

OPINION 42

In answer to your last two questions, it is my opinion that any foreign insurance company, now attempting to be admitted, must meet the requirements of Burns' 39-6303, *supra*, regardless of the date the company was organized.

OFFICIAL OPINION NO. 42

September 17, 1963

Hon. William Christy
State Senator
7106 Grand Avenue
Hammond, Indiana

Dear Senator Christy:

This is in reply to your request for an Official Opinion in which you ask if the provisions of the Acts of 1959, Ch. 107, Sec. 6, as found in Burns' (1962 Supp.), Section 48-1233, apply to the "employees of the Judicial Branch of a City Government?"

The section to which you refer added a new section, numbered 20(a), to the Acts of 1933, Ch. 233, as amended. The 1933 Act concerns the classification and government of civil cities. Section 6 of the Acts of 1959, *supra*, has two subsections, the first of which concerns the fixing of salaries for elected city officials. Subsection (b), as found in Burns' (1962 Supp.), Section 48-1233, concerns the salaries of appointive officers, deputies and employees of the city and reads as follows:

"(b) The salaries of each and every appointive officer, employee, deputy, assistant and departmental and institutional head shall be fixed by the mayor subject to the approval of the common council: Provided, That the provisions of this subsection shall not apply to the manner of fixing and the amount of compensation paid by any city to the members of the police and fire departments. The common council may reduce but in no event is the common council authorized to increase any salary so fixed by the mayor. All such

salaries shall be fixed on or before the first day of August of each year for the next succeeding fiscal year and shall not be increased or reduced during such fiscal year. Wherein the provisions of this subsection are in conflict with the provisions of Section 10 of Chapter 233 of the Acts of the Indiana General Assembly of 1933, as the same has been amended, such provisions shall be deemed to amend the provisions of Section 10."

In the above subsection, reference is made to the Acts of 1933, Ch. 233, Sec. 10, as amended, and as found in Burns' (1950 Repl.), Section 48-1222. Burns' 48-1233, subsection (b), *supra*, modifies the provisions of Burns' 48-1222, *supra*, only where the provisions of the sections conflict. Both sections deal with fixing the salaries of city employees while only Burns' 48-1222, *supra*, contains additional provisions for vesting broad appointive powers in the office of the mayor. The major difference between these sections is that, with respect to salaries, there are fewer appointive officers, deputies and employees specifically excepted from the provisions of Burns' 48-1233, subsection (b), *supra*. For a detailed discussion of the effect of Burns' 48-1233, subsection (b), *supra*, I refer you to the following opinions of my office:

1959 O. A. G., page 328, No. 64;

1960 O. A. G., page 18, No. 2.

Research has disclosed that our Supreme Court has answered a question very similar to the one you have presented. In the case of State *ex rel.* Bailey v. Webb (1939), 215 Ind. 609, 21 N. E. (2d) 421, an action was brought by the relator Bailey against the defendant Webb for possession of the position of city court bailiff in the City of Gary. The conflict over the position arose when both the mayor and the judge of the city court undertook to appoint a bailiff. The Supreme Court considered all of the provisions of the Acts of 1933, Ch. 233, *supra*, and particularly Section 10 thereof, as amended by Acts of 1935, Ch. 307, Sec. 2. In holding that Burns' 48-1222, *supra*, did not apply to appointive positions in the judicial branch of the city government, the court stated as follows at page 611 of the Indiana Reports:

“A consideration of both of the acts relied upon by appellant, in their entirety, discloses a legislative intention to make the mayor, who is the chief executive of the city, responsible for, and to give him control over, the administrative and executive departments of the city. There is no expression in the acts indicating a desire or intention to put court officers under the control of the mayor, nor is such an intention consistent with our legislative history. The acts must be construed in the light of their apparent purpose, and statutes cannot be treated as repealed by implication, as in conflict with the acts in question, unless they are clearly irreconcilable. The mayor is the chief executive officer, is responsible for the functioning of the executive and administrative departments, and the purpose of the law was to place it within his power to control the appointive officers in these departments. The legislative reason for these enactments in respect to such officers is apparent, but there is no reasonable basis for concluding that the Legislature believed that the executive powers should be extended to control over court officers who serve the courts only and have nothing to do with those departments of the government in which the mayor functions as an officer. The very purpose of centering responsibility in the mayor, the head of the executive and administrative branches of the government, would seem to indicate the desirability of resting the responsibility of court appointments in the city judge, who is the head of the judicial branch of the city government, if the court is in fact a part of the city government.”

I have been unable to discover any change in the provisions of the law in question applicable to this situation since the ruling in the above case. This would indicate to me that the Legislature does not intend that judicial positions be included within the purview of either Burns' 48-1222, *supra*, or Burns' 48-1233, subsection (b), *supra*. The proposition that such sections encompass only positions with the executive and administrative branches of the city has been recognized in the following authorities:

1963 O. A. G.

City of Lafayette v. Keen (1943), 113 Ind. App. 553,
48 N. E. (2d) 63;

1959 O. A. G., page 328, No. 64, *supra*;

1960 O. A. G., page 18, No. 2, *supra*.

Therefore, in answer to your question, it is my opinion that the provisions of Burns' 48-1233, subsection (b), *supra*, apply only to appointive officers, deputies and employees within the executive and administrative branches of the city and do not control salaries of employees within the judicial branch of the city performing solely judicial activities. However, this opinion should not be construed as implying that a city judge has the authority to employ personnel without specific statutory authority.

OFFICIAL OPINION NO. 43

September 18, 1963

Hon. Wilfrid J. Ullrich
State Senator
403 Main Street
Aurora, Indiana

Dear Senator Ullrich:

In your letter of September 9, 1963, you request an Official Opinion as to whether or not under Chapter 355 of the Acts of 1963, the library board of a public library (not a school library) could grant a vacation with pay, and paid holidays, to hourly employees of such public library.

Acts 1963, Ch. 355, Sec. 1, as found in Burns' (1963 Supp.), Section 49-4101, provides:

"Retroactive to January 1, 1963, employees of the state of Indiana who are compensated for their services on an hourly basis may be granted a vacation with pay and paid holidays by executive order of the governor, and employees of the political subdivisions of the state may be granted a vacation with pay and paid