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remonstrance is sustained, then such town is excepted from inclusion in the town-township library district. Furthermore, if the proposal for merger is not submitted to the board of town trustees of such incorporated town, then it is automatically excluded from such merger.

OFFICIAL OPINION NO. 69

December 6, 1962

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in answer to your letter of November 21, 1962, wherein you request an Official Opinion from me.

Your specific questions are stated as follows:

“1. Does Chapter 237 of the Acts of 1961 limit the vacation time of hourly paid county employees to two weeks?

“2. Does Chapter 237 of the Acts of 1961 limit the vacation time of salaried county employees to two weeks?”

Your questions require a consideration of the Acts of 1961, Ch. 237, Secs. 1 and 2 as found in Burns' (1962 Supp.), Sections 49-4101 and 49-4102 respectively. These sections read as follows:

“SECTION 1. On and after January 1, employees of the State of Indiana who are compensated for their services on an hourly basis may be granted a vacation with pay, as hereinafter provided, by executive order of the governor, and employees of the political subdivisions of the state may be granted a vacation with pay, as hereinafter provided, by ordinance of the common council of a city, board of county commissioners of a county, town board of a town, or advisory board of a township.”

“SEC. 2. Any such employee may be granted one week of vacation with pay in the current calendar year if, during the preceding calendar year, he performed services for the State of Indiana or a political subdivision thereof, on an average of thirty-five hours per week during at least fifty-two weeks of employment, and two weeks’ vacation with pay in the current calendar year if, during the preceding two calendar years he performed services, for the State of Indiana or a political subdivision thereof, on an average of thirty-five hours per week during one hundred and four weeks of employment. A week of vacation with pay shall be deemed a week of employment of forty hours.”

It will be noted that your first question pertains solely to “vacation time of *hourly paid* county employees” and your second question solely to “vacation time of *salaried* county employees.” (Our emphasis)

Your questions will be considered in inverse order, with our attention first directed to question No. 2 appertaining to “*salaried* county employees.” The Acts of 1961, Ch. 237, *supra*, shows the title of H. 291, to be as follows:

“AN ACT concerning vacation pay for hourly paid public employees.”

The Indiana Constitution, Art. 4, Sec. 19, reads as follows:

“*Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title.* But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.” (Our emphasis)

The Supreme Court in the case of *Crabbs v. State* (1923), 193 Ind. 248, 255, 139 N. E. 180, stated:

“* * * The purpose of Art. 4, Sec. 19, of the Constitution of Indiana was to prevent surprise or fraud in the legislature by means of a provision or provisions in a bill of which the title gave no information and to apprise the people of the subject of legislation under consideration.”

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An examination of the entire act shows that neither the title thereto nor the various sections of the act include any reference whatever to *salaried* employees. That I was cognizant of this fact, when I examined House Enrolled Act No. 291, is shown in my letter of March 8, 1961, to the Governor, wherein I said:

“This is an original Act *pertaining to vacations and vacation pay for hourly paid employees* of the State of Indiana and its political subdivision. Vacations are granted pursuant to executive order of the Governor or ordinances of the political subdivision and the Act establishes standards of administration.” (Our emphasis)

Therefore, it is my opinion, that inasmuch as the title to the Acts of 1961, Ch. 237, *supra*, embraces but one subject, namely, “vacation pay for hourly paid public employees,” said act is not applicable to your question No. 2, which relates to “vacation time of salaried county employees.”

Let us now consider your question No. 1, which reads as follows:

“1. Does Chapter 237 of the Acts of 1961 limit the vacation time of hourly paid county employees to two weeks?”

The import of this question, as shown more fully by the correspondence accompanying your request, is whether the Acts of 1961, Ch. 237, *supra*, establishes minimums instead of maximums that can be authorized as vacation pay for employees coming within the above classification.

The 1961 Act is an original act, which establishes standards of administration whereby hourly paid public employees may qualify for vacation time with pay. The act is the first and only statutory enactment, in Indiana, to specifically provide for payment of vacation time to hourly paid public employees and to provide a specific formula by means of which such vacation credit can be uniformly determined for public employees in the above classification.

