

OPINION 25

OFFICIAL OPINION NO. 25

October 30, 1973

Honorable Steve Collins
Indiana State Representative
Box 131
Portage, Indiana 46368

Dear Representative Collins:

This is in reply to your request for an official opinion as to whether the office of Justice of the Peace will appear on the 1974 ballot and, if so, for what length of term.

ANALYSIS

Your question most likely is prompted by changes in the laws of Indiana pertaining to Justices of the Peace occurring in and subsequent to the 1970 amendment to the Judicial Article of the Indiana Constitution. Prior to that amendment, Article 7, Section 14 provided the following:

“A competent number of Justices of the Peace shall be elected, by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.”

The 1970 amendment, effective January 1, 1972, omitted any provision relating to Justices of the Peace. The office, therefore, no longer is a constitutional one. Cf. *Kirkpatrick v. King* (1950), 228 Ind. 236, 91 N.E. 2d 785. The new Article 7, Section 20 provides that superior, criminal, juvenile, probate, municipal, city and magistrate courts in existence immediately prior to January 1, 1972, shall remain in existence unless changed by an act of the Indiana General Assembly. The omission of Justices of the Peace from the list in Section 20 might have raised the question of whether that office existed, even as a statutory one, subsequent to January 1, 1972. That the Indiana General Assembly wished the statutory office of Justice of the Peace to continue subsequent to January 1, 1972 was clarified by Acts 1971, P.L. 441, being IC 1971, 33-11-21-1 and 33-11-21-2, as found in Burns' Ind. Stat. Ann., Sections 5-123 and 5-124 (1973 Supp.), which provided

that all laws in effect prior to the new Judicial Article should continue in effect. However, P.L. 441 provides for the continued existence of that office only until January 1, 1976.

It is clear, then, that the office of Justice of the Peace will cease to exist on January 1, 1976 unless the Indiana General Assembly amends the present law. It is also clear that, until that time, existing statutes pertaining to that office are in force. Although none of these existing statutes expressly provides for a four-year term as was provided by Article 7, Section 14 of the old Constitution, that silence cannot be taken as authority for extending to January 1, 1976 the present four-year terms which will expire December 31, 1974. The clear intent of P.L. 441 was to preserve the *status quo*, not to create a new five-year term. Additionally, the Election Code provides for the election of Justices of the Peace "every four years." Acts 1945, Ch. 208, § 175, being IC 1971, 3-1-18-1, as found in Burns' Ind. Stat. Ann., Section 29-4501 (1969 Repl.).

CONCLUSION

It is, therefore, my Official Opinion that the office of Justice of the Peace will appear on the 1974 ballot. Pursuant to the provisions of P.L. 441, the length of term will be for one year, i.e., January 1, 1975 until December 31, 1975. Thereafter, the office of Justice of the Peace will cease to exist, unless the Legislature acts in the meantime.