OPINION 8

OFFICIAL OPINION NO. 8

April 14, 1970

Hon. James M. Plaskett
Assistant Minority Leader
New Washington, Indiana 47162

Dear Senator Plaskett:

This is in response to your request for my Official Opinion on the following questions:

1. Does Ch. 148 of the Acts of 1935, as amended, require a County Surveyor to be a registered land surveyor before he can engage in surveying; and
2. If so, is that regulation constitutional?

ANALYSIS

This issue arises because Acts of 1935, Ch. 148, as amended, and found in Burns' (1969 Supp.), Sections 63-1517 through 63-1553, restricts the practice of land surveying, with certain exceptions, to registered land surveyors, whereas Article 6, Sec. 2, of the Indiana Constitution creates the office of County Surveyor and does not require the holder of that office to be a registered land surveyor.

Acts of 1935, Sec. 1, makes it unlawful for a person to practice land surveying unless he is registered under the Act or exempted by the Act. The exemptions are contained in Sec. 20 of the Act and, when originally adopted, specifically exempted County Surveyors. That section was amended by Acts of 1947, Ch. 282, Sec. 9, and the amendment limited the practice of surveying by unregistered County Surveyors to the county in which they had office. The statute was so interpreted in 1954 O. A. G. No. 37, page 135, in which the then Attorney General specifically concluded that a County Surveyor could practice land surveying within his county even though he was not registered.

The Act was amended by Acts of 1961, Ch. 277, Sec. 10, which added "until July 21, 1962" to the phrase exempting County Surveyors, therefore implying that the exemption was to expire on that date. Subsequent to that date, a County
Surveyor would have to be registered to practice land surveying.

This position is supported by the fact that legislation since 1961 imposing duties on a County Surveyor has provided for those instances wherein a County Surveyor is not registered. Furthermore, Acts of 1969, Ch. 279, Sec. 7, completely deleted the County Surveyor exemption from the statute.

In view of this legislative history, there can be no doubt that the Acts of 1935, Ch. 138, as amended, would prevent unregistered County Surveyors from practicing land surveying.

But, the Legislature cannot prescribe qualifications for holding a constitutional office additional to the qualifications prescribed by the Constitution. See In re Petition of Justice of the Peace Association (1958), 237 Ind. 436, 147 N. E. (2d) 16, in which a statute that would require Justices of the Peace to be lawyers was held unconstitutional.

However, the present statutes do not establish registration as a qualification for holding the office of County Surveyor, but instead limit his activities while holding office.

CONCLUSION

A County Surveyor who is not registered as a land surveyor with the Board of Professional Engineers and Land Surveyors may hold his office but may not personally engage in land surveying.