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OFFICIAL OPINION NO. 18

April 26, 1968


Opinion Requested by Hon. Roger D. Branigin, Governor.

You have advised me that the "United States Department of Transportation has announced that, effective Sunday, April 28, 1968, daylight saving time shall be observed within the two federal time zones which now divide the State of Indiana, and that such 'fast time' will continue until Sunday, October 27, 1968." As Chairman of the State Election Board, you asked my advice as to what hours the polling places in Indiana should be open on Primary Election Day, May 7, 1968, under Indiana law.

At the outset, I must point out that although Congress has adopted what most people call “fast time” or “daylight saving time” for the summer months for all United States time zones, Congress has seen fit to call that advanced time “standard time.” The Uniform Time Act of 1966, P. L. 89-387, Title 15 U. S. C. §§ 260 to 267, required the Interstate Commerce Commission to establish standard time zones for the United States. The powers and duties of the Interstate Commerce Commission under the Uniform Time Act of 1966 were transferred to the Secretary of the Department of Transportation by the Department of Transportation Act, P. L. 89-670, 49 U. S. C. § 1655(e)(5)(C). Section 260a of Title 15 U. S. C. provides that on the last Sunday in April of each year through part of the last Sunday in October of each year, the standard time shall be advanced one hour and

"such time as so advanced shall for the purposes of such sections 261-264, as so modified, be the standard
time of such zone during such period; except that any State may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if such law provides that the entire State (including all political subdivisions thereof) shall observe the standard time otherwise applicable under such sections 261-264, as so modified, during such period.” (Emphasis added.)

Therefore, the terms “fast time” and “daylight saving time” are no longer legally proper references to the federally established time during the summer. The confusing nomenclature adopted by Congress greatly adds to the difficulty of discussing the problem in an intelligible manner. In an attempt to achieve clarity, I shall hereafter refer to the standard time for the summer months as “advanced standard time,” pursuant to the wording of 15 U. S. C. § 260a.

The Indiana Election Code, Acts 1945, ch. 208, § 269, as amended by Acts 1965, ch. 261, § 23, Burns IND. STAT. ANN. § 29-5030, reads in part as follows:

“The polls in all precincts at elections provided for in this act shall be opened in the forenoon at the hour of six (6) o'clock Eastern Standard Time. . . . The polls shall continue open until seven (7) o'clock Eastern Standard Time in the afternoon: Provided, That if Central Standard Time is the prevailing time in any county on election day, the county election board may hold the election from six (6) o'clock Central Standard Time in the forenoon until seven (7) o'clock Central Standard Time in the afternoon.” (Emphasis added.)

Prior to its amendment in 1965, this section of the Indiana Election Code simply provided that the polls should be open from “the hour of six o'clock” in the forenoon until at least “four o'clock” in the afternoon. In 1961, the federal government first divided the counties of Indiana into two time zones—Central Standard and Eastern Standard. Subsequently, the Indiana Supreme Court decided that, since the Indiana Elec-
tion Code was ambiguous, elections should be conducted on Central Standard Time in those counties in that federal zone, and on Eastern Standard Time in those counties in the Eastern Standard Time Zone. State Election Bd. v. McClure, 243 Ind. 658, 189 N.E. 2d 711 (1963). The 1965 amendment to the Election Code can have only one meaning. The General Assembly intended that Indiana elections be conducted on Eastern Standard Time with the exception that counties in which the inhabitants were actually setting their clocks on Central Standard Time would be allowed the option of conducting their elections on that time, regardless of the federal time zone within which the federal government had placed the county.

That “Eastern Standard Time” and “Central Standard Time” are those times established by the federal government, in the absence of state legislation establishing standard time, was decided in the 1963 State Election Board case, 243 Ind. at 664, 189 N.E. 2d at 714. No Indiana statute does purport to establish a “standard time” for Indiana. It must be noted that, at the time the General Assembly amended the Indiana Election Code in 1965, the federal government had not yet adopted the Uniform Time Act of 1966, and advanced time was not standard time. The General Assembly had the object of reducing confusion, not adding to it. The intention of the Legislature was to permit each county to conduct its election on the prevailing time, in order to avoid confusion and inconvenience to its citizens. The General Assembly could not have anticipated that Congress would change the federal time statutes to designate what was then called “daylight savings time” as “standard time.”

