusion, it is my opinion that the question submitted by you should be answered in the negative.