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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

corporate trustees as specified in (Burns' 47-835 (f)) Acts of 1957, Chapter 142, Section 1(f). Accounting records shall be kept by the Secretary of the Public Employees Retirement Fund. All benefits that accrue to members after July 1, 1961 shall be paid by warrant drawn on the Treasurer of State by the Auditor of State on basis of claims filed and approved by the Trustee of the State Police Pension and Benefit Funds. PROVIDED, FURTHER, That the portion of the appropriation which remains as of June 30, in any fiscal year shall become a part of the respective fund to which the appropriation was made.'

"1. Is the proviso, quoted above, or any part of it, in violation of the Constitution of Indiana, with particular reference to Section 19 of Article 4, and Section 24 of Article 1?

"2. If the proviso, or any part of it, is not in violation of the Constitution, what will be its effect on those portions of the Indiana State Police Pension Act, (Burns', 1952 Repl., §§ 47-835—47-845, as amended) which are in conflict with said proviso?

"3. If the proviso, or any part of it, is not in violation of the Constitution, what will be its effect on those portions of the Pension Trust Agreement, adopted pursuant to the Pension Act, which are in conflict with said proviso?"

The Indiana Department of State Police was granted the authority by the provisions of the Acts of 1937, Chapter 54, as since amended and now found in Burns' (1952 Repl., 1960 Supp.), Section 47-835 *et seq.*, to establish and operate an actuarially sound pension trust for eligible employees. The term "pension trust" is defined by Burns' 47-835 (h), *supra*, as follows:

"(h) The term 'pension trust' means the agreement between the department and the trustee under the terms of which an actuarially sound retirement pension

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plan is established and operated for the exclusive benefit of the employee beneficiaries subject to the following limitations: * * *

Burns' 47-835 (f), *supra*, provides that the term "trustee" shall mean the trustee of the pension trust who may be either one or more corporate trustees or the Treasurer of State serving under bond.

Pursuant to the statutory authority given, the Department of State Police of Indiana and the Treasurer of State of Indiana entered into a written Pension Trust Agreement effective July 1, 1937. This Agreement, along with its companion supplemental agreement, was considered by Attorney General Jackson in 1937 O. A. G., page 309 and found to be valid and legal and drawn pursuant to Chapter 54 of the Acts of 1937. That Opinion states in part on page 309:

"The agreement * * * defines the rights, duties and liabilities of all parties concerned, among whom are the policemen, their beneficiaries, the trustee, the department and the pension engineers."

The Pension Trust Agreement provides on page 21:

"The Trust arising under the operation hereof shall constitute a trust under the laws of the State of Indiana, and this Agreement shall be construed by the applicable laws of Indiana."

Provision is made in Item 10 of the Agreement on page 3 that any eligible employee may become an Employee Beneficiary by signing and delivering an "Application and Authorization (Form #51a)," which provides, among other things, that he agrees that his rights in and to the Pension Fund and Benefit Fund established pursuant to the Trust and Supplemental Agreements shall be determined by and limited to the rights set forth in said Agreements and any duly adopted amendment thereto, and that he is bound by their terms in the same manner and to the same effect as if he were a party thereto.

Item 28 of the Pension Trust Agreement, on page 22, provides for changes to the Agreement, and reads as follows:

“28. At any time after January 1, 1954, the Trust Agreement may be changed, altered, or amended in any particular by the Department with the consent of the Engineers, and a majority of all the Employee Beneficiaries, except that if such change, alteration or amendment shall modify or change the relative rights under the respective pension classification, the consent shall be required thereto of a majority of the Employee Beneficiaries of each pension classification so affected.

“A copy of any amendment approved after January 1, 1954, shall be filed with the Trustee and the Engineers.”

The proviso from the 1961 General Appropriation Act, set out in your letter above, purports to change the trustee of the State Police Pension and Benefit Funds, shift certain duties, and also limit the method of payment of benefits accruing to members after July 1, 1961. Your first question asks whether this proviso is in violation of the Constitution, particularly Article 4, Section 19 and Article 1, Section 24.

The Constitution of the State of Indiana, Article 4, Section 19, provides:

“Every act, amendatory act or amendment of a code 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, amendatory act or amendment of a code, which shall not be expressed in the title, such act, amendatory act or amendment of a code shall be void only as to so much thereof as shall not be expressed in the title. The requirements of this paragraph shall not apply to original enactments of codifications of laws.

“Every amendatory act and every amendment of a code shall identify the original act or code, as last amended, and the sections or subsections amended shall be set forth and published at full length. The identification required by this paragraph may be made by citation reference.”