You have sent me a copy of a letter dated April 15, 1968, from John E. Robson, General Counsel of the Department of Transportation, to United States Senator Birch Bayh on the subject of time in Indiana.

Mr. Robson advised Senator Bayh that an administrative proceeding is pending before the Department of Transportation to determine what time zone boundary alignment would best suit the needs of commerce and the people of the State of Indiana. He also stated that the information thus far presented to the Department is inconclusive, and the Depart-
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ment "does not believe it is in a position to make a final administrative determination at this time." He further advised Senator Bayh as follows:

"The Department does not have authority to exempt a state from the Uniform Time Act or alter what is technically the legal time under the Act. For that reason, the Department, in its recent announcement indicated that the technically 'legal' time would have to be ascertained by reference to the Uniform Time Act as applied to the existing time zone boundary in the state. (That 1961 boundary runs to the west of the following counties: Elkhart, Kosciusko, Wabash, Grant, Madison, Hamilton, Boone, Hendricks, Morgan, Johnson, Shelby, Decatur, Jennings, Scott, Clark, Floyd and Harrison. All of these counties, and everything to the east of them, are in the eastern time zone.)

This clarification was made on the assumption that interstate carriers would follow the technical time pattern. However, it should be noted that the Uniform Time Act authorizes the Department to permit variance from technical observance by interstate common carriers for reasons of practicability. The Department will consider as an appropriate grounds for variance a carrier's own bona fide determination that technical time observance will be disruptive to its operations during the pendency of the Department's administrative proceeding.

"The Department's practice has been to defer consideration of court enforcement actions while (as is the case here) a properly instituted administrative time zone boundary proceeding is pending before the Department. That practice will be followed here."

As pointed out by Mr. Robson, the fact that the United States Department of Transportation has indicated that it will not enforce the Uniform Time Act of 1966 does not change the meaning of "Eastern Standard Time" and "Central Standard Time" as designated pursuant to the federal statute. However, it will permit Indiana cities and counties
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to use with impunity a different time than the standard time established for their federal time zones.

A 1967 Indiana Act does concern time in the State. Acts 1967, ch. 283, Burns §§ 60-2206—60-2207. That statute decrees that in each courthouse and city hall and in the state capitol building of the State of Indiana a clock shall be maintained showing the official time of the state in accordance with the Uniform Time Act of 1966. The second section of the Act, Burns § 60-2207, purports to establish "local time" in the state, defined as the time upon which any governmental unit, business, school or other entity desires to conduct its business. This statute was enacted after the latest amendment to the Indiana Election Code. However, it is a general statute relating to time. Even should it conflict with the Indiana Election Code, it does not, in my opinion, repeal or amend by implication the earlier special statute pertaining to elections alone, section 269 of the Indiana Election Code, as amended, supra, and quoted above. See State v. LaRue's, Inc., 239 Ind. 56, 154 N.E. 2d 708 (1958).

The General Assembly apparently did intend, by enacting section 2 of this statute, to comply with 15 U. S. C. § 260a, quoted supra, which authorizes a state to exempt itself from advanced standard time. However, in my opinion, the General Assembly failed to accomplish its purpose. Section 2 reads in relevant part as follows:

"It is provided further that no area in the official Eastern Standard Time zone, as established by the Interstate Commerce Commission, shall observe a local time other than Eastern Standard Time, nor shall such areas advance such time during the period from the last Sunday in April until the last Sunday in October." (Emphasis added.)

That statute fails to comply with the federal statute authorizing an exemption because the prohibition against advancement of time applies only to that portion of the state in the federal Eastern Standard Time Zone. It does not apply to that part of the state within the federal Central Standard Time one. As I advised you when the Enrolled Act which is chap-
ter 283 of the 1967 Acts was presented to me during the last legislative session, it is my opinion that this statute also violates subsection (b) of Title 15 U. S. C. § 260a, which reads as follows:

"It is hereby declared that it is the express intent of Congress by this section to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for advances in time or changeover dates different from those specified in this section."

Therefore, both Central and Eastern Standard Time in the State of Indiana will advance one hour on April 28, 1968.

