

OPINION 9

maternity hospital as defined by Acts 1909, ch. 154, § 2, the same being Burns IND. STAT. ANN., § 52-515.

OFFICIAL OPINION NO. 9

May 18, 1966

AUDITOR OF STATE—Payment of Salaries to Members of the General Assembly—Salary Payable to One Who Resigns Prior to Expiration of Term.

Opinion Requested by Hon. Mark L. France, Auditor of State of Indiana.

This is in reply to your letter which reads as follows:

“The Board of Finance would like to obtain an Official Opinion concerning a claim submitted by Mr. Donald Foltz for his remaining salary for the 1961-62 legislative session.

“He accepted an appointment in the Welsh Administration after the close of the legislative session in 1961 and therefore, was asked to, and did resign as a member of the Legislature in March of that year. Mr. Foltz was paid for the year 1961 in the amount of \$1,800.00.

“Does Mr. Foltz have a legal claim for his 1962 salary?”

You later indicated that Mr. Foltz's salary as a member of the General Assembly payable subsequent to his March, 1961, resignation is the salary to which your question is addressed. This opinion is therefore confined to the question submitted

concerning Mr. Foltz's legal right to collect the salary payable in 1962 to members of the General Assembly.

The first question to be considered is whether statutes providing salaries for General Assembly members contain the answer to your question.

The present salary for members of the General Assembly is provided in Acts 1955, ch. 65, § 1, as amended, as found in Burns IND. STAT. ANN., § 34-201f, which reads as follows:

“From and after November 7, 1956, the salary of the members of the general assembly shall be eighteen hundred dollars annually. The salary shall be paid in the following manner:

“(1) In odd-numbered years, nine hundred dollars shall be paid on the fifteenth day of January, and nine hundred dollars shall be paid on the fifteenth day of February; and

“(2) In even-numbered years, four hundred fifty dollars shall be paid on January 15th, April 15th, July 15th and October 15th.”

The Supreme Court had previously declared, under a 1947 statute identical in effect except for the dollar amounts of salaries, Acts 1947, ch. 2, that a legislator who resigned during his term would not be entitled to recover the remainder of the salary payable to him after the date of his resignation, and that “equity and good conscience should require that he return to the State the amount which he was paid for the time beyond his voluntary resignation. . . .” *State ex rel. Black v. Burch*, 226 Ind. 445, 490, 80 N.E. 2d 294 (Reh. Den.), 81 N.E. 2d 850, 851 (1948).

In 1953, a special statute, Acts 1953, ch. 102, § 1, formerly found in Burns IND. STAT. ANN., § 34-201d, added § 3 to the 1947 salary statute then in effect. That section read as follows:

“. . . In the event of the death or resignation of any member of the General Assembly between periods of payments herein, the compensation already received

OPINION 9

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." (Emphasis added.)

Acts 1955, ch. 65, § 1a, as added by Acts 1957, ch. 245, § 1, as amended by Acts 1963 (Spec. Sess.), ch. 25, § 2, Burns § 34-201i, 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."

The 1963 amendment deleted a provision forbidding extra payment for special sessions, but neither the original statute nor the 1963 amendment repealed Burns § 34-201d, which was therefore in effect in 1961 and 1962.

The language of Burns § 34-201i 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.

However, Burns § 34-201d, *supra*, applied particularly to salaries of legislators who had resigned or died prior to the expiration of their terms, and prohibited further payment of such salary after a legislator's death or resignation. If there is a conflict between a general and a special law in their application to a particular subject matter, the special law will be held to prevail. *Grether v. Indiana State Bd. of Dental Examiners*, 239 Ind. 619, 623, 159 N.E. 2d 131, 133, 134 (1959).

Therefore, the payment of Mr. Foltz's 1962 salary as a member of the General Assembly subsequent to his 1961 resignation was prohibited by Burns § 34-201d, *supra*.

1966 O. A. G.

Since your question must be answered in the negative under this statute, it is unnecessary to consider any further questions.

On the basis of the above authority, it is my opinion that Mr. Foltz is not entitled to the salary payable in 1962 to a member of the General Assembly.

OFFICIAL OPINION NO. 10

May 27, 1966

INDIANA SESQUICENTENNIAL COMMISSION — Expenditure of Public Funds for County Historical Society Sesquicentennial Celebration—Predominance of Historical Theme—Expenditure of Monies Privately Contributed to Society.

Opinion Requested by Mr. Carl A. Zenor, Indiana Sesquicentennial Commission.

This office has received your recent letter requesting an Opinion as to whether Hancock County may make county funds available to help defray the cost of that county's sesquicentennial celebration. We have been advised that an appropriation to the County Historical Society has been proposed and that the specific question is whether the society may use the appropriation to finance the celebration.

A rule applicable to all appropriations is that the public funds can be expended only for public purposes. 1953 O.A.G. No. 12, pp. 44, 45. Exactly what constitutes a public purpose cannot be defined with precision. *State ex rel. Jackson v. Middleton*, 215 Ind. 219, 230, 19 N.E. 2d 470, 475 (1939). In *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 98 N.E. 2d 835 (1951), the Ohio Supreme Court considered that ques-