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The second paragraph of Section 19, *supra*, has replaced former Section 21 of Article 4, and applies only where there is an attempt to revise by direct amendment an old act but does not apply to new and independent legislation. The proviso in question is not in amendatory form and does not purport to be an amendment and therefore the second paragraph of Section 19 does not apply to this situation. An independent statute, which has the effect of amending or modifying prior statutes because of being in conflict therewith, does not come within the purview of this section of the Constitution.

Wright-Bachman, Inc. v. Hodnett *et al.* (1956), 235 Ind. 307, 320, 133 N. E. (2d) 713;

The State v. Gerhardt (1896), 145 Ind. 439, 452, 44 N. E. 469;

1957 O. A. G., page 28, No. 9.

The Court stated in Home Owners' Loan Corp. v. Wise *et al.* (1939), 215 Ind. 445, 19 N. E. (2d) 737, at page 449:

“The 1931 act does not purport to amend any other act. It is a new, independent, and complete act within itself. It does not come within the terms of section 21, Article 4, of the state Constitution. That section only applied where there is an attempt to revise or amend an old act by mere reference to the title. If chapter 90 of the Acts of 1931 were amendatory of a former act, then the title should conform to section 21, Article 4, but since it is an independent act affording a complete procedure for foreclosure of mortgages thereafter executed, *even though the effect might be to amend the act of 1881*, nevertheless, it is not violative of that provision of the Constitution. * * *” (Our emphasis)

The first paragraph of Section 19 of Article 4 requires that every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title. It has been held numerous times by the Indiana courts that the title need not contain an index, or complete abstract of the contents of an act, but the title sufficiently expresses the subject if it gives such notice as reasonably to lead interested persons to inquire into the body of an act and if it expresses the general subject of the legislation.

DeHaven *et al.* v. Municipal City of South Bend (1937), 212 Ind. 194, 7 N. E. (2d) 184;

Draper v. Zebec *et al.* (1941), 219 Ind. 362, 37 N. E. (2d) 952, reh. den. 38 N. E. (2d) 995;

Home Owners' Loan Corp. v. Wise *et al.*, *supra.*

If a title expresses the general purpose of the act, everything contained in the body of the act which is germane to such purpose or properly connected therewith as a means of making the act effective to accomplish the purpose is covered by the title.

Wright-Bachman, Inc. v. Hodnett *et al.* (1956), 235 Ind. 307, 317, 133 N. E. (2d) 713.

The effect of a provision similar to the one here in question was considered in 1946 O. A. G., page 80, No. 26. The 1945 General Appropriation Act appropriated funds to build a hospital under a 1943 Act and further provided that the hospital trustees "shall not be restricted or bound by any recommendations of the commission first provided for in the act aforesaid (Acts 1943) but shall have the power and authority to make investigation and acquire any site in their judgment determined to be most practical * * *." The proviso was questioned as a violation of Article 4, Section 19. After citing numerous authorities on the matter of constitutionality of titles, the Opinion stated on page 84:

"It is not uncommon for the Legislature to attach limitations to an appropriation in a general appropriation act such as approval by the Governor or approval and allocation by the Governor. Since the limitations control the expenditure of funds appropriated they are considered as germane to the subject of the Act. It is difficult to see why a removal of a limitation on the expenditure, as in this case, is any less germane than the imposition of the same.

"Giving the title of the act as liberal construction in order to effectuate in so far as possible the legislative intent, I am of the opinion the language of the proviso is germane to the general subject matter of the Act."

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Other states have also recognized that the tying of legislative strings to appropriations of state funds for governmental purposes does not add a second object to an appropriation act which would render such an act unconstitutional under similar constitutional provisions. See: *Lewis v. State of Michigan & Military Establishment* (1958), 352 Mich. 422, 90 N. W. (2d) 856.

The general rule that substantive legislation may be amended by provisions in an appropriation act is recognized in 82 C. J. S. Statutes § 253, page 422. However, it is frequently pointed out that, although the power exists to change existing law even in an appropriation act, still such procedure is universally recognized as exceedingly bad legislative practice. See: *Tayloe v. Kjaer et al.* (1948), 84 App. D. C. 183, 171 F. (2d) 343.

The title of House Enrolled Act No. 2 of the 92nd General Assembly, which is Acts of 1961, Ch. 298, reads as follows:

“AN ACT making appropriations for the conduct of the State Government, its officers, boards, * * * funds, * * * placing certain limitations on and providing certain methods for expenditures, * * * establishing legislative policy pertaining to the administering of funds, and declaring an emergency.”

