OFFICIAL OPINION NO. 34

November 4, 1969

Hon. William N. Salin
Secretary of State
201 State House
Indianapolis, Indiana 46204

Dear Mr. Salin:

I am in receipt of your request for an opinion concerning the 1969 amendment of that section of the Indiana General Corporation Fee Act of 1957 regulating the fee to be paid for an increase in the shares represented in Indiana of a foreign corporation licensed to do business in this state.

Indiana Acts of 1957, Chapter 230, Section 2, set out certain fees to be collected by the Secretary of State, and provided in part:

> "(d) For increases in proportion of its issued and outstanding Stock, represented in this state, * * * to be computed on the basis of annual reports as required by law * * *"

In 1961 the Attorney General issued an Official Opinion concerning the interpretation of the above provision. In that opinion (1961 O. A. G. No. 8, p. 40), he concluded that the existence or non-existence of an increase of stock represented in Indiana in any given year was to be based solely upon a comparison of the annual report then being filed and the last preceding annual report. If the current report shows an increase over the last preceding report, then a fee must be paid regardless of the relationship between those two reports and all preceding annual reports. Your office has been assessing and collecting fees on the basis of that opinion.

The recent session of the General Assembly, in Acts of 1969, Chapter 44, Section 2, amended Burns' Section 25-602 to read in part:

> "(d) For increases in Indiana shares as indicated on the annual report of a foreign corporation for profit, over the highest number of Indiana shares previously reported, whether on the application of admission of

such foreign corporation for profit or in any of its prior annual reports. * * *"

The above language is clear and will undoubtedly change the method for determining the existence or non-existence of an increase in shares of a foreign corporation represented in Indiana. In the future a foreign corporation will be deemed to have increased its shares only if the number of shares represented in the current annual report is greater than those represented in all preceding annual reports and in the certificate of admission. To this extent the 1969 amendment specifically overrules the 1961 Opinion of the Attorney General.

If the 1969 amendment had stopped with the above change there would be no difficulty in construction of application. However, the same amendment added to the end of subsection (d) the following sentence:

"* * * It is the intent of the legislature that this section be considered a restatement of prior law, providing no substantive change with respect to the method heretofore authorized for computing fees payable on increases in shares of a foreign corporation for profit represented in this state, any judicial or administrative decisions to the contrary notwithstanding."

In relation to that sentence you asked the following questions:

"1. Does the language of this sentence specifically invalidate the prior interpretation, specifically 1961 O. A. G. No. 8, p. 40?

"2. Which method of computation do we use in computing the fees for prior years? That is, if a corporation has failed to file an annual report for a past year and now wishes to file a delinquent annual report, are we to compute the fees on that report by the method used in Acts of 1969, Chapter 44? Or, since the report was filed for a former year, should fees be computed by the method used under the applicable law which existed at the time the report was due?

"3. Must this office issue a refund to those foreign corporations, whose fees were computed on the basis

> of Burns' Ind. Stat. Ann. Section 25-602(d) before amendment and 1961 O. A. G. No. 8, p. 40, any excess paid by reason of the fact that the fees were not computed as set out in Acts of 1969, Chapter 44?"

Inasmuch as there is no question but that the procedure provided by the 1969 amendment is different from the procedure suggested in the 1961 O. A. G. and followed by your office, your three questions could properly be combined into one different question:

> Is the language of the 1969 amendment to be construed as a valid statement of the interpretation to be given the language contained in Acts of 1957, Chapter 230, Section 2, subsection (d), prior to the 1969 amendment of that subsection, and, if so, should this office take the remedial action necessary to insure that the fees charged all foreign corporations prior to the amendment, whether paid or unpaid, were assessed on the basis of the formula contained in the 1969 amendment?

The issue, then, is whether one session of the General Assembly can by its own enactments specify the interpretation that is to be given to legislation enacted by a previous session of the General Assembly. That exact question was answered in the case of Bettenbrock v. Miller (1916), 185 Ind. 600, 606, 112 N. E. 771, and there the Indiana Supreme Court stated:

> "Prior to the amendments mentioned the statute was open to construction in this respect, and it had not been construed by this court. The legislature, probably, intended to make certain by express enactment what might otherwise be doubtful. Village, etc. v. Knoff (1904), 210 Ill. 453, 71 N. E. 340. However this may be, it must still be borne in mind that the meaning of a statute must be gathered from the language of the act, for that is the expression of the legislative will, and that the intention or will which the court seeks to ascertain and follow in construing an act, is that of the legislature which passed it, and not that of any subsequent legislature. Bingham v. Board, etc. (1863), 8 Minn. 441. A legislature may embody in an act

> passed a construction of its meaning and such construction is binding on the courts because the construction forms a part of the statute as enacted, and makes clear the intent of the legislature which passed it; but, the expression of the opinion of a subsequent legislature as to the proper construction of a statute passed by previous legislature is of no judicial force. Taylor v. State, *ex rel.* (1906), 168 Ind. 294, 80 N. E. 849; Frey v. Michie (1888), 68 Mich. 323, 36 N. E. 184. It need scarcely be said that the legislature possesses no judicial power, as this power is vested exclusively in the courts of the state. The courts are charged finally with the responsibility of construing doubtful statutes, and they should not be controlled in the discharge of that important function by a legislative construction which in their judgment does not accord with the meaning expressed by the language of the act."

Thus, a session of the General Assembly may define the terms used in any legislation it enacts, and by the same token amend prior legislation to specify the manner in which that prior legislation is to be interpreted in the future, but it has no authority to specify how the enactments of an earlier Legislature should have been interpreted. In fact, insofar as the 1969 amendment attempts to impose a given interpretation on prior legislation, "any judicial * * * decisions to the contrary notwithstanding," it is patently unconstitutional as a violation of Article 3, Section 1 (separation of powers doctrine), and Article 7, Section 1 (vesting of judicial power in Supreme and Circuit Courts), of the Indiana Constitution.

It is my opinion, therefore, that the attempt by the 1969 session of the General Assembly to interpret statutes enacted by an earlier General Assembly is ineffective and, accordingly, the fees paid by or owing from foreign corporations for increases in the amount of Stock represented in Indiana in years prior to the effective date of the 1969 amendment should be computed on the basis of 1961 O. A. G. No. 8, p. 40.