

1971 O. A. G.

OFFICIAL OPINION NO. 4

March 8, 1972

Mr. H. B. Shepherd
Executive Secretary,
Public Employees' Retirement Fund

Honorable Ralph R. Heine
State Representative

Hon. E. Henry Lamkin, Jr., M.D.
State Representative

Gentlemen:

Each of you has requested an opinion as to the effective date of Legislation passed by the 1969 Legislature, and vetoed by the Governor in 1969, but subsequently passed over the Governor's veto by the 1971 Legislature.

QUESTIONS

The questions presented can be summarized as follows:

1. What is the effective date of Senate Enrolled Act No. 20 (1969)?
2. When does the classification status of certain counties change under the mandate of House Enrolled Act No. 1634 (1969)?
3. Are House Enrolled Acts No. 1073 (1969) and No. 1068 (1969) to be given retroactive application?

ANALYSIS

The effective date of legislation in Indiana is controlled by Art. 4, Sec. 28, of the Indiana Constitution, which reads as follows:

“Effective date of statutes—No act shall take effect, until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body of the law.”

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From the above language, it becomes apparent that all Acts except those containing an emergency clause must be published and circulated in the several counties of the State before they become effective.

An Act containing an emergency clause, however, will become effective either (1) upon approval by the Governor, (2) lapse of time, as is provided by Art. 5, Sec. 14 of the Indiana Constitution, or, (3) in the event of a veto, upon the date that the veto is overridden by the Legislature, as provided in Art. 5, Sec. 14 of the Indiana Constitution. *State ex rel Holt, et al v. Denny, Mayor, et al*, 118 Ind. 449; *State ex rel White v. Grant Superior Court, et al*, 202 Ind. 197, 172 N. E. 897.

Senate Enrolled Act No. 20 (1969) poses a further problem in that the Governor's veto was overridden *after* the effective date provided in the Act. The rule is that such circumstances render void the specified date. *Robey v. Broersma*, 29 A. (2d) 82; *In Re Borough of Sharpsburg*, 60 A. (2d) 557.

The rationale of the cited cases is that where the effective date provided in the Act is rendered null and void by later circumstances, the Act must be read as though *no* effective date were stated, providing, of course, that the Act is otherwise enforceable and its purpose is not altered.

CONCLUSIONS

My official opinion, therefore, is as follows:

1. Senate Enrolled Act No. 20 (1969) should be considered effective at such time as the Acts of 1971 are published and circulated. This date will be set by the Governor pursuant to Burns' Section 1-103, I. C. 1971, 1-3-1 and -2.

2. House Enrolled Act No. 1634 (1969) will also become effective upon publication and circulation of the Acts of 1971. The intent of Sec. 1 of the legislation in postponing reclassification to January 1, 1970, was to allow county officers an opportunity to make necessary budget adjustments required by the Act. In order to give effect to that intent and to carry out the legislative purpose, the effective date of the

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program provided for by Sec. 1 of the Act should be January 1, 1972.

3. The question of whether retroactive application should be given House Enrolled Acts No. 1073 (1969) and No. 1068 (1969) is moot because the Governor's vetoes of these particular Acts were sustained by the Indiana General Assembly.