The appropriation act does not expressly profess to be amendatory of any statute. Its title indicates it to be a distinct and original enactment. While it is true that the body of the act refers to existing laws concerning the trustee of the State Police Pension and Benefit Funds, and may have a bearing upon the same, and may result in modifying or amending certain parts thereof by implication if not unconstitutional for other reasons, still, none of this is sufficient reason to hold such provisions unconstitutional under Article 4, Section 19. It is therefore my opinion that the proviso in question is within the scope of the title as expressed, that the title does not embrace more than one subject and the matters properly connected therewith, and that the quoted proviso does not violate the provisions of Article 4, Section 19.

Your first question also asks specifically if the proviso is in violation of the Indiana Constitution, Article 1, Section 24.

That section provides that no *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

As stated earlier, the proviso in question purports to substitute a new trustee, alter his duties, and limit the method of payment of benefits. The question therefore arises whether the relationships created under the State Police Pension and Benefit Funds are contractual in nature, and, if so, whether such changes and alterations would amount to the unconstitutional impairment of obligations of contract.

This is a situation where an express trust agreement has been entered into pursuant to authority granted by statute. The Agreement itself provides in Item 26, page 21 that it shall constitute a trust. In 1954 O. A. G., page 39, No. 12, the Attorney General stated, "I believe the Indiana State Police Pension and Benefit Fund is a public trust."

Attorney General Emmert had occasion to examine the Pension Trust Agreement and came to the following conclusions in 1944 O. A. G., page 75, No. 20:

"An examination of the entire contract shows that it establishes a trust for the benefit of the employee beneficiaries, with a vested interest in the beneficiaries in the assets of the pension fund, even in case said trust terminates.

"In 65 C. J., page 340, Section 112, the following rules are announced:

"As in the case of contracts, a trust agreement may be modified by consent of all the parties in interest. After an express trust has been perfectly and completely created, and the rights of the beneficiaries have thus become vested, in the absence of a power of modification reserved, the trust may not be changed, altered, or modified by the settlor without the consent of the beneficiaries, and although the trust is a voluntary one. * * * The right to amend a trust instrument may be exercised in conformity with the power reserved in the instrument. *Under general rules an effective revocation or modification should be made only by pursuing*

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the mode prescribed by the trust instrument.
* * * (Citing Cases.)

* * *

“Within the rule announced by the foregoing authorities it is my opinion that each of the employee beneficiaries of such pension fund has a vested interest therein, which can only be divested in accordance with the provisions of the trust agreement. * * *”

In 1945 O. A. G., page 309, No. 73, the Opinion immediately above was cited and the conclusion reaffirmed that members of the State Police Pension Fund had a vested interest in said fund.

Where a statute creates a pension or annuity fund and confers an elective right as to participation therein upon the individual participant, the participant's contributions are voluntary consideration and create vested contractual rights in the individual participants.

Raines v. Board of Trustees of Illinois State Teachers' Pension & Retirement Fund (1937), 365 Ill. 610, 7 N. E. (2d) 489;

Keegan v. Board of Trustees of Illinois Municipal Retirement Fund (1952), 412 Ill. 430, 107 N. E. (2d) 702;

McQuillin, The Law of Municipal Corporations (3d ed.), Vol. 3, § 12.144;

52 A. L. R. 2d 437.

The voluntary election to participate in the fund raises a contractual relation, the terms of which are ascertained by reference to the statute. Accordingly, the terms of such a contract cannot be altered as to those who have already accepted, even by a subsequent statute.

40 Am. Jur., Pensions § 17, page 974.

Membership under the State Police Pension Agreement is voluntary, therefore members making contributions to the fund have a vested contractual interest in the fund which

cannot be impaired by future legislation and the member divested of his rights by unilateral action of the Legislature except in a proper exercise of the police power of the state, or by an amendment which is not damaging or detrimental to the member. An examination of the proviso fails to disclose that it has any relation to promoting public order, safety, health, morals or the general welfare so as to make it a permissible exercise of the police power by the state.

In this instance an express trust has been created which raises contractual rights of the parties, and since the Trust Agreement provides an express method for changing its terms, such procedure must be followed for the change to be effective and not violative of the Constitution. Changes in the Trust Agreement were considered in 1942 O. A. G., page 69 and also in 1953 O. A. G., page 355, No. 70. The 1942 Opinion, in answer to the question as to what steps were necessary to change the Agreement, stated on page 70:

“An examination of the trust agreement now in force reveals the fact that provision is expressly made for an amendment to be made to such agreement which, if the procedure set out in the trust agreement is complied with, would be sufficient to effect any amendment which would have been legal under the Act if incorporated in the original agreement. * * *”

The procedure for change provided by the Agreement recognizes the right of the parties to change the terms by mutual consent, in which case no question of the impairment of the obligation of contract is involved. Furthermore, even though the member's interest is a vested contractual right, the Legislature may make some types of changes which are not detrimental or damaging to the member.

