OFFICIAL OPINION NO. 30

October 16, 1969

Mr. Edwin Steers, Sr.
State Election Board
45 North Pennsylvania—Suite 312
Indianapolis, Indiana

Dear Mr. Steers:

This is in response to your request for an Official Opinion concerning the state election laws as affected by several 1969 amendments.

Your first question concerns what appears to be a conflict of three sections, the pertinent parts of which are as follows:

1. Acts of 1945, Ch. 208, Sec. 256, as amended by Acts of 1969, Ch. 222, Sec. 30, and found in Burns' (1969 Supp.), Section 29-5017:

> "It shall be the duty of the county commissioners in each county before each election to provide for and secure for each precinct of the county a suitable room in which to hold the election. In the event no such room is available within the confines of such precinct, such polling-place may be located in a public building in an adjoining precinct: Provided, Said public building is not more than one-half [½] mile from the closest boundary of the precinct for which it is the polling place * * *"

2. Acts of 1945, Ch. 208, Sec. 397, as amended by Acts of 1969, Ch. 222, Sec. 34, and found in Burns' (1969 Supp.), Section 29-5911:

> "Whoever knowingly votes, or offers to vote, in any precinct or ward except the one in which he is registered and resides shall be guilty of a felony."

3. Acts of 1945, Ch. 208, Sec. 257, as found in Burns' (1969 Repl.), Section 29-5018:

> "Each elector shall vote in the precinct wherein he resides."

These three sections should be read together and harmonized. If they cannot be harmonized, the latest expression of legislative intent will prevail. Sutherland, Statutory Construction, 3rd Ed., Vol. 3, Sec. 1934, p. 430. While the statutes, read together, are admittedly in conflict, the Legislative intent is clear and should be given priority.

> "* * * the intent, as collected from the whole instrument, must prevail over the literal import of terms, and control the strict letter of the law." Decatur T.P. v. Board of Commissioners of Marion County (1942), 39 N. E. (2d) 479, 11 Ind. App. 1998.

In the three sections at hand, the legislative intent is that no person should represent himself as a voter from any precinct but the one wherein he resides and is registered. A precinct is both a political and geographical concept.

It is my opinion that Burns' Section 29-5018 and Section 29-5911 are concerned with the political aspect of that concept, and that those statutes require a voter to vote in the polling place for his political precinct and make it unlawful for him to vote in any other polling place. Conversely, Burns' Section 29-5017 merely provides a procedure for determining the geographical location for the polling place of the political precinct.

The geographical location of the polling place may be placed in another precinct. In other words, a man living in precinct X can vote at the polling place designated for precinct X even though the polling place is physically located in precinct Y territory. Conversely, a man who resides in precinct X cannot vote at the polling place designated for precinct Y, even though that polling place be located within the gographical boundaries of precinct X.

Your next two questions may be taken together. You call attention to the fact that Acts of 1969, Ch. 222, Sec. 26, states that it amends Acts of 1945, Ch. 208, Sec. 196, as last amended by Acts of 1967, Ch. 249, Sec. 4, when the act actually amends Sec. 1 of the 1967 amendatory Act. Also Acts of 1969, Ch. 222, Sec. 5, states it is to amend Acts of 1945, Ch. 208, Sec. 26, and then numbers the section it amends 36 instead of 26. Your question is what effects these mistakes have on the validity of the legislation.

It is my opinion these mistakes do not invalidate the amending legislation. Acts of 1969, Ch. 222, Sec. 26, will be taken to amend the Acts of 1967, Ch. 49, Sec. 1, and Acts of 1969, Ch. 222, Sec. 5, will be taken to amend Acts of 1945, Ch. 208, Sec. 26 and not Sec. 36. The legislative intent is clear in both cases, and the amendments should not be interpreted so as to refer to the misnumbered sections, one of which is non-existent.

In Woerner v. City of Indianapolis (1961), 247 Ind. 253, 177 N. E. (2d) 34, the Indiana Supreme Court would not read a statute to include a non-existent territory, where it was clear that the intent of the Legislature was that the legal descriptions should have been S6/T16N/R4E instead of S6/T15N/R4E. The Court states:

> "* * * We now consider the law to be well settled that although the language employed in the enactment may be technically free from uncertainty or ambiguity, in construing the acts of the legislature, courts may provide minor omissions or make minor substitutions in the enactments of the legislature where * * * (2) an omission has occurred or a correction is necessary because of a clerical or typographical error * * *"

Your final question concerns Acts of 1969, Ch. 222, Sec. 37, which states, among other things, that Acts of 1945, Ch. 229, Sec. 3b, as amended, is expressly repealed. As you point out in your letter, 3b was enacted in 1947, not 1945 and later amended in 1959. You ask whether Acts of 1969, Ch. 222, Sec. 37 has repealed this Act because it does not refer to the 1959 amendment and because Sec. 3b was not originally part of the 1945 Act. A minor error in the designation of the Act or section thereof being amended will not invalidate the amendment provided the error does not prevent proper identification of the Act or section affected. Citizens Street Railroad Co. v. Haugh (1895), 142 Ind. 254.

It is my opinion the 1969 Act did effectively repeal the earlier Act in question. The mistakes discussed are minor in nature and do not render the intent of the Legislature ambiguous. It is clear that Sec. 3b was repealed. The 1959 amendment, although not referred to by the 1969 Legislature, merely raised the fees to be paid to election officials, and did not change the substance of Sec. 3b.