

OPINION 35

It is, therefore, my opinion that public policy dictates broad adjudicatory jurisdiction by the State Personnel Board so as to include any employer-employee dispute or grievance.

OFFICIAL OPINION NO. 35

December 12, 1966

COUNTY OFFICERS—Highway Supervisor—Requisite Qualifications of Supervisors—Maximum Salary Allowable—New Contract of Employment from County Commissioners.

Opinion Requested by Hon. Robert W. Jones, State Senator.

This is to answer your recent letter in which you requested an opinion on the following situation. The Fayette County Commissioners appointed a County Highway Supervisor on January 1, 1965 for a salary of \$5,000.00 per annum. The individuals did not meet either the experience or "Registered Engineer" requirements for such position and thus was limited to a salary of \$5,000.00. The contract was for a period of one year. On January 1, 1966 the individual was reemployed at a salary of \$6,000.00. In light of the enactment of Chapter 391, Acts 1965, can such a salary be paid to the County Highway Supervisor?

Acts 1933, ch. 27, § 10 as amended by Acts 1961, ch. 107, being Burns IND. STAT. ANN., § 36-1110, read in part as follows:

"(b) No person, other than the county surveyor, except such person as provided in subsection (d) of this section shall be employed by the board of county commissioners as the county highway supervisor un-

less such person presents evidence to the board that he possesses at least one of the following qualifications:

“(1) At least six years’ practical experience in civil and highway engineering, or at least six years’ experience in the construction and maintenance of streets and highways, or both: Provided, That at least two years of such experience shall be administrative experience similar to that required of a county highway supervisor by the provisions of this act: Provided further, That each of the first three years of educational experience in an approved engineering curriculum may be considered as equivalent to two years’ practical experience in civil and highway engineering, or experience in the construction and maintenance of streets or highways; or

“(2) Registration as a professional engineer pursuant to the laws of the State of Indiana, and at least two years’ experience in civil and highway engineering, or experience in the construction and maintenance of streets or highways, or both.

“(c) The salary of any county highway supervisor, appointed pursuant to the provisions of subsection (b) of this section shall be fixed by the board of county commissioners: Provided, That the salary of any such county highway supervisor shall not be less than five thousand dollar per year.

“(d) *If the board of commissioners of any county of the State of Indiana shall elect to employ as county highway supervisor a person who is not the county surveyor and who does not meet the qualifications as set forth in subsection (b) hereof, the compensation for such person as fixed by the board of commissioners shall not exceed five thousand dollars per year. Provided, however, That said county highway Supervisor, as specified in this subsection, shall be a full-time employee.*” (Emphasis added.)

Acts 1965, ch. 391, § 1, as found in Burns IND. STAT. ANN., § 36-1110, amended the above section and deleted the

OPINION 35

experience and/or "Registered Engineer" requirements. Subsection (d), as amended, now reads as follows:

"(d) Nothing in this act shall change the salary status or qualification requirements of any county highway supervisor already employed in such position in any county in the state of Indiana, as of the effective date of this act, but the provisions hereof shall apply to all *replacements thereof*, including all county highway supervisors *newly employed in any of the counties of the state of Indiana following the effective date of this act.*" (Emphasis added.)

The primary object of statutory construction is to ascertain and effectuate the intent of the Legislature as shown by the whole law, the law existing before its passage, the changes made, and the apparent motive for making them. *State ex rel. Rogers v. Davis*, 230 Ind. 479, 104 N.E. 2d 382 (1952). Where a statute is ambiguous the courts will construe it so as to prevent absurdity, hardship, or injustice. *State v. Rice*, 235 Ind. 423, 134 N.E. 2d 219 (1956).

By amending the Act and deleting the six year experience requirement, the Legislature obviously intended that such requirement should no longer apply. If, however, it should be held that one who is a Highway Supervisor at the date of passage of the amendatory act, and who is subsequently reemployed, must continue to work in subsequent years and under subsequent appointments under conditions set out in the repealed law, then it would be possible that one would have to work under the provisions of the repealed law for five years, or until he acquired six years of experience. But the legislative intent was obviously to delete that requirement. Such a limited construction could result in the anomalous situation that two highway supervisors with the same amount of experience could be receiving different pay, because one was appointed before the amendment and one after. This would be an injustice and should be avoided unless it was the clear intent of the Legislature.

The difficulty here is in the use by the Legislature of the words "newly employed" and "replacement." In our fact

situation, the highway supervisor was reemployed, not newly employed, and one who is reemployed is not usually thought of as being a replacement of oneself. Thus there seems to be a conflict between the legislative intent and some of the words of the amendment. In such a case, the intent of the Legislature as ascertained from the Act as a whole will prevail over the strict literal meaning of any word or term used therein. *Zoercher v. Indiana Associated Tel. Corp.*, 211 Ind. 447, 7 N.E. 2d 282 (1937). This rule of construction is especially applicable where adherence to the letter of the law would lead to injustice, absurdity or contradictory provisions. *City of Indianapolis v. Evans*, 216 Ind. 555, 24 N.E. 2d 776 (1940). In adhering to this rule, words may be modified or rejected and others substituted. *Zoercher v. Indiana Associated Tel. Corp.*, *supra*.

In conformity with the above criteria, the amendment can be interpreted to read as applying to all county highway supervisors "newly employed or reemployed," as there is no evidence that the Legislature meant to make an arbitrary distinction between those newly employed and those newly reemployed. As we have seen, the legislative intent was to do away with a distinction previously existing, rather than to establish a new and meaningless distinction.

For the foregoing reasons, it is my opinion that the County Commissioners are not barred from paying such a reemployed Highway Supervisor more than \$5,000.00.