1958 O. A. G., page 240, No. 57.

It thus becomes necessary to determine whether the member would suffer any detriment or damage by the proposed changes, which would thereby make such changes unconstitutional.

The trustee of the State Police Pension Trust Agreement is given numerous duties to perform both by statute and by the

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terms of the Agreement itself. These include discretionary as well as ministerial duties. He is to receive and hold in trust, manage, invest and reinvest any moneys paid to him, which would include voluntary contributions from both the department and the members. Employees eligible for membership in the fund must execute authorizations for deductions to be made from wages and delivered to the trustee, all in accordance with the Agreements. The only trustee so authorized to hold such deductions is the Treasurer unless amendments are adopted in conformity with the procedure outlined in Item 28, page 22. No other change could bind the employee beneficiary.

The trustee is required to engage the pension engineers to assist and supervise the operation of the trust so that there will be no deterioration in the actuarial status and he is to pay them in a manner agreed upon by the trustee, the department, and the engineers. The trustee is required to make annual reports. The trustee, with the approval of the department, is authorized to invest, reinvest and manage the pension fund for the purchase or payment of specified items, subject to the limitations set out in Item 20 of the Agreement. He is empowered, with the approval of the engineers and the department, to exercise any rights, privileges, or options, including but not limited to the right to leave proceeds on deposit or in trust and rights of conversion or surrender under any life insurance contract, policy, or annuity forming a part of the Pension Fund. The department and the engineers are entitled to rely on statements made by the trustee as to the amount held and the amounts paid from the fund, provided such statements are signed by the Treasurer of State or by any person authorized by him to sign such statements.

Since the trustee manages the fund, holds the members' money, invests it, pays it out, and has many other duties which could affect the solvency of the fund, it is my opinion that the employee beneficiaries, having made contributions to the fund under the Agreement and having vested contractual interests in the fund, have the right to continue under the Agreement with the Treasurer as trustee, and a new trustee cannot be substituted except by agreement of the parties or by action of a court of competent jurisdiction. That portion of the appropriation act providing that 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 is therefor of no force and effect inasmuch as it results in the impairment of the obligation of contract.

It has already been pointed out that Item 28 on page 22 of the Trust Agreement provides the method to be used to change, alter or amend the Trust Agreement in any particular. No attempt has been made to follow that prescribed procedure in this instance. Under the rule quoted earlier from Corpus Juris in 1944 O. A. G., page 75, No. 200, such a trust cannot be changed, altered or modified except by pursuing the mode prescribed by the trust instrument. Therefore the legislation which attempts to alter or change the trust instrument by a procedure other than that prescribed by the instrument itself is of no force and effect to the extent that it alters or modifies the Trust Agreement.

The second sentence of the provision on page 65 of the appropriation act provides that accounting records shall be kept by the Secretary of the Public Employees Retirement Fund. This was undoubtedly intended as an aid to the Board of that Fund in its capacity as trustee. Inasmuch as the Treasurer of State is still entrusted with the duties as trustee of the State Police funds, there is no apparent reason why such records should now be kept by the Secretary of the Public Employees Retirement Fund. It should be pointed out that Item 24 of the Trust Agreement, on page 18, provides that the Department of State Police shall keep complete records of the amounts paid from the wages of each employee beneficiary into the Pension Fund and complete employment records of employee beneficiaries. The trustee is to keep records as to the amount held and the amounts paid from the Pension Fund to any person whomsoever.

