

secticides, disinfectants or dyestuffs to the exempted list as the said Board might deem fit—but not medicines.

V

The general merchant may sell only such medicines as are fixed by the statute and it is again observed that he may sell “medicines of secret composition * * * providing said medicines are not poisonous.” If said medicines are poisonous, as defined in the Boswell case and as followed by the Indiana State Board of Pharmacy in its adoption of the rule on poison, they can not be sold by the general merchant. The Legislature doubtless had in mind the regulation of the sale of drugs and chemicals of all kinds, a part of which drugs and chemicals is used as medicine and a part used for other purposes. This body was cognizant of the fact that the improper use of the same is dangerous to public health and the general welfare of the public at large. It is a well-known fact that the promiscuous sale of drugs and chemicals by persons not trained in the proper dispensation of the same can very easily constitute a menace to society. The Legislature in its broad police power has attempted to regulate the sale of the same and has also delegated to the Indiana State Board of Pharmacy the power to make such rules and regulations as it sees fit to carry out the purpose and intent of the statute.

HEALTH, STATE BOARD OF: Public works, board of. Sanitary districts, amount expended as preliminary expenses.
December 9, 1937.

W. H. Frazier,
Director,
Division of Stream and Water Pollution,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Mr. Frazier:

Receipt is acknowledged of your request for an official opinion dated November 29, 1937. This request is as follows:

“Section 6, chapter 157, Acts of 1917, as amended, provides that all preliminary expenses actually incurred by the Board

of Sanitary Commissioners prior to the issue and sale of bonds and prior to collection of taxes levied under the provisions of this Act, shall be paid out of the general funds of such city not theretofore appropriated, without a special appropriation being made therefor by the common council or a temporary transfer from other funds or the making of a temporary loan for such purpose, and, the fund or funds of such cities from which such payments are made shall be fully reimbursed out of the first proceeds of the sale of bonds.

I would like your opinion as to whether chapter 150, Acts of 1935, would affect the provisions of the above mentioned Act insofar as the clause "without a special appropriation being made therefor by the common council."

Section 2, chapter 157, Acts of 1917, as amended, provides for the organization of a Board of Sanitary Commissioners, preliminary expenses and salaries and also provides that not more than \$20,000 shall be so expended the first year for such preliminary work. It also provides for yearly reports with a full statement of its receipts and disbursements of the preceding year, the first reports covering the period from the date of organization of such board to the first day of January, 1918. This Act, as you know, was originally written for the city of Indianapolis, and was later made applicable to cities of second class.

I would like your opinion as to whether the provision "that not more than \$20,000 shall be so expended the first year for such preliminary work" applied to the balance of the calendar year in which such a district was organized or whether it would apply to the twelve months following the organization of such a district. It seems obvious that this provision was intended to restrict the amount of funds borrowed in the manner provided for in Section 6 of this Act inasmuch as it would be possible for a district to be formed in the first months of the year and have funds available from a bond issue before the expiration of the twelve-month period. The Act certainly is not intended to delay proceedings if funds are available.

Section 4, chapter 61, Acts of 1932, as amended, (Sewer Service Charge and Revenue Bond Act), provides methods of paying preliminary expenses that are similar to those of section 6, chapter 157, Acts of 1917.

I would like your opinion as to whether chapter 150, Acts of 1935, would affect the provisions of this Act insofar as the

clause "without a special appropriation being made therefor by the common council." * * *

The title of chapter 157 of the Acts of 1917 is as follows: "An Act concerning the Department of Public Sanitation in cities of the first class, defining its powers and duties, creating a sanitary district consisting of such cities and any incorporated towns located within the boundaries thereof, repealing conflicting laws, and declaring an emergency. Approved March 9, 1917." This Act originally applied, as noted by the statute, to cities of the first class.

Chapter 258 of the Acts of 1921 (Burns Indiana Statutes Annotated, 1933, section 48-4227) amends chapter 157 of the 1917 Acts and extends rights therein to cities of the second class. It is noted that this legislation concerns public sanitation and the creation of a sanitary district which is separate and apart from the civil city.

Chapter 150 of the Acts of 1935 deals with general taxing powers of the municipality. Said chapter of the 1935 Acts is an amendment to the old general tax enactment and does not affect the provisions of section 6, Chapter 157 of the 1917 Acts, as amended.

Chapter 157 of the Acts of 1917, as amended, provides, among other things, for the establishment and creation of a sanitary district supervised by officials, with powers given to levy taxes for the purpose of carrying on the project of sanitation, the limit of taxation for said district being set out in the Acts of 1929, chapter 34, section 1 (Burns Indiana Statutes Annotated, 1933, section 48-4229). Note the following specific language of said section:

"Bonds in cities of second class . . . Issuance . . . Tax levy.—Whenever any such city shall have heretofore or may hereafter adopt said Act by ordinance duly passed by the common council thereof and shall proceed with the establishment and maintenance of a sanitary district as therein provided, it shall be lawful for the Board of Sanitary Commissioners to issue the bonds of said sanitary district, payable by special taxation and for the purposes as in said Act provided, in an aggregate amount not to exceed two (2) per cent of the total assessed valuation (after deducting all mortgage exemptions) of the property within said sanitary district;

and to levy annually a tax of not exceeding twenty cents (20 cents) on each one hundred dollars (\$100) of taxable property in such city to provide for the payment of all general expenses of said Board of Sanitary Commissioners, not properly chargeable into the cost of any property acquired or work done under any resolution of said board for which special taxing district bonds are issued. Said tax shall be levied, collected and expended pursuant to the provisions of section twenty-one (48-4221) of the Act referred to in the title hereof."

