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OFFICIAL OPINION NO. 18

September 24, 1975

Honorable Otis R. Bowen, M.D.
Governor of Indiana
Room 206 State House
Indianapolis, Indiana 46204

Dear Governor Bowen:

This is in response to your request for an official opinion as to whether the Warrick Superior Court presently is in existence and, if so, if it is your duty to fill the vacancy in the office of the Judge of the Warrick Superior Court.

ANALYSIS

Sections 33-5-45.5-1 to 33-5-45.5-24 of the Indiana Code of 1971, as added by Acts 1975, Public Law Number 311, Section 1, establish a Superior Court in Warrick County to be designated as the Warrick Superior Court. Code Section 33-5-45.5-1 provides, in part, the following:

“There shall be and is hereby established a superior court in Warrick County, Indiana.”

Since no emergency clause is contained in Public Law Number 311, the Act took effect upon promulgation on July 29, 1975. Thus, based on Code Section 33-5-45.5-1 alone, the Warrick Superior Court came into existence on July 29, 1975, and a vacancy in the office of Judge has existed since that date. When Public Law Number 311 is read as a whole, however, it appears that the Indiana General Assembly did not intend to establish the Court until January 1, 1977.

The law itself evidences two reasons for the Court's creation: first, to lessen the case load now pending in the Warrick Circuit Court and, second, to provide a Court where small claims can be heard *after the office of justice of the peace is abolished*. To this end, Code Section 33-5-45.5-4 gives the Warrick Superior Court concurrent and co-extensive jurisdiction with the Warrick Circuit Court in all cases and

upon all subjects and original jurisdiction within Warrick County in all matters which may otherwise be brought before a justice of the peace or city or town court in the county. Although there is no indication that the lessening of the case load now pending in Warrick Circuit Court is to be postponed until January 1, 1977, it is plain that the Indiana General Assembly does not intend the Warrick Superior Court to handle small claims litigation until that date. Section 2 of Public Law Number 311 expressly extends the terms of justices of the peace in Warrick County to December 31, 1976, on which date all proceedings in justice of the peace courts are transferred to the Warrick Superior Court.

To find that the General Assembly intended to establish a Warrick Superior Court upon promulgation is to find that it intended the Court to do, during its first year and a fraction of operation, only part of the task it was created to do.

Beyond this, there are three other sections of the law which indicate that the Court does not come into existence until January 1, 1977. Under the well-settled rule of statutory construction noted in *State ex rel. Clemens v. Kern* (1939), 215 Ind. 515, 21 N.E. 2d 141, a statute must be considered as a whole, and courts may look beyond a particular phraseology which is contrary to the legislative intent.

Code Section 33-5-45.5-8 clearly provides that the Judge of the Court "shall hold his office for four (4) years beginning January 1, 1977." Code Section 33-5-45.5-11 provides that a Judge for the Court shall be elected "at the general election to be held in 1976 and every four (4) years thereafter." Finally, Code Section 33-5-45.5-23 provides that the county commissioners shall provide the necessary rooms, facilities, furniture, and equipment for the Court for occupancy and use before January 1, 1977."

CONCLUSION

It is, therefore, my Official Opinion that the Indiana General Assembly clearly intended the Warrick Superior Court to come into existence on January 1, 1977, at which time a

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Judge elected by the voters of Warrick County at the 1976 general election will assume the office of Judge. Accordingly, there presently is no vacancy on the Court, nor can a vacancy exist until after January 1, 1977.