It is my opinion that in the State of Indiana on May 7, 1968, (a) all primary elections may be conducted on advanced Eastern Standard Time; (b) elections in counties in which advanced Central Standard Time is not the prevailing time on election day must be conducted on advanced Eastern Standard Time; and (c) in all counties in which the prevailing time on election day is advanced Central Standard Time, the election may be conducted on advanced Central Standard Time at the option of each county election board.

For example, should Marion County, which is now on Eastern Standard Time, advance its clocks one hour on April 28, 1968, the prevailing time in that county will be advanced Eastern Standard Time on primary election day, and it must conduct that election on advanced Eastern Standard Time. However, should Marion County fail to advance its clocks one hour on April 28, 1968 (pursuant to the Department of Transportation’s “amnesty”), that county will thereafter be on advanced Central Standard Time until October 27, 1968. Marion County could, under these circumstances, conduct its 1968 primary election on advanced Eastern Standard Time. However, Marion County also would have the option of conducting its election on its then prevailing time, which would be advanced Central Standard Time, as explained above.

A county which is in the federal Central Standard Time Zone, but uses Eastern Standard Time in the winter months and does not advance its clocks on the last Sunday in April,
will have advanced Central Standard Time as its prevailing time on primary election day, and will have both of the options described above.

A county which is using Central Standard Time in the winter months and does advance its clocks one hour on April 28, 1968, will have both of the options above, as it will have advanced Central Standard Time as its prevailing time on election day.

Since the Department of Transportation does not intend to enforce the Uniform Time Act of 1966 in the State of Indiana during the summer months of 1968, it seems likely that some counties will elect to use a different time from the Standard Time for the county. It is impossible to predict with certainty what time will be prevailing in each county in Indiana this summer. Mr. John E. Robson, General Counsel of the United States Department of Transportation, indicated in his letter to Senator Bayh, supra, that the time prevailing in eighty (80) Indiana counties is Eastern Standard Time during the winter months, and that none of those counties move their clocks forward on the last Sunday in April. In the other twelve (12) Indiana counties (six in the northwest and six in the southwest corners of the state), according to Mr. Robson, the prevailing time is Central Standard Time during the entire year (i.e., they are on Central Standard Time during the winter months and do advance their clocks on the last Sunday in April.) If this situation is in existence in the summer of 1968, the prevailing time on primary election day, 1968, in all counties of the State of Indiana will be advanced Central Standard Time. In that event, any or all county election boards may choose to hold their elections on the then prevailing advanced Central Standard Time. In any county in which the county election board does not provide that the election shall be held on advanced Central Standard Time, the primary election of 1968 will be held on advanced Eastern Standard Time.

Past history indicates, however, that the General Counsel of the Department of Transportation may be too optimistic in concluding that the entire state will have advanced Central Standard time as its prevailing time during the summer of 1968. In the past, at least some of the counties on our
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Borders with Ohio and Kentucky and in the federal Eastern Standard Time Zone have advanced their clocks in the summer time. Such counties have included Dearborn and Ohio (in the Cincinnati, Ohio area), Randolph (Union City is partly in Indiana and partly in Ohio), and Floyd, Clark, Crawford and Harrison (in the Louisville, Kentucky area). Any county which follows this practice in the summer of 1968 will have advanced Eastern Standard Time as its prevailing time, and must hold its election on that time.

Despite the legal intricacies and technicalities required to interpret the Indiana Election Code time provision in relation to federal statutes amended after the Indiana law was enacted, the final result is that result which the General Assembly intended. Each county in Indiana apparently may conduct its 1968 primary election on the time prevailing in the county. In summary, those counties, if any, in which the prevailing time in the winter months is Eastern Standard Time and in which the clocks are advanced one hour in the summer, must conduct their elections on their prevailing time. Assuming that all other counties of the State have advanced Central Standard Time as their prevailing time in the summer months (either because they use Eastern Standard Time in the winter and do not advance their clocks in the summer, or because they use Central Standard Time in the winter and do advance their clocks in the summer) each may, through its county election board, exercise its option to hold the 1968 primary election on its prevailing time. If the county election board of such a county does not exercise its option, the 1968 primary election in that county must be held on advanced Eastern Standard Time.