

1971 O. A. G.

OFFICIAL OPINION NO. 30

November 29, 1971

Hon. Edgar D. Whitcomb
Governor of the State of Indiana
206 State House
Indianapolis, Indiana 46204

Dear Governor Whitcomb:

This is in response to your letter requesting my Official Opinion on the following question:

“What is the legal process in the proper appointment of the 9th Judge of the Court of Appeals? Do I, as Governor, through my constitutional powers and authority make the appointment, or should I make my appointment upon the recommendation of the Judicial Nominating Commission?”

ANALYSIS

Art. 7 of the Indiana Constitution, as amended, provides in part:

“§5. The Court of Appeals shall consist of as many geographic districts and sit at such locations as the General Assembly shall determine to be necessary. Each geographic district of the Court shall consist of three judges. The judges of each geographic district shall appoint such personnel as the General Assembly may provide by law.”

* * *

“§9. Judicial nominating commission.—There shall be one judicial nominating commission for the Supreme Court and Court of Appeals. This commission shall, in addition, be the commission on judicial qualifications for the Supreme Court and Court of Appeals.

“The judicial nominating commission shall consist of seven members, a majority of whom shall form a quorum * * *

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“§10. * * * A vacancy in a judicial office in the Supreme Court or Court of Appeals shall be filled by the Governor* * *”

Implementing legislation is found in the Judiciary Article of 1972 (Public Law No. 427, as found in IC 1971 33-2.1-1-1 and Burns' [1971 Supp.], Section 4-7701, *et seq.*). While much of this Act is to take effect January 1, 1972, there is an emergency provision which makes Ch. 4, Sections 1-14 effective upon the Act's passage (April 14, 1971). This chapter pertains to the organization, operation and duties of the Judicial Nominating Commission, and, among other things, provides:

“Sec. 6. Duties of the Judicial Nominating Commission. When a vacancy occurs in the Supreme Court or in the Court of Appeals, the Clerk of such court shall promptly notify the Chairman of the Commission of such vacancy. The Chairman shall call a meeting of the Commission within twenty (20) days following such notice. The Commission shall submit its nominations of three (3) candidates for each vacancy and certify them to the Governor as promptly as possible, and in any event not later than seventy (70) days from the time such vacancy occurs. When it is known that a vacancy will occur at a definite future date, but the vacancy has not yet occurred, the Clerk shall notify the Commission immediately thereof, and the Commission may, within sixty (60) days of such notice of such vacancy, make its nominations and submit to the Governor the names of three (3) persons nominated for such forthcoming vacancy.”

CONCLUSION

It is my official opinion that the 9th Judge position does not come into being until January 1, 1972, which is the effective date of the establishment of the Court of Appeals under the new Judiciary Article. Therefore, the Judicial Nominating Commission cannot officially submit to the Governor the names of three nominees for said 9th position until said court and said position come into being. Furthermore, the Gov-

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ernor cannot fill such position until it comes into being. Hence, on January 1, 1972, all can act within their respective areas on the new 9th position. The Governor shall make his selection for filling that position from among the three names submitted to him by the Judicial Nominating Commission on or after that date.