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OFFICIAL OPINION NO. 25

July 24, 1967

GENERAL ASSEMBLY—STATUTORY CONSTRUCTION—Payments of Salary to Legislator Who Served During Session, but Who Resigned During Biennium.

Opinion Requested by Hon. John P. Gallagher, Auditor of State.

I am in receipt of an inquiry from your predecessor in office asking whether a State Representative elected in 1964 who served during the entire 1965 regular session of the Indiana General Assembly, but resigned from that office in October of 1965, is entitled to receive the salary payments he would have received on the 15th day of January, April, July and October of 1966 if he had remained a member of the Legislature.

My Official Opinion rendered May 18, 1966, (1966 O.A.G., p. 58) answers in the negative substantially the same questions concerning a legislator who resigned in 1961.

In 1962 my predecessor rendered an Official Opinion (1962 O.A.G., p. 3) in response to an inquiry concerning salary payments to a legislator who may have disqualified himself by removal from the state. While pointing out that only the General Assembly could determine its members' eligibility, that opinion took the position that the effect of Acts 1957, ch. 245, § 1, Burns § 34-201i, was that service through the 61-day regular session entitled the senator to the full biennial salary, regardless of whether he continued eligible to serve thereafter. Because of the sentence by which my 1966 O.A.G., p. 58 took cognizance of the different and apparently conflicting results reached in the two opinions, some persons have sug-

gested that a 1965 Act (ch. 28) has removed the basis for any distinction between the salary of a resigned legislator and a disqualified legislator and that now both are entitled to full pay of the biennium salary in which they serve 61 days in a regular session. The 1966 opinion contains this statement:

> "The language of Burns § 34-201i [Acts 1955, ch. 65, § 1a, as added by Acts 1957, ch. 245, § 1, as amended by Acts 1963 (Spec. Sess.), ch. 25, § 2] *can be* interpreted to mean that the annual salary provided by statute has been earned by the legislator at the end of his sixty-one days' service at the regular session, see 1962 O.A.G., No. 2, page 3, and that he is entitled to collect it regardless of whether he performs further services or not." (Emphasis added.)

That statute (Burns § 34-201i, *supra)* reads as follows:

> "The General Assembly hereby declares that the salary provided for in section 1 of this Act is solely for the purpose of compensating the members of the General Assembly for services rendered during the regular sixty-one day session of the General Assembly and said salary shall be in full for their attendance at the regular session of the General Assembly. . . ."

My 1966 O.A.G., p. 58, holding that a resigned legislator is entitled to no further pay, relies on Acts 1953, ch. 102, § 1 (Burns § 34-201d) which reads as follows:

> "SECTION 1. The above entitled act is amended by adding a new and additional section thereto to be numbered section 3 and to read as follows: Sec. 3. In the event of the death or resignation of any member of the General Assembly between periods of payments herein, the compensation already received shall be considered payment in full, up to and including the date of death or resignation. And no claim shall be made by the State of Indiana for any refund of payments herein, by reason of the death or resignation of any member of the General Assembly for the period of time until the next payment due under this act."

The rationale of 1966 O.A.G., p. 58 is that the foregoing statute, being a special law applicable to salaries of deceased and resigned legislators, was controlling over the general provisions of Burns § 34-201i which 1962 O.A.G., p. 3 said authorized full salary payment to a member who served throughout the 1961 regular session, even though he *may have* subsequently disqualified himself (by removal from his district and state) before the end of his term and before all installments of his salary became due. That general statute, (above quoted) Burns § 34-201i, is Acts 1957, ch. 245, § 1 (which takes the form of adding section 1a to Acts 1955, ch. 65 and which was amended in 1963 by deleting a clause immaterial here). Thus, Burns § 34-201d, the special statute, was in effect for four years before Burns § 34-201i, the general statute, became law and remained in effect thereafter for eight more years (until 1965). By the rationale of 1966 O.A.G., p. 58, Burns § 34-201d prevented Burns § 34-201i, at the time of its enactment and for eight years thereafter, from having the effect on salaries of deceased and resigned legislators which 1962 O.A.G., p. 2 said it had on the salaries of disqualified legislators.

In 1965 the General Assembly affirmatively established a new rule as to the salary of deceased legislators by enactment of Acts 1965, ch. 28, § 1, which reads as follows:

> "AN ACT providing for the payment of salary to certain named beneficiaries of deceased members of the General Assembly and repealing laws in conflct therewith.
>
> "*Be it enacted by the General Assembly of the State of Indiana*:
>
> "SECTION 1. [Burns § 34-201j] In case a member of the General Assembly should die prior to the expiration of the term for which he was elected his unpaid salary for the term shall be paid to his surviving spouse; in case he is not survived by a surviving spouse then such payment shall be paid to his dependent child or children; and in case he is not survived by a dependent child or children then such payment shall be paid to his parent or parents and to no other.

"SEC. 2. [Not published in Burns] Acts 1953, c. 102, s. 1 is hereby specifically repealed."

It is now suggested that the above quoted Sec. 2 has completely abrogated the statute on which 1966 O.A.G., p. 58 relies and, therefore, nothing remains to prevent the general statute, Burns § 34-201i, having the same effect with regard to resigned members' salaries it has (according to 1962 O.A.G., p. 3) with regard to disqualified members' salaries. Acts 1965, ch. 28, *supra,* does, indeed, purport in express terms specifically to repeal Acts 1953, ch. 102, § 1. But its title belies any intent to deal with anything except the salaries of deceased members and the repeal of laws in conflict therewith. The casual, or even the careful, reader of this Act, or the Bill which became this Act, would have no idea from merely reading the Bill itself, that enactment of the Bill into an Act would in any way affect the pay of resigned members of the General Assembly. The title tells him that the Act will provide for payment of salaries of deceased members and will repeal laws in conflict with that provision. Any intent the General Assembly, or of any member thereof, may have had to change the law concerning salaries of resigned members by the enactment of Acts 1965, ch. 28, cannot be discovered by reading the Act. It, therefore, appears to be a fair statement to say that reasonable men reading the Act in its entirety could reach but one conclusion as to the manifest intent of the members of the Legislature with respect to what kind of a law they were repealing and what the effect of its repeal would be. Clearly the manifest intent was to repeal a law which conflicted with the provisions the Act made for the salary of *deceased* members and the only intended result of the repeal provision in section 2 was to insure that section 1 would have the effect its words expressed—nothing more, nothing less.

Therefore, before attempting to determine whether the result of repealing Acts 1953, ch. 102, § 1, would be something quite different from that manifest intent of the 1965 General Assembly, let us consider the legal effect of the manifestation of that intent on the question of whether the 1953 Act was repealed in its entirety.

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Article 4, section 19, Indiana Constitution, reads, in pertinent part, as follows:

> "Every act, amendatory act or amendment of a code shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, amendatory act or amendment of a code, which shall not be expressed in the title, such act, amendatory act or amendment of a code shall be void only as to so much thereof as shall not be expressed in the title. The requirements of this paragraph shall not apply to original enactments of codifications of laws."

State ex rel. Milligan v. Ritter's Estate, 221 Ind. 456, 48 N.E. 2d 993 (1943) was a claim against a decedent's estate for his care in a state mental hospital from March 6, 1917, to March 29, 1940. On the theory that a 1917 statute making the estate liable had been impliedly repealed by a 1927 statute, the trial court allowed recovery only from June 10, 1935, under a new enactment. In reversing that decision, the Indiana Supreme Court held the purported repeal was not effective because it was beyond the scope of the title. Of it the court said, quoting 48 N.E. 2d beginning on page 997:

> ". . . Section one of this act on its face seems to repeal the act of 1917 . . . we have examined the titles of chapter 72 of the Acts of 1917 and chapter 69 of the Acts of 1927, and have concluded that the title of the act of 1927 is too specific and narrow to cover the subject-matter of the act of 1917. Both titles are specific. Neither covers the general subject of insanity or institutions for the insane. The 1917 title is limited to payment for care in benevolent institutions out of the estates of inmates. The 1927 title is limited to the subject of inquests and the procedure in adjudging persons insane, their commitment to hospital, their care pending admission, their discharge, their apprehension and return upon escape, and prohibiting their kidnapping or aiding to escape. There seems to have

> been purposely omitted any matter dealing with the period between admission and discharge from the institution. There is nothing in this title suggesting that the act might deal with payment for care of inmates, but, on the contrary, the seemingly intentional limitation to the period preceding admission and following discharge or escape indicates an intention not to deal with the period of confinement. It is well settled that where titles are limited, provisions of the law not within the limitation are void under the Constitution, and it must be concluded that in so far as section one of the act of 1927 may have been designed as an implied repeal of chapter 72 of the Acts of 1917 it is void."

While the repeal held invalid in the above case was an implied repeal, the case of *Indianapolis Union Ry. v. Waddington,* 169 Ind. 448, 453, 82 N.E. 1030, 1032 (1907) involved a purported repeal which was express and specific. By Acts 1907, ch. 148, the General Assembly amended a 1901 Act concerning the Indiana Appellate Court. Section 3 of the 1907 Act was a repealer which, *inter alia,* expressly and specifically repealed "subdivision three (3) of section ten (10)" of the 1901 Act, which had provided for an appeal from the Appellate Court to the Supreme Court of cases involving over $6,000. The appellee moved to dismiss the appeal on the ground that such purported repeal had deprived the Supreme Court of jurisdiction. In denying the motion the Supreme Court took the position that it should refuse to give effect to the repeal because such effect was not intended by the Legislature, saying:

> "It may be admitted that it was competent for the General Assembly to cut off this court's jurisdiction on appeal from the Appellate Court. We are of opinion, however, that this is not the effect of said act as applied to cases of the class in question which were ready for distribution at the time the law took effect. A repealing clause is subject to construction the same as any other provisions of statute. *Arnett v. State, ex rel.* (1907), 168 Ind. 180, 8 L.R.A. (N.S.) 1192; 26 Am. and Eng. Ency. Law (2d ed.), 720. Even an express

declaration of a repeal will not be given that effect when it is apparent that the legislature did not so intend. We observe in the first place that, as applied to cases in which more than $6,000 is in controversy upon the judgment, the statute continues the legislative policy of this State for many years to give this court final jurisdiction for the purposes of review of this class of cases. What reason could there be, therefore, for permitting certain cases of this class to be conclusively determined by the Appellate Court? A construction is to be preferred which carries out the general policy, thus leaving all interests unimpaired. 26 Am. and Eng. Ency. Law (2d ed.), 758; *Taylor v. Strayer* (1906), 167 Ind. 23; *State v. Kates* (1897), 149 Ind. 46. In determining whether it was the legislative purpose by the repealing clause absolutely to repeal subdivision three of section ten of the act of 1901 (Acts 1901, p. 565, § 1337j Burns 1901), the fact must not be lost sight of that section seventeen of the latter act (§ 1337q Burns 1901), provides that if a clause be appealed to the Supreme Court from the Appellate Court, 'the judgment of the division of the Appellate Court is thereby vacated.' We would therefore have the startling consequence, as applied to cases which had been decided by the Appellate Court and were pending on appeal in this court at the time the act of 1907 took effect, that, if the provision for repeal were literally followed, there would not even remain the judgment of the Appellate Court, so that, whatever might have been the judgment of the latter court, the judgment of the trial court would have to prevail, the fact being that the act of 1907 had deprived us of jurisdiction, while § 1337q, *supra,* had operated to vacate the judgment of the Appellate Court. It cannot be presumed that such a result was contemplated by the legislature when it added the repealing clause to the act of 1907. Therefore we are led seriously to doubt the proposition that said clause should be given an unrestricted operation. But we do not rest our conclusion on the above consideration. . . ."

In the case of *Cory v. Nethery,* 19 Wash. 2d 326, 142 P. 2d 488 (1943), the Supreme Court of Washington applied the principles stated in the two Indiana cases quoted above (and principles often stated in other Indiana cases) in holding an expressly stated specific repeal ineffective beyond the scope of the title of the repealing act and the scope of the subject-matter affirmatively provided for in the body of the Act. While the subject-matter of the statutes involved in the Washington case was the period of limitation for bringing actions to foreclose public improvement liens, a subject quite different from legislators' salaries, the analogy between the legal problem of statutory interpretation in that case and the problem raised by your predecessor's request is almost perfect.

That case was an attempted foreclosure of a drainage district public improvement lien commenced more than two years, but less than ten years, after the cause of action accrued. Plaintiffs (appellants) contended that the period of limitation was ten years by virtue of chapter 182 of the Laws of 1907 which defendant contended was repealed by chapter 98, Laws of 1911, thereby making the limitation two years by virtue of a general statute covering actions not otherwise specifically provided for.

The title of the 1911 law which contained the express and specific repealer of the 1907 law was: "An Act relating to local improvements *in cities and towns,* and repealing certain acts and parts of acts." (Emphasis added.)

The court said, beginning at page 490 of 142 P. 2d:

> "It will thus be seen that, by its terms, chapter 98 of the Laws of 1911 repealed chapter 182 of the Laws of 1907, which had fixed a ten-year limitation on actions to enforce collection of special assessment liens levied by any kind of a taxing or assessment district, and substituted therefor § 41 of chapter 98. This section cannot avail the appellant, because the title to chapter 98 of the Laws of 1911 limits the operation of § 41 to *cities and towns,* while the lien appellant seeks to enforce is for special assessments levied by a drainage district, an essentially different kind of entity. The

same reasoning, however, must apply to the repealing section, for, if it, too, is limited by the title to the act of which it is a part, it does not repeal chapter 182 of the Laws of 1907 beyond the subject of local improvement assessments levied by cities and towns.

"Section 19 of Art. II of the constitution of the state of Washington provides that 'No bill shall embrace more than one subject, and that shall be expressed in the title.' In construing this constitutional provision, we have many times held that the title of a statute need not be a complete index of its provisions, but it is sufficient if it so indicates its substance and scope as reasonably to lead to an inquiry into its content.

"In DeCano v. State, 7 Wash. 2d 613, at page 627, 110 P. 2d 627, at page 634 (a case heard en banc), many of our cases were reviewed, and we said:

" 'In this connection, it should be noted that, in applying the general rules in question, this court has observed a well-marked line of distinction between broad, general titles on the one hand and narrow, restricted titles on the other. The legislature may, if it chooses, adopt a very broad and comprehensive title in a bill, in which case great liberality will be indulged to hold that any subject reasonably germane to such title may be embraced within the body of the bill. If, however, the legislature sees fit to use a restricted title, in which the language is of specific, rather than generic, import, the title will not be regarded so liberally, and provisions of the bill not fairly embraced therein cannot be given force. This rule was concisely expressed in Hacker v. Barnes, 166 Wash. 558, 7 P. 2d 607, 609, 80 A.L.R. 1212, in the following language:

" ' "In its decisions, this court has tended to uphold general titles to statutes, while closely scrutinizing specific or restricted titles. Northern Cedar Co. v. French, 131 Wash. 394, 230 P. 837; National Ass'n of Creditors v. Brown, 147 Wash. 1, 264 P. 1005; National Ass'n of Creditors v. Pendleton, 158 Wash. 137, 290 P. 987; In re Hulet, 159 Wash. 98, 292 P. 430." '

"In the enactment of chapter 98 of the Laws of 1911, the legislature saw fit to use a restricted title, and it will be seen therefrom that legislation with reference to drainage districts is not at all germane. If we should accept § 71 of chapter 98 of the Laws of 1911 as a repeal in its entirety of chapter 182 of the Laws of 1907, then it would be unconstitutional as to liens for assessments levied by drainage districts, for it would offend § 19 of Art. II of the constitution.

"We believe that, by the application of established rules of construction, it can be said that the 1911 legislature did not intend to repeal chapter 182 of the Laws of 1907 in so far as it applies to taxing entities other than cities and towns, even though the language of the repealing section, when read literally, includes such repeal. We think that the legislature, when legislating on the subject of local improvement assessments by cities and towns and providing a ten-year limitation for actions to enforce liens, could not have intended, in view of the acts of 1895 and 1907, to differentiate between assessment liens upon property in a city or town and those upon property located in a drainage or other similar district, provide a ten-year limitation for the former, and relegate the latter to the situation existing prior to the 1907 act, and thus recreate the evil which it corrected by that act. A repealing clause or section in an act is subject to the same rules of interpretation as any other clause or section therein. Express words of repeal must not be taken literally if, by so doing, the enactment is carried beyond the scope of its title and thereby other legislation is broken down or destroyed.

"The situation here is substantially the same as that with which this court was confronted in Howlett v. Cheetham, 17 Wash. 626, 50 P. 522, 523. In that case, it appears that, by an act passed in 1895, the office of commissioner of arid lands was created. By one of the sections of an act passed in 1897, the act of 1895 was expressly repealed. It was contended that the title of the later act was not sufficient to warrant

the inclusion therein of any matter covered by the 1895 Act. We said, 17 Wash. at page 629, 50 P. at page 523: 'While it is a primary and general rule in the construction of statutes that effect should be given to words which are plain, unambiguous, and well understood, according to their natural and ordinary sense and meaning, yet it is well settled that where the literal interpretation of a particular word or phrase is repugnant to the intent of the legislature plainly manifested by the act taken as a whole, such interpretation ought not to prevail. The only object of construction is to ascertain the meaning and intention of the legislature, and, when that intention is discovered, it is controlling, although it may be contrary to the strict letter of the statute.'

"After quoting what was said by a New York court, we further said, 17 Wash. at page 632, of 50 P. page 524: 'Applying the principles so clearly enunciated in the foregoing quotation, we are irresistibly forced to the conclusion that it was not the real intention of the legislature to repeal the act of March 22, 1895, notwithstanding the words of absolute repeal employed by the legislature. It will manifestly appear from an examination of this so-called repealing act, and from the history of its passage, that the legislature at the time of its final enactment did not have in mind either the office of arid-land commissioner, or the subject of arid lands.'

"The doctrine of this case has not in any way been modified. It is based upon sound and logical reasoning, and it is applicable to this case. We, therefore, hold that chapter 182 of the Laws of 1907, providing for a limitation period of ten years in cases like the one before us, was not repealed by chapter 98 of the Laws of 1911."

The foregoing Washington opinion has been quoted at such great length not only because of the analogy involved but also because of the clarity with which the rules of construction are stated. Virtually all of these rules are stated or im-

plied in either *State ex rel Milligan v. Ritter's Estate, supra,* or *Indianapolis Union Ry. v. Waddington, supra,* (or in both). The first conclusion the Washington court reached is the conclusion reached in the first cited Indiana case and the final conclusion reached is the conclusion reached in the second cited Indiana case.

First, the Washington court held (as in *Ritter's Estate*) that the specific repealer could not be held to be intended as a full repeal of the 1907 Act without being unconstitutional because, as such, it would be beyond the scope of the title.

The second holding, the holding of *Indianapolis Union Ry. v. Waddington, supra,* and the holding on which the decision rested was that the expressly specific repeal of chapter 182 of the Laws of 1907 was not a repeal in its entirety of that chapter because the legislature did not so intend it.

As for the problem at hand: The question of whether Acts 1965, ch. 28, § 2, repealed completely "Acts 1953, c. 102, s. 1" as it expressly purported to do, it is obvious both that the General Assembly did not intend to repeal it as to salaries of resigned members and that, regardless of the Legislature's intent, section 2 cannot have that effect because such effect is beyond the scope of the title. By Art. 4, § 19, Indiana Constitution, the invalidating effect of exceeding the limits of the title is merely to render the act "void only as to so much thereof as shall not be expressed in the title."

By expressing in the title to Acts 1965, ch. 28, such a restricted area of legislation as "providing for the payment of salary to certain named beneficiaries of deceased members . . . and repealing laws in conflict therewith" the 1965 General Assembly not only clearly expressed an intent to do no more than to provide that which section 1 did provide for deceased members' salaries and to repeal what conflicted therewith, but also, by that title, placed it beyond their constitutional power to repeal, in that chapter, any provision of law which did not conflict with section 1. They could have chosen a much broader title which would have covered provisions for the salaries of resigned, disqualified, and expelled members as well as deceased members, had the Legislature wished to include such provisions in the body of the Act.

This statute seems to be almost a textbook example of the purpose of the constitutional requirement that the effect of the act be limited to the scope of the title. Here, if the act purportedly repealed were fully repealed and its repeal were given the effect suggested (the effect of giving a resigned legislator two years pay for 61 days service), then legislation would have been enacted blindly. And what is done blindly can easily be the result of deception.

It is my opinion that Acts 1965, ch. 28, § 2 did not repeal Acts 1953, ch. 102, § 1, in relation to legislators who resign prior to the end of their term and, therefore, I find no reason to reach a conclusion different from that reached in 1966 O.A.G., p. 58. Consequently, my answer to the question asked by your predecessor is that salary payments falling due in 1966 cannot be paid to a member of the General Assembly who resigned in 1965.

OFFICIAL OPINION NO. 26

July 25, 1967

GENERAL ASSEMBLY—Legislative Council—Eligibility of Members of Council to Receive Expense Allowance.

Opinion Requested by Indiana Legislative Council.

You have requested an answer to the following questions:

(1) May the Legislative Council establish and pay to the "leaders" of the General Assembly a fixed annual reimbursement of expense allowance?

(2) May the Legislative Council reimburse the "leaders" of the General Assembly for their actual