Your question requires a consideration of whether the method of computation of vacation pay set forth in Burns'

49-4102, *supra*, provides a minimum or maximum of allowable credits. The answer is dependent upon a determination of the legislative intent relative to said act. Particular attention is invited to the provisions of Section 1 of said act, as found in Burns' 49-4101, *supra*, wherein it is stated such employees may be granted vacation time with pay "as hereinafter provided." (Our emphasis) Immediately thereafter, Section 2 of the act as found in Burns' 49-4102, *supra*, establishes the standards or basis for computing the amount of vacation with pay which employers, such as a board of county commissioners, may grant, by ordinance, to such hourly paid employees.

The Supreme Court in *State ex rel. Roberts v. Graham, Trustee* (1952), 231 Ind. 680, 686, 110 N. E. (2d) 855, stated:

"Courts interpret statutes for the purpose of ascertaining legislative intent. *Zoercher v. Indiana Associated Telephone Corp.* (1937), 211 Ind. 447, 7 N. E. 2d 282; 50 Am. Jur., Statutes, 200. Such intent must be determined primarily from the language of the statute itself, 50 Am. Jur. Statutes, 210, which language must be so reasonably and fairly interpreted as to give it efficient operation and to give effect, if possible, to the expressed intent of the legislature. *State v. Griffin* (1948), 226 Ind. 279, 79 N. E. 2d 537."

In my opinion, the words "as hereinafter provided," as used in Burns' 49-4101, *supra*, means as provided in the remaining sections of Chapter 237, Acts of 1961, *supra*. Therefore the above quoted phrase constitutes a limitation on the amount of vacation, with pay, which political subdivisions may grant to hourly paid public employees.

The instant case, dealing with an original act wherein specific standards of qualifications are enumerated, makes appropriate the use of the maxim *expressio unius est exclusio alterius* as an aid in seeking the legislative intent. In the case of *Shupe v. Bell et al.* (1956), 127 Ind. App. 292, 298, 141 N. E. 2d 351, it is said:

"* * * One of the oldest maxims of the law is, 'The express mention of one person or thing is the exclusion of another.' Wharton's Legal Maxims, p. 11. Otherwise stated, 'What is expressed makes what is silent to cease.' Coke Litt., 210a; *Woodford et al. v. Hamilton*

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et al. (1894), 139 Ind. 481, 39 N. E. 47. 'When the law is in the affirmative that a thing should be done by certain persons or in a certain manner, this affirmative manner contains a negative that it shall not be done by other persons or in another manner.' 26 Am. and Eng. Ency. Law, (2nd ed.), 605, and cases cited therein; *State ex rel. v. Home Brewing Co.* (1914), 182 Ind. 75, 95, 105 N. E. 909."

See also: 26 I. L. E. Statutes § 119, p. 327;

82 C. J. S. Statutes, § 333, p. 666;

Sutherland Statutory Construction, 3rd Ed., Vol. 3, Sec. 5822, p. 117.

In my 1961 O. A. G., pages 360, 363, No. 58, I cited the following statement taken from the case of *Poyser v. Stangland* (1952), 230 Ind. 685, 689, 106 N. E. (2d) 390, wherein the court said:

“ “The general rule is that nothing may be read into a statute which is not within the manifest intention of the legislature as gathered from the act itself, and that a statute should not be construed any more broadly or given any greater effect than its terms require. Where the language of the statute is clear in limiting its application to a particular class of cases and leaves no room for doubt as to the intention of the legislature, there is no authority to transcend or add to the statute which may not be enlarged, stretched, or expanded, or extended to cognate or related cases not falling within its provisions.” 50 Am. Jur. Statutes, § 229, pp. 214, 215, 216. See also 59 C. J. Statutes, § 569, pp. 953 to 958. *Bettenbrock v. Miller* (1916), 185 Ind. 600, 606, 112 N. E. 771.’ ”

In summary, the Acts of 1961, Ch. 237, *supra*, does enumerate specific standards for earning credit for vacation pay by hourly paid public employees; that the phrase “as hereinafter provided” places a limitation upon employing authorities to use the method of computation set forth in Acts of 1961, Ch. 237, *supra*, and the application of the legal maxim *expressio unius est exclusio alterius* indicates a legislative

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intent to limit vacation credit time for such employees to the standards set forth in the 1961 Act.

Therefore, in my opinion the answers to your questions are as follows:

Question 1. The Acts of 1961, Ch. 237, *supra*, does limit the vacation time of hourly paid county employees to a maximum of two weeks.

Question 2. The Acts of 1961, Ch. 237, *supra*, is not applicable to salaried county employees for the reason that this class of employees is not referred to in either the title or the body of said act.