1970 O. A. G.

OFFICIAL OPINION NO. 37

December 16, 1970

Hon. John K. Snyder
Treasurer, State of Indiana
242 State House
Indianapolis, Indiana 46204

Dear Mr. Snyder:

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

1. "What are the effective dates of the three Constitutional Amendments ratified by the voters of Indiana on November 3, 1970?

2. "Under the amendment to the Indiana Constitution pertaining to the terms of office for the State Treasurer, State Auditor, and Secretary of State, what are the terms of office for those officials elected November 3, 1970?"

ANALYSIS

Of the three amendments to the Indiana Constitution which were ratified by the voters of this state on November 3, 1970, only the amendment pertaining to the judicial article contained an effective date, which is January 1, 1972. The other two amendments did not contain precise effective dates.

There is an Indiana Supreme Court case in point which indicates the effective date of the latter two amendments would be when the polls close on election day. That case says in part:

"A constitutional amendment, which was ratified by a majority of the electors at the general election in 1948, became effective upon the closing of the polls at 6:00 P.M., November 2, 1948." Kirkpatrick v. King (1950), 228 Ind. 236, 91 N. E. (2d) 785.

Therefore, following that precedent, the two amendments in question (that is, the Legislative amendment and the amendment affecting terms of office for Treasurer, Auditor,
and Secretary of State) became effective at 6:00 P.M. on November 3, 1970.

In regard to your second question, the Kirkpatrick case, *supra*, also indicates an answer as to the length of terms of office of those officials elected simultaneously with an amendment changing the term of that office.

The Kirkpatrick case holds that those officials elected simultaneously with the Constitutional amendment have their term of office limited by the amendment. Therefore, if one follows that line of thought, the three state officers elected in November, 1970, should now serve for a four year term of office.

However, there are certain other factors which were present in the Kirkpatrick case which are not present in the question now before us. One of those questions was a uniform time for electing and inaugurating officials. In Kirkpatrick, the Court went on to say:

"We must presume that the General Assembly, and the voters who ratified the amendment, were aware of this situation, and it was their expressed intention not only to change the term of the office of Sheriff from two years to four years, but also to *establish a definite uniform cycle for the beginning and ending of all such terms throughout the State.*" (My emphasis), Kirkpatrick v. King, *supra*, at page 243.

While it is true that the amendment in Kirkpatrick contained an express provision for all sheriffs to be elected at the same time, it could be inferred that one of the rationales for changing the terms of office of the Secretary of State, Auditor, and Treasurer, was to have them elected every four years at the same time as the other state administrative officials, such as the Governor, Lieutenant Governor, the Attorney General, etc. If this thinking is followed, then the terms of office of the recently-elected Secretary of State, Treasurer, and Auditor, should be two years, so that all major state offices would be up for election at the same time in 1972, and every four years thereafter.
Also, the three persons chosen by the Indiana electorate to be Secretary of State, Treasurer, and Auditor, in the November 3, 1970, election, were selected at party conventions under the former Constitutional requirements, and all campaigned and were elected under the former Constitutional requirements. Moreover, when the voters went to the polls in Indiana, they voted for these officials under the former Constitutional requirements, not knowing whether or not they would be changed.

CONCLUSION

It is, therefore, my official opinion that the effective date of the judicial amendment would be January 1, 1972.

The effective date of the Legislative amendment, and the Treasurer-Auditor-Secretary of State amendment, would seem to be at the close of the polls on November 3, 1970.

The uncertainty as to Legislative intent with reference to the initial terms of office of the Treasurer, Auditor, and Secretary of State would indicate that the matter should be resolved by the Indiana General Assembly and the Courts.