

cer', that by that term it means a chief probation officer other than one dealing solely with juveniles under the Juvenile Court Act. * * *” (Our emphasis)

The salary provisions for probation officers dealing with juvenile probationers are set forth in the Acts of 1945, Ch. 347, Sec. 17, as amended and found in Burns' (1956 Repl.), Section 9-3117, and the Acts of 1945, Ch. 347, Sec. 17a, as added by the Acts of 1959, Ch. 275, Sec. 1, and found in Burns' (1959 Supp.), Section 9-3117b. The only reference in the above sections to a “chief adult probation officer” is found in Burns' 9-3117, *supra*, in the population range of not less than 100,000 nor more than 250,000 inhabitants, which reads, in part, as follows:

“* * * The salary of the chief probation officer, chief adult probation officer, and other probation officers shall hereafter be fixed by the judge of the court to which such officers are attached, within limits prescribed by the county council. * * *”

In view of the above it is my opinion that the fact that a chief adult probation officer has also been appointed to supervise juvenile probationers can be taken into consideration in determining the amount of salary he is to receive for *all* his work as a probation officer provided that this total does not exceed the maximum provided for a chief adult probation officer under Burns' 9-2214d and 9-2214k, *supra*.

OFFICIAL OPINION NO. 26

June 15, 1961

Honorable William E. Babincsak
State Representative
1856 South River Drive
Munster, Indiana

Dear Representative Babincsak:

You have requested my Official Opinion in regard to the following questions:

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"I would like an official opinion pertaining to the effect of city ordinances on contractors working on state highway projects within the corporate limits of cities and towns.

"1. Would it be necessary for a contractor to secure construction permits which might be required by city ordinances before starting highway construction within the corporate limits of the city?"

"2. Would plumbers and electricians employed by such contractors be required to obtain licenses in compliance with the city's ordinances requiring licensing of plumbers and electricians prior to work within the corporate limits of the city?"

All powers and duties in connection with the construction, reconstruction and maintenance of the state highway system are lodged in the State Highway Commission. The Acts of 1961, Ch. 201, Sec. 5, reads in part as follows:

"Powers, Responsibilities and Duties of Commission. The Highway Commission shall have the following powers, responsibilities and duties:

"1. To plan and supervise the administration and the conduct of the work of constructing, reconstructing, improving, maintaining and repairing the public highways and bridges of the State of Indiana."

This includes adoption of plans and specifications, approval of qualifications of the contractor, and acceptance of completed work.

It is provided by statute that the State Highway Commission may take over city streets as part of the State Highway system. The Acts of 1933, Ch. 18, Sec. 16, as found in Burns' (1949 Repl.), Section 36-116, reads in part as follows:

"If any state highway connects at the corporate limits of any city or of any town having a population of more than thirty-five hundred [3,500], as shown by the last preceding United States census, with an unimproved street of such city or town, the state highway commission may, in its discretion, improve the same as

a part of such state highway; and if any state highway connects at the corporate limits of any town having a population of not to exceed thirty-five hundred [3,500], as shown by the last preceding United States census, with an unimproved street of such town, the state highway commission shall select, mark and maintain such street until such time as it may improve the same as a part of such state highway and after such street shall have been improved as a part of a state highway, such street shall thereafter be maintained as a part of such state highway; and if any state highway connects at the corporate limits of any town having a population of not to exceed thirty-five hundred [3,500], as shown by the last preceding United States census, with an improved street of such town, the state highway commission shall select, mark and maintain the same as a part of such state highway. * * *”

Additional powers over streets within cities and towns were granted to the State Highway Commission by the Acts of 1937, Ch. 257, Secs. 2 to 9, inclusive, as amended. These sections are found in Burns' (1949 Repl.), Section 36-2902 *et seq.*, and specifically place the selection, maintenance and control of state highways within cities and towns in the State Highway Commission. Burns' Section 36-2902, *supra*, states in part:

“The state highway commission shall select the route of highways in the system of highways under its control through incorporated cities and towns in the state, and may from time to time change such routes as said commission may determine most convenient for public travel. From and after the 1st day of January, 1938, said commission, to the extent of the funds available for the purpose, shall maintain and, as it determines necessary and the funds required are available, may construct and improve the roadway of the streets, or any part thereof to such width as may be determined by the commission in all incorporated cities and towns in the state over which highways in such system are routed. As part of the construction work, said commission shall construct within the limits of any such

