

of the Acts of 1933, page 1042, commonly referred to as the Cities and Towns Classification Act.

The power to make laws is vested exclusively in the General Assembly and the attorney general has no power other than to construe its laws. Such being the case, it is my duty to construe this law as it is, and this power does not include the right to change its language.

Section 2 of the act in question plainly states, that "all present civil cities with a population less than three thousand as shown by the last preceding United States census shall, on and after 12:00 o'clock noon of the first Monday in January, 1934, become civil towns, and shall operate thereafter under the provisions of the laws pertaining to the government of civil towns."

The plain and unquestioned import of this language is that in order that a municipality shall remain a city, the last United States census must show it to have had, at that time, a population of at least three thousand.

This language fixes a definite criterion for the measurement of population, viz., the last United States census, and a definite figure to be shown by such census, and does not permit any exercise of judgment or discretion in such determination.

Since the municipality in question had a population of less than three thousand by the United States census of 1930, it follows that under the provisions of section 2 above referred to, it *must* become a civil town and there is no way, other than by act of the General Assembly itself, to change the plain and unambiguous language of this section.

GOVERNOR: Right of highway commission to re-locate highways.

August 2, 1933.

Hon. Wayne Coy,
Under-Secretary to the Governor,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter as follows:

"The State Highway Commission is contemplating changing the route of a road, with the approval of the governor, in such a manner that the new route will not touch any portion of the route followed by the old

road. The same number will be used in designating the route and it will follow the same general direction and serve the same general traffic.

“Can such a change in a route be made under the provisions of the new highway act?”

Section 17 of the act of 1933, creating the State Highway Commission, provides as follows:

“The line or actual location of a state highway may deviate from the location of the public highway as actually traveled at the time such public highway was, under this act, designated as a state highway as may be deemed expedient by the state highway commission in order to shorten distance, to eliminate steep grades or sharp turns, to widen narrow portions or otherwise to promote public convenience and safety. Such portion of a public highway as may be abandoned because of the changes herein described shall no longer be considered as a portion of a state highway and the board of county commissioners of the county in which any such abandoned portion may be located may maintain such portion as other highways are now maintained by such board of commissioners.” (Our italics.)

The italicized language, *supra*, grants to the commission very broad powers in the location and relocation of state highways to promote public *convenience* and safety, and while arbitrary action would not be justified, it is clear that a wide discretion is granted. The question in each individual case, in the event the action of the commission is attacked, is largely a question of fact and not a question of law. If public convenience will be better served by a relocation, I think the commission under the above section has the authority to make it.

You refer in your letter to the fact that the relocation contemplated will not touch any portion of the route followed by the old road. I assume that you have reference to some definitely *numbered* road as distinguished from the highway system as a whole. I do not see how a relocation could be justified that does not in some way connect with an existing or proposed part of the state's system of state highways. The numbering of certain routes, however, is more or less arbitrary,

and so long as the relocation connects with some part of the state highway system, I think it may be justified as a relocation if public convenience will thereby be better served. Because of the nature of the question, this opinion is necessarily quite general. There may be cases in which the facts are sufficiently conflicting to justify the designation of a new highway to carry out the purpose of the commission as a practical matter, rather than the relocation of an old one. The obligation will rest upon the commission in each case to establish the factual basis for the relocation in accordance with some provision of section 17, *supra*, and as applied to your particular question, in accordance with the principles announced in this opinion.

CONSERVATION DEPT.: Big Long Lake—authority of conservation department to acquire private dam and water rights to maintain water level.

August 3, 1933.

Kenneth M. Kunkel, Director,
 Division of Fish and Game,
 Conservation Department,
 Department of Public Works,
 Indianapolis, Indiana.

Dear Sir:

I have before me your letter of July 26 enclosing a communication received from Dr. C. E. Munk, of Kendallville, Indiana. The enclosure refers to certain water rights, dam and floodgate at the outlet of Big Long Lake in LaGrange County, which are now privately owned but which could be acquired by the cottage owners on said lake or by other parties who might be interested in maintaining the present level of such lake. The letter points out that the dam and the water rights in connection with the same could be so used by a disinterested owner as to lower the present level of the lake as much as seven feet, and asks that the Department of Conservation acquire and exercise dominion over the dam and appurtenant water rights so as to maintain perpetually a proper lake level. Your letter, in turn, inquires concerning your powers and/or duties in this connection.

Section 4742 Burns Annotated Indiana Statutes, Supplement of 1929, gives the Department of Conservation the following authority through its Division of Lands and Waters: