

OPINION 51

the Indiana State Board of Education in its role as a State Board of or for Vocational Education. Therefore, pursuant to Acts 1945, ch. 14, § 1, Burns § 1-203, the words "present state board of vocational education" must be construed to mean the Commission on General Education acting as State Board of or for Vocational Education, including its functioning as the State Board for Vocational Rehabilitation.

Therefore, it is my opinion that the State Board of Vocational and Technical Education (the 1965 Vocational Board) created by Acts 1965, ch. 244, Burns §§ 28-4951—28-4953, has succeeded to the rights, duties, powers and privileges of the Commission on General Education of the State Board of Education in its function and authority as State Board of Vocational Education with respect to the latter's authority over vocational rehabilitation. The transferred rights, duties, powers and privileges include those granted by the 1921 Indiana Vocational Rehabilitation Act, Acts 1921, Burns §§ 28-4920—28-4925, as it may have been amended and supplemented.

OFFICIAL OPINION NO. 52

December 26, 1967

ATTORNEYS—Person Not Admitted to Bar Acting for Self— Acting for Others.

Opinion Requested by Hon. David Rogers, State Senator.

I am in receipt of your request for an Official Opinion on the following question:

"Is it lawful for a person not admitted to the practice of law to appear for and represent a person other than himself in proceedings before a Justice of the Peace?"

An early statute dealt specifically with appearance in Justice of the Peace Courts. 2 R.S. 1852, ch. 1, § 31, the same being Burns § 5-313, provides:

“Infants shall appear by next friend, to be appointed by the justice; all other persons may appear in person, or by agent, or attorney; but no constable or justice shall act as such agent or attorney.”

A subsequent act, Acts 1881 (Spec. Sess.) ch. 38, § 830, the same being Burns § 4-3604, provides:

“A civil action may be prosecuted or defended by a party in person or by attorney, except that a corporation appears by attorney in all cases.”

Section 857 of the same Act, Burns § 2-4701, defines an attorney thusly:

“The word ‘attorney’ includes a counselor and every other person authorized to appear and represent a party in an action or special proceeding, in any stage thereof.”

There could be some questions as to whether the 1881 Act did, or was intended to, supersede the 1852 Act insofar as the latter Act permitted appearances by an agent. This is especially true since the definition of “attorney” in the 1881 Act appears to be broad enough to include an agent.

However, it is not necessary to determine that question. An even later enactment, Acts 1913, ch. 347, § 1, the same being Burns § 4-3601, provides:

“That it is hereby made unlawful and a violation of this act for any person to hold himself out as a practicing lawyer; to conduct the trial of a case in any circuit, criminal, city, justice, probate, juvenile, commissioner or any other court of this state or to engage in the business of a practicing lawyer without first having been duly admitted as an attorney at law in some court of general jurisdiction or of appellate jurisdiction of this state.”

OPINION 52

The 1913 Act did not specifically repeal the earlier statutes.

In *Hammond City Ct. v. State ex rel. Hofbauer* (1965) — Ind. —, 208 N.E. 2d 682, 685, 5 Ind. Dec. 705, 709, the court said:

“In considering the effect of laws which may repeal other laws by implication, this court has said many times that we will endeavor to give that construction to the law which will effect the intention of the legislature. . . .”

The intention of Acts 1913, ch. 347, is clearly expressed in the title to that Act: “AN ACT prohibiting the practice of law by an unauthorized person and prescribed penalties for its violation.” The intention is even more clearly expressed in the first section, set out in full above, which provides that “[i]t is hereby made unlawful and a valuation of this act for any person . . . to conduct the trial of a case in any . . . justice . . . or any other court in this state . . . without first having been duly admitted as an attorney at law. . . .” The intention of the Legislature is clear, and that intention can be given effect only if the 1913 Act is interpreted as repealing by implication all earlier statutes that might authorize a person not admitted as an attorney to appear for and represent a person other than himself in any such proceeding. See *State ex rel. Indiana State Bar Ass’n v. Indiana Real Estate Ass’n.*, 244 Ind. 156, 191 N.E. 2d 21, 1 Ind. Dec. 455 (1963).

It should also be noted that Art. 7, § 21, of the Indiana Constitution, which provided that any voter of good moral character was entitled to be admitted to the practice of law was repealed in 1931, and that since that time the Indiana Supreme Court has jurisdiction over admissions to the bar. Acts 1931, ch. 64, § 1, as amended by Acts 1951, ch. 143, § 1, the same being Burns § 4-3605, provides:

“That the supreme court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state and exclusive jurisdiction to issue restraining orders and injunctions in all

1967 O. A. G.

cases involving the unauthorized practice of the law under such rules and regulations as it may prescribe.”

A justice of the peace court is a court of record. *Brackney v. State*, 182 Ind. 343, 106 N.E. 532 (1914). Thus the Supreme Court has exclusive jurisdiction to admit attorneys to practice law in such courts.

It is, therefore, my opinion that it is not lawful for a person not admitted to the practice of law to appear for and represent a person other than himself in proceedings before a Justice of the Peace, and of course a corporation can appear in court only through a duly admitted attorney at law.

OFFICIAL OPINION NO. 53

December 27, 1967

**CITIES AND TOWNS—OFFICERS—Town Marshal—
Authority of Town Board to Provide Pension.**

Opinion Requested by Mr. Richard L. Worley, Chief Examiner, State Board of Accounts.

This is in reply to your letter of October 9, 1967, in which you request my Official Opinion concerning the following question:

“Does Chapter 129, Acts of 1905, Section 30, Burns 48-208, authorize the town board to provide a pension for the town marshal?”

You have indicated in the information enclosed with your request for an opinion that the question has arisen in many