The proviso under consideration in the 1961 appropriation act also provides that all benefits that accrue to members after July 1, 1961, shall be paid by warrant drawn on the Treasurer of State by the Auditor of State on basis of claims filed and approved by the trustee of the State Police Pension and Benefit Funds. As has been pointed out above, the employee beneficiaries do have vested contractual rights in the fund. Each employee beneficiary is entitled to receive what he bargained for. This would include the right to "receive a life-long

monthly income in the proper amount of his pension.” [Burns’ 47-835 (h) (7), *supra*.] The statutes providing for the creation of the Trust Agreement do not specify how such income payments are to be made. The Trust Agreement appears to provide alternative methods of payment—either from an annuity payable to the employee beneficiary, purchased by the trustee from an authorized insurance company, or by monthly payments from the trustee direct to the retiree. Thus the employee beneficiary has no vested right to a payment made by one particular method, but payment by either method would be within the terms and conditions of the Trust Agreement and the employee beneficiary’s contract. Furthermore, there would not appear to be any conflict between the method for payment provided by the Agreement and the restriction placed upon the appropriation for that purpose. The appropriation act does not attempt to alter or change the terms of the Trust Agreement itself regarding benefit payments nor to take away a pension already earned and vested, nor to diminish or increase the amount of benefits. It merely restricts the manner in which state funds appropriated by the 1961 Act may be expended, and this restriction is in conformity with one procedure provided by the Agreement. Thus, benefits due members can be paid by state warrant without impairing any obligation of any contract entered into under statute, Trust Agreement, and members’ “Application and Authorization (Form #51a).” These appropriated funds can be used to make benefit payments direct to the employee beneficiary only on a state warrant. This restriction would not necessarily prevent the fund from paying out moneys it had available from sources other than the 1961 appropriation to purchase annuities from insurance companies for retired employee beneficiaries. Only the sums appropriated by the 1961 Act are so restricted, and such restriction applies only to benefits that accrue to members after July 1, 1961. Benefits which accrued prior to July 1, and benefits payable to persons other than members of the fund, are not so restricted. It is therefore my opinion that the provision in the appropriation act regarding payments by warrants of benefits that accrue to members after July 1, 1961, does not violate any contractual rights under the Trust Agreement nor does it impair any obligation of contract within the meaning of the Indiana Constitution, Article 1, Section 24.

Your second and third questions ask what the effect will be of the valid portions of the proviso in question upon those portions of the Indiana State Police Pension Act and the Pension Trust Agreement which are in conflict with said proviso. As I pointed out earlier, I do not believe that there is any conflict between the provisions of the act, the Agreement, and the effective provisions in the appropriation act proviso under consideration. The only immediate effect will be that money appropriated by the 1961 Act to pay benefits that accrue to members after July 1, 1961, can only be expended by way of a warrant drawn on the Treasurer of State by the Auditor, and such appropriated funds cannot be expended for those particular benefits in any other way during the life of the appropriation. This restriction does not render ineffective the Trust Agreement provisions regarding payment of benefits to members by means of annuities purchased from approved companies if funds other than those appropriated by the 1961 Act are available for that use.

By way of summary and in reply to your specific questions, it is my opinion that:

1. The proviso under consideration is not in violation of the Indiana Constitution, Article 4, Section 19. The title does not embrace more than one subject, and all the matters contained in the proviso are within the scope of the title and germane thereto.

2. The portion of the proviso which states that all benefits that accrue to members after July 1, 1961, shall be paid by state warrant does not violate any constitutional provision.

3. The portion of the proviso which states that 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 is of no force and effect inasmuch as it purports to alter the terms of the legally constituted Trust Agreement without following the procedure prescribed in that instrument, and also impairs the obligation of contract, materially affecting the contractual rights and privileges of the employee beneficiaries.

4. Those parts of the proviso which have been determined to be valid and constitutional are not in conflict with any

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portions of the Indiana State Police Pension Act and the Pension Trust Agreement, and therefore all may be carried out in harmony.

OFFICIAL OPINION NO. 28

June 29, 1961

Mr. David Cohen, Chairman
Indiana State Highway Commission
11th Floor, State Office Building
Indianapolis 4, Indiana

Dear Mr. Cohen:

This is in response to your request for my Official Opinion as to whether Senate Enrolled Act No. 365 of the 92nd regular session of the General Assembly is applicable to the acquisition of right of way by the State Highway Commission. For the sake of brevity, that act will be referred to in this Opinion by its official designation as the Acts of 1961, Ch. 293 and as your request notes it provides that it shall be in full force and effect from and after July 1, 1961 pursuant to the emergency clause therein. The question as stated by your letter is as follows:

“The Land Acquisition Division of the State Highway Commission is in a quandary as to its responsibility under the above-named Act which was passed by this last Legislature and which will be effective July 1, 1961. The provisions of this Act, if applicable to the State Highway Commission, would make the work of the Land Acquisition Division more cumbersome, to say the least. In view of our status as an arm of the State Government, there would appear to be some question as to whether the provisions of this Act are applicable to the State Highway Commission.

“We hereby request an official opinion from you as to the applicability of the provisions of this Act to the acquisition of right of way by the Division of Land Acquisition.”