

OPINION 26

OFFICIAL OPINION NO. 26

October 31, 1975

Honorable Joseph P. Harris
Indiana State Representative
3500 Cedar Court
Kokomo, Indiana 46901

Dear Representative Harris:

This is in response to your question as to whether a second-class city may abolish its city court.

ANALYSIS

The confusing legislative history of acts relating to the office of city judge already has been traced in 1967 O.A.G. No. 5, p. 21. The office itself, however, will be abolished effective December 31, 1979, except in second-class cities in counties having a population in excess of 500,000, pursuant to Acts 1975, Public Law Number 305, Section 55. You question whether the city council of a second-class city may abolish the office of city judge prior to the December 31, 1979 date fixed by the Indiana General Assembly.

Although the so-called Home Rule Act, Indiana Code of 1971, Sections 18-1-1.5-1 *et seq.*, gives to cities broad powers to conduct their municipal and internal affairs, the General Assembly has itself prescribed the scheme by which city judges are selected. Code Section 18-2-1-4.2 provides that in all second-class cities there shall be an elective city judge. It does not allow second-class cities to exercise any discretion as to whether the office will exist.

It is true that Code Section 18-2-1-7 does not require fourth and fifth-class cities to have a city court and authorizes the city council to create a city court if it wishes. However, the Indiana General Assembly has not similarly delegated legislative authority with respect to city courts in second-class cities.

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Since it is the General Assembly which has created the office of city judge in second-class cities, only the Indiana General Assembly can abolish that office. See *State ex rel. Yancey v. Hyde* (1891), 129 Ind. 296, 302, 28 N.E. 186, 187, where the General Assembly had abolished the office of state inspector of oils and created the office of state supervisor of oil inspection.

CONCLUSION

It is, therefore, my Official Opinion that a second-class city lacks the authority to abolish its city court. Since the Indiana General Assembly has created courts in second-class cities and has not delegated any authority in that regard to city councils, the General Assembly alone may abolish those courts in second-class cities.