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street, the curbs and gutters, manholes, catch basins and the necessary construction work to make connections with existing drainage structures and facilities; and if any such existing drainage facilities are inadequate the city or town affected shall upon notice from said commission as hereinafter provided construct or improve at its own expense such connecting drainage facilities as the commission may determine as necessary to conform to the drainage facilities installed by the commission. * * *

A statute similar to that found in Burns' Section 36-116, *supra*, was construed by the Appellate Court of Indiana in the case of Gardner v. City of Covington (1927), 86 Ind. App. 229, 156 N. E. 830. The Court states, in part, on pages 235 and 236 as follows:

"Section 22, as amended in 1923, gives the State Highway Commission the absolute power to take over certain streets inside of cities and towns, and improve the same without consulting the authorities of the city or town. The local municipal corporation has nothing to say as to the character of the improvement to be made, and having no control over the improvement of streets which are taken over by the commission and made a part of the state highway system, and the exclusive control over the improvement of such streets being given to the commission, it is but reasonable to conclude that the legislature, when it relieved the cities and towns of the duty of maintaining such streets, and placed such duty on the commission, intended that the authority of the State Highway Commission should be exclusive of the city or town. It is quite apparent that the legislature did not intend that two different governmental organizations should have control over the same highway and be responsible for its safety. * * *"

The Supreme Court of Indiana, in a matter involving utility permits, in Winfield *et al.* v. Public Service Comm. (1911), 187 Ind. 53, 59, 118 N. E. 531, further discussed the power of the state over city streets and stated as follows:

"The streets and other highways of the city are, however, a part of the other and general highways of the

state and, as such and to the extent that the interests involved are not purely local to cities and incorporated towns, such power as a municipality has over them is granted to the municipality by the state, and may be modified or withdrawn by the state from the municipality, unless the state has waived its right to do so.

* * *”

It is, therefore, my opinion, in answer to your first question, that contractors working for the State Highway Commission on state highways within the corporate limits of cities or towns are not subject to ordinances which require construction permits to be acquired before work is done.

In regard to the second question, the power to determine the qualifications and technical ability of the employees of a contractor lies in the State Highway Commission. In addition to the above authorities cited, the Acts of 1937, Ch. 98, Sec. 4, as found in Burns' (1949 Repl.), Section 36-2925, provides as follows:

“For the purpose of carrying into effect the terms of this act and insuring to the state and public the award of all contracts to competent and responsible bidders, the commission shall be empowered to prepare and promulgate such rules and regulations not inconsistent with the terms of this act as it may deem proper. Such rules and regulations may cover the requirements of the commission with respect to equipment, past record and experience of applicant, personnel of organization, and such other matters as the commission may deem necessary to enable it to pass upon the qualification of applicants.”

The purposes of city ordinances regarding the licensing of plumbers and electricians is to protect the public by insuring that plumbing and electrical work will be done by qualified persons and when completed will be safe for the use and enjoyment of the public. The state has not legislated in the area of licensing plumbers and electricians, but has delegated this power to the counties, cities and towns. Nor has the State Highway Commission adopted any rules or regulations requir-

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ing the use of duly licensed electricians or plumbers as the Commission might do under Burns' 36-2925, *supra*.

It would be reasonable to conclude, as evidenced by the inaction of the state Legislature and the Commission, that the power thus delegated and exercised by the counties, cities and towns in the enacting of ordinances requiring licensing of electricians and plumbers, was intended to be given full force and effect. It would therefore be my opinion that, until the state acts through the Legislature or the Commission acting through its power to make rules and regulations expresses otherwise, plumbers and electricians employed by contractors engaged in highway construction within the corporate limits of cities and towns would be controlled by valid city ordinances applicable thereto.

OFFICIAL OPINION NO. 27

June 16, 1961

Honorable John J. Barton, Superintendent
Indiana State Police
Indiana State Office Building
100 N. Senate Avenue
Indianapolis, Indiana

Dear Superintendent Barton:

This is in reply to your request for an Official Opinion, which reads in part as follows:

“House Enrolled Act No. 2 of the 92nd General Assembly of Indiana, the same being the General Appropriation Act, at pages 64 and 65, provides for appropriations for the operation of the State Police Retirement Fund. Included in the said General Appropriation Act at page 65 is the following language:

“PROVIDED, That on and after July 1, 1961 the Board of Trustees of the Public Employees Retirement Fund shall act as the trustee for the State Police Pension and Benefit Funds in lieu of the Treasurer of State or either one or more