It is noted that chapter 157 of the 1917 Act provides a procedure whereby money may be obtained for carrying on the project; that the civil city or municipality, being a separate governmental unit, by the special provisions of the 1917 Act, incurs no obligation for the payment of the expenses of operation, construction, etc., for said sanitary project; that the Legislature intended by the 1917 Act that cities advance or loan money to the sanitary district for preliminary expenses; that said money was not an appropriation in the strict sense of the word but rather a provision by which the civil city was authorized to loan temporarily to the sanitary district sufficient funds for operating expenses, etc.; that said loan is to be made until such time as said sanitary district could sell bonds and obtain the necessary money therefor. Upon said sanitary district obtaining money, the civil city is to be immediately reimbursed for said temporary "appropriation." The Legislature did not intend that the civil city should appropriate to the sanitary district but rather that it should *loan* to the sanitary district sufficient money for the latter to start operations.

Chapter 157 of the 1917 Act not only created a sanitary district but clothed it with taxing power, thereby creating a separate taxing district from that referred to in Chapter 150 of the Acts of 1935.

See: *Bollenbacher v. Harris*, 196 Ind. 657;

See: *Johnson v. Board of Park Commissioners of Fort Wayne*, 202 Ind. 282.

Note: The latter citation is an interpretation of chapter 68 of the Acts of 1917, relative to the question of the formation of a park district and its power of taxation.

Section 2, chapter 157, Acts of 1917, as amended, (Burns Indiana Statutes Annotated, 1933, Section 48-4202) uses the following language in speaking of the amount of money to be expended for preliminary work, to wit:

“Provided, that not more than \$20,000 shall be so expended for the first year for such preliminary work.”

Section 6 of the Act (Burn Indiana Statutes Annotated, 1933, Section 48-4206) uses the following language pertaining to expenditure and payment thereof:

“* * * said Board of Sanitary Commissioners shall, from time to time, certify such items of expense to the controller of such city, directing him to pay the several amounts thereof, * * *”

There is no doubt that the Legislature intended by the use of the language referred to in sections 48-4202 and 48-4206 to limit the amount of expenditure for “the first year for such preliminary work” and that it was not intended that said \$20,000 should be divided into monthly periods, one of the reasons for this conclusion being that section 48-4206, as stated above, provides the manner in which expenditures shall be presented to the controller of such city. It is noted that the Act uses the words “from time to time” as to the certification of such expense, and that the \$20,000 would apply to the balance of the calendar year, rather than applying to the twelve months following the organization of such sanitary district.

Peoples Trust and Savings Company Bank v. Hennessey, 153 N. E., 507.

“* * * The object of all rules of statutory construction is in the ascertainment of the Legislative intent. In searching for the Legislative intent in enacting a particular statute it is proper to consider the evils at which the statute was aimed. The cardinal principle of statutory construction is that it is the duty of courts to execute laws according to their true intent and meaning, as collected from the whole and every part of the statute taken together and, when so collected, it must prevail even over the literal sense of the terms and control the strict letter of the statute

where the letter would lead to possible injustice, contradiction and absurdity.”

Chapter 61, Acts of 1932, as amended, (Burns Indiana Statutes Annotated, 1933, sections 48-4301 to 48-4324 inclusive) is what is known as the Revenue Bond Act and provides methods for paying preliminary expenses similar to those provisions set out in section 6, chapter 157 of the Acts of 1917 as amended. The Revenue Bond Act is not applicable to the sanitary district but is an Act providing a means of financing a sanitary project by a municipality, be it first or second class, where no sanitary district is formed. In determining whether or not chapter 150 of the Acts of 1935 affects the provisions of the 1917 Act, we note that the Revenue Bond Act, like the Sanitary District Act, is a sanitary measure and not a tax measure; that the Revenue Bond Act provides a manner of building a sanitary project; that revenue bonds by their nature do not become obligations of the civil city and do not increase its indebtedness in violation of section 1, article 13 of the Indiana Constitution; that the Revenue Bond Act is no more affected by the 1935 Act than is the 1917 or Sanitary Sewer Act. I conclude that,

(1) Chapter 150 of the Acts of 1935 does not affect the provisions of section 6, chapter 157 of the Acts of 1917.

(2) By provision of section 2, chapter 157 of the Acts of 1917, the Legislative intent was that not in excess of \$20,000 for the first year's preliminary work on a sanitary project could be expended and that the payment of said sum, be it \$20,000 or less, be presented to the controller of the city for payment as provided in section 6 of said 1917 Act, and that it was not the intention of the Legislature to divide said \$20,000 into monthly portions.

(3) Chapter 150 of the Acts of 1935 does not affect the provisions of chapter 157 of the Acts of 1917 with reference to "special appropriations" being made therefor by the common council of the civil city.