

1975 O. A. G.

OFFICIAL OPINION NO. 23

October 17, 1975

Honorable Paul E. Burkley  
Indiana State Representative  
2102 Gerrard Drive  
Speedway, Indiana 46224

Dear Representative Burkley:

This is in response to your request for an opinion as to whether, under the Uni-gov Act, a resident voter of an excluded city, such as Speedway, may serve as a member of the City-County Council.

ANALYSIS

The 1969 Indiana General Assembly enacted the Consolidated First-Class Cities and Counties Act (Uni-gov Act), Indiana Code of 1971, Sections 18-4-1-1 to 18-4-15-2, to consolidate many of the governmental functions then exercised separately by the City of Indianapolis and the County of Marion. The legislative body of the consolidated city and of the county was designated the City-County Council. Expressly excluded from the operation of much of the Act were the Cities of Beech Grove, Lawrence, and Southport, and the Town of Speedway, since each of them is an "excluded city" within the meaning of Code Section 18-4-1-2(d).

Code Section 18-4-3-6, which established the numbers and method of election of City-County Councilmen, provides the following:

"The city-county council shall consist of twenty-nine [29] members elected for four [4] year terms in accordance with the general election laws relating to the election of city officials, the first election to be held at the time of the primary and general election in which a mayor of the consolidated city is to be elected under this article [18-4-1-1—18-4-24-25], the term of the council members to commence on January 1 following each such general election.

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“Four [4] of the members of the council shall be elected from an electoral district which shall consist of the entire county and shall be elected by all voters of the county voting for such office. Each such member may reside any place within such district and shall have been a resident thereof for two [2] years prior to the time he is to take office. Each of the remaining twenty-five [25] members shall be elected from a single additional electoral district by the voters voting for such office in such district, shall be a resident of such district and shall have been such resident for two [2] years prior to the time he is to take office. To this end, *the county* and the consolidated city shall be divided into twenty-five [25] council districts. The terms of office of all members of the common council of the first-class city and the county council of the county when they become members of the interim city-county council, shall extend to, and shall terminate upon January 1, following the first general election held pursuant to this article.

“A member of the city-county council shall be a resident voter of the consolidated city at the time of such election.” (emphasis added)

Read literally apart from the remainder of the Uni-gov Act, the last sentence of Code Section 18-4-3-6 confines membership on the City-County Council to “a resident voter of the consolidated city at the time of such election.” Since the “consolidated city,” as defined by Code Section 18-4-1-2(f), does not include “excluded cities,” a resident voter of Beech Grove, Lawrence, Southport, or Speedway, may not, under this isolated sentence in Code Section 18-4-3-6, be a member of the City-County Council.

The remainder of Code Section 18-4-3-6, however, does not support this limiting construction. As to the four at-large Councilmen, their district is defined as “the entire county”; and they are permitted to reside “any place within such district.” As to the remaining 25 Councilmen, their individual districts are created by the Council out of “*the county* and

the consolidated city"; and each of them must be "a resident of such district." The significance of the inclusion of the term "the county" is, of course, that it adds to the area comprising the consolidated city the excluded areas of Beech Grove, Lawrence, Southport, and Speedway. Thus, the councilmanic districts drawn by the City-County Council include the "excluded cities"; and a Councilman from one of those districts may live anywhere within his district.

Code Section 18-4-3-6 thus is not clear and unambiguous. Its language is subject to two conflicting constructions and, therefore, must be interpreted. That portion of Code Section 18-4-3-6 noted above which conflicts with the provisions of the bulk of this section was not part of the original enactment of the Uni-gov Act in 1969. Rather, it was added by Acts 1973, Public Law No. 175. Although general rules of statutory construction provide that a later enactment supersedes an earlier, conflicting enactment, the 1973 law was not passed to amend the election and residence provisions being questioned here. Public Law No. 175 was part of the age of majority amendments; and its title, "An Act to amend IC 1971, 18-4-3, 20-3-5, and 20-3-11 as they relate to the age requirements for certain elective offices (emphasis added), indicates this. As stated at 2A Sands, *Sutherland Statutory Construction* Section 47.03 at 73 (4th ed.) :

"In short, in ascertaining the intention of the legislature nothing is to be rejected which will assist in the clarification of ambiguous phrases and where the title throws light on the meaning of the statute itself, it is an available tool for resolution of the doubt."

This rule is noted also at *McNamara v. State* (1932), 203 Ind. 596, 181 N.E. 512.

In reducing the minimum age for holding the office of City-County Councilman from 21 to the minimum age for voting, that is, to 18, it appears that the legislative draftsmen inadvertently added the provision that a Councilman should reside within the consolidated city. Since no attempt was made by the 1973 Indiana General Assembly to amend the obviously conflicting provisions in the first part of Code Section 18-4-

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3-6, the addition of the new, restrictive provision must have been unintentional.

### CONCLUSION

It is, therefore, my Official Opinion that under the Uni-gov Act resident voters of a so-called excluded community, such as Speedway, may serve as members of the City-County Council because the City-County Council is the only countywide legislative body they have and for whose members they can all vote. It must be noted, however, that the governing statute, namely, the Indiana Code of 1971, Section 18-4-3-6, is ambiguous with respect to this question and should be clarified by the Indiana General Assembly. My opinion is based upon what I believe to be legislative intent consistent with constitutional considerations of equal privileges and immunities and statutory construction of basic fairness to all the residents of Marion County.