

OFFICIAL OPINION NO. 39

September 5, 1963

Hon. William E. Wilson  
State Superintendent of Public Instruction  
227 State House  
Indianapolis, Indiana

Dear Mr. Wilson:

Your request of July 23, 1963, for an Official Opinion on the question and facts contained in an accompanying letter from Mr. Severin H. Schurger has been received and, which letter reads, in part, as follows:

“QUESTION: Did the North Adams Community School Corporation Board of Trustees ‘come into being’ on the 1st day of July 1962 by and in every respect, save as to said restraining order, or, by reason of said restraining order and temporary injunction, did said Board of Trustees of North Adams Community School Corporation, come into being on July 3, 1963, the date of the dissolution of said temporary injunction?”

“FURTHER: Under the comprehensive plan, (for North Adams Community School Corporation), the fifth member of the Board of Trustees was appointed by the remaining Board. The remaining Board Members did, in June 1962 (and more than 20 days prior to July 1, 1962), appoint said fifth member for a period of one year as in said comprehensive plan set out. Since said Board was prohibited from acting during the period of the restraining order and temporary injunction, did the restraining order and temporary injunction toll the time of said North Adams Community School Corporation from ‘coming into being’ until the dissolution thereof?”

Acts 1959, Ch. 202, Sec. 7, as amended, referred to in your letter, is found in Burns’ (1963 Supp.), Section 28-6118, and, in part, reads as follows:

“If a majority of the votes cast at such special election on such question are in favor of the formation of

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such corporation, a community school corporation shall be created and come into being on July 1 or January 1 following the date of publication of said notice, whichever date is the earlier \* \* \*”

The date of publication refers to the notice for the special election. Since the special election was held on May 8, 1962, and resulted in an affirmative majority vote, said corporation came “into being” on July 1, 1962, unless prevented by the restraining order, since the above provisions of the statute as to the effective date were in existence at the time of such election. The temporary restraining order was issued on June 30, 1962.

First of all everything that had to be done to bring the school corporation into being under the statute had been done by the time the injunction was issued, except the passage of time. You cannot enjoin the passage of time so in order for the injunction to have affected the “coming into being” of the school corporation it would have had to enjoin the election, which was an accomplished fact. It is well settled that an injunction will not be granted where the thing sought to be enjoined has already been accomplished.

Standard Mercantile Co. v. Strong (1934), 207 Ind. 55, 191 N. E. 140;

Cole v. Duke (1881), 79 Ind. 107;

McGoldrick v. Slevin (1873), 43 Ind. 522.

Secondly, it is well settled that an injunction is an action *in personam* and not *in rem*.

Armour & Co. v. Miller, Judge (1937), 91 F. 2d 521;

Lueine v. Pennsylvania Alcohol Permit Board, *et al.* (1931), 305 Pa. 162, 157 A. 470;

Town of Lincolnville v. Perry (1954), 150 Me. 113, 104 A. 2d 884, 887;

25 Am. Jur., Injunctions, §§ 4, 186;

43 C. J. S. Injunctions § 165, p. 779.

During the time the injunction was in force it thus only restrained *persons* from performing certain acts and did not halt the operation of the law.

From the foregoing I am of the opinion that the temporary injunction did not prevent said school corporation from "coming into being" on July 1, 1962.

In answer to your second question in the case of *State ex rel. Wilson v. Wells* (1895), 144 Ind. 231, at page 237, the court said:

"\* \* \* The term of an office is a definite time, relating to the office and not the officer, and will not be enlarged or varied by changing the date when a person shall be elected to fill such office."

In the case of *Russell v. The State of Indiana ex rel. Crowder* (1909), 171 Ind. 623, 87 N. E. 13, in holding that an elected county auditor did not have his term extended from March 28 to July 5 by virtue of the fact the incumbent in office refused to surrender the position of the office until July 5, the court on page 628 of the opinion said:

"The term of office refers to the office itself, and not to the incumbent, and is 'not enlarged or varied by changing the date when a person shall be elected to fill such office.' *State, ex rel., v. Wells* (1896), 144 Ind. 231, 237."

And again on pages 630 and 631 continued:

"\* \* \* It appears by appellant's first paragraph of answer that Lang voluntarily surrendered the office to appellant July 5, 1904, and the court finds that he took upon himself the duties of the office from that date. We think that in doing so appellant was simply filling his term. The fact that he did not obtain possession until July 5, 1904, could make no difference in his term \* \* \*"

Under the authorities cited in answer to your first question, it is clear the term of office in question, provided for the reorganization plans for the operation of said school corpora-

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tion, came "into being" at the same time the school corporation was so created. An appointment was made for such person to hold such one year term of office prior to the time the restraining order was so issued, all as contemplated by the reorganization plan. Such appointment was, therefore, legal and it was for a term of office to begin July 1, 1962 and expire July 1, 1963. Under the last referred to authorities, the fact the appointed member was unable to occupy such office would not result in an extension of such term of office. The temporary injunction, therefore, would not toll the time of the North Adams Community School Corporation coming "into being" or extend the one year term of office of the school board member appointed to take office July 1, 1962.

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### OFFICIAL OPINION NO. 40

September 10, 1963

Mr. T. Michael Smith, Administrator  
Inheritance Tax Division  
Indiana Department of State Revenue  
100 North Senate Avenue  
Indianapolis 4, Indiana

Dear Mr. Smith:

This is in reply to your letter requesting an Official Opinion on the following question:

"Will you please advise me in the form of an Official Opinion as to the effective date of Senate Enrolled Act 268, Chapter 265, Acts of 1963 and as to whether it is retroactive to the estates of decedents dying before the effective date."

An analysis of the above-quoted inquiry reveals that it actually consists of two questions, to-wit:

- (1) What is the effective date of Senate Enrolled Act 268, being the Acts of 1963, Ch. 265?
- (2) What is the purpose and effect of said act as to whether the Legislature intended that the same be applied retroactively to transfers caused by