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OFFICIAL OPINION NO. 35

November 5, 1969

Hon. Wilfrid J. Ullrich  
403 Main  
Aurora, Indiana 47001

Dear Senator Ullrich:

This is in response to your request for an Official Opinion concerning whether the terms of office of two persons elected County Commissioners in the general election of 1964—one taking office January 1, 1965, and the other taking office January 1, 1966—both expired as of December 31, 1968.

It is my opinion that the terms of both commissioners elected in the general election of 1964 terminated on December 31, 1968.

The applicable statute is Acts of 1885, Ch. 38, Sec. 1, as amended by Acts of 1963, Ch. 116, Sec. 1, as found in Burns' (1969 Supp.), Section 26-604. Prior to the 1963 amendment the three commissioners in every county served a three year term, and the term of each was so staggered that one, and only one, commissioner's term expired every year. The 1963 amendment changed the length of the term of a county commissioner from three years to four years.

It was, therefore, necessary that two commissioners be elected at the 1964 general election. Prior to 1964 the term of one of the commissioners-elect began on the first Monday of the December next following his election, and the term of the other commissioner-elect began on the first Monday of the second December following his election.

The 1963 amendment appears to result in two seemingly contradictory provisions in the statute. The first portion of the statute contains the phrase "the term of office of no two districts in the same county shall begin in the same year." However, the amendment to the above statute provides that in certain general elections two County Commissioners are to be elected and that "the terms of office for County Commissioners \* \* \* shall commence on the first day of January next following the general election." The two portions are in such obvious conflict that it is impossible to follow both provisions.

There are two principles of statutory construction which are applicable to the type of problem presented by the above statute. First, if an amendment of a statute changes the language of a earlier statute, then it must be assumed that the Legislature intended to change the meaning of the statute. *Daubenspeck v. City of Legonia* (1962), 135 Ind. App. 565, 183 N. E. (2d) 95. Secondly, when two parts of a statute are in conflict, the part later in position is controlling. *Town of Homecroft v. MacBeth* (1958), 238 Ind. 57, 154 N. E. (2d) 563.

Application of either of the above principles forces the conclusion that the 1963 General Assembly intended to, and did, supersede the restriction contained in the statute as enacted in 1885, and made it both permissible and occasionally mandatory for the term of office of two districts in the same county to begin in the same year.

Therefore, it is my opinion that the term of both commissioners elected in the general election of 1964 terminated on December 31, 1968.

The only remaining question is which of the two commissioners elected in the general election of 1964 was to take office on January 1, 1966, and serve only a three year term. The answer to that question is contained in 1 R. S. 1852, Ch. 20, Sec. 2, as found in *Burns' (1960 Repl.)*, Section 26-602. This section provides that each county is divided into three districts and that a commissioner shall be elected from the residence of each such district by the voters of the whole county. In other words, although commissioners are elected by all the voters in the county, they each, in a sense, hold a different office, each commissioner being a commissioner for a specific district. At the 1964 general election the commissioners for two districts were elected.

As a result of the 1963 amendment the term of one incumbent commissioner was to expire on December 31, 1964, and the term of the other incumbent commissioner was to expire on December 31, 1965. At the time of their election, and prior to the 1963 amendment, the term of one incumbent commissioner should have expired on the first Monday of December, 1964, and the term of the other incumbent commissioner on the first Monday in December, 1965.

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Although the 1963 amendment did not specify which of the two commissioners elected in 1964 was to serve a three year term, the only reasonable interpretation would be that it would be the commissioner elected from the district whose incumbent commissioner's term, absent the amendment, would have expired on the first Monday in December, 1965.

Such an interpretation would have the 1963 amendment lengthening the term of each of the incumbent commissioners by one month. Any alternative interpretation would result in the 1963 amendment lengthening the term of one incumbent commissioner by thirteen months and shortening the term of the other incumbent commissioner by eleven months. That result would be patently absurd, and interpretations that produce absurd results are to be avoided. *Marks v. State* (1942), 220 Ind. 9, 40 N. E. (2d) 108.

It is, therefore, my opinion that the commissioner elected in 1964 to succeed the incumbent commissioner, whose term, absent the 1963 amendment, would have expired on the first Monday in December, 1965, should have taken office on January 1, 1966, and should have served a three year term ending on December 31, 1968. His successor should have been elected in the 1968 general election and should have taken office on January 1, 1969, and should serve a full four year term ending on December 31, 1972.