

OPINION 42

OFFICIAL OPINION NO. 42

September 6, 1961

Honorable James D. Allen
State Representative
Farmers-Citizens Bank Building
Salem, Indiana

Dear Representative Allen:

This will acknowledge receipt of your recent letter requesting my Official Opinion relative to Acts of 1961, Ch. 166.

In relation to this Act, your letter reads, in part, as follows:

“* * * This Chapter had to do with an increase in the salaries of some of the recorders of Indiana and the specific question involved was as to the effective date of this Act and when the salaries could be increased by reason of its passing.

* * *

“Would you be kind enough to furnish us your opinion as it relates solely to Chapter 166 of the Acts of 1961. I am informed that considerable confusion exists in the various counties of Indiana and it would appear that this specific question needs to be answered. * * *”

As you have indicated, Acts of 1961, Ch. 166, Sec. 1, as found in Burns' (1961 Supp.), Section 49-1061, amends the salary schedule for county recorders. Section 1 reads in its entirety as follows:

“SECTION 1. Acts of 1957, c. 319, s. 9 is amended to read as follows: Sec. 9. The salary for the county recorder shall be Class 1, \$12,500.00; Class 2, \$11,000.00; Class 3, \$9,500.00; Class 4, \$8,000.00; Class 5, \$7,500.00; Class 6, \$7,000.00; Class 7, \$6,000.00; Class 8, \$5,500.00; Class 9, \$5,000.00; Class 10, \$4,500.00; Class 11, \$4,000.00; Class 12, \$3,500.00; Class 13, \$3,000.00.”

Although Section 2 of this Act purports to repeal Chapter 72 of the Acts of 1957, dealing with the salaries of recorders in

1961 O. A. G.

counties having a population of four hundred thousand or more, Section 1 is only amendatory to Acts of 1957, Ch. 319, Sec. 9. There is nothing in either Section 1 or Section 2 of Chapter 166 of the Acts of 1961 from which I can infer a repeal of any other provision of the County Officers' Salary Law of 1957. Therefore, all of the provisions of the Acts of 1957, Ch. 319, remain in full force and effect excepting only the salary amounts in Section 9 thereof as now amended by Acts of 1961, Ch. 166.

In order to answer your question as to the effective date when the new salaries are to be paid pursuant to Acts of 1961, Ch. 166, it is necessary to examine into the legislative intent with respect to Acts of 1957, Ch. 319. Certainly, if Chapter 166 of the Acts of 1961 only amends Section 9 of the 1957 Act, it does not stand alone, separate and apart, but must be applied along with other applicable provisions of the County Officers' Salary Law of 1957. It is a well-established rule of statutory construction that a statute must be considered as a whole in order to determine the legislative intent.

1945 O. A. G., page 136, No. 29.

The Acts of 1957, Ch. 319, did not contain an emergency clause so it became law on the twenty-fifth day of June, 1957, pursuant to the Indiana Constitution, Art. 4, Sec. 28. However, the effective date for the payment of salaries created by the 1957 law was controlled by Section 18 thereof which reads as follows:

“SEC. 18. This act shall be in full force and effect on and after January 1, 1958.”

In its original form, Chapter 319, although passed in 1957, would not have been effective until January 1, 1959. This date, however, was amended on the floor of the Senate to January 1, 1958.

Combs, as Auditor of the State of Indiana, *et al.* v. Cook (1958), 238 Ind. 392, 151 N. E. (2d) 144.

Thus the Legislature contemplated a difference between the date of the passage and the date that certain provisions became operative.

OPINION 42

The Supreme Court of Indiana was confronted with a similar problem in *O'Rourke v. Board of Commissioners of Lake County* (1939), 215 Ind. 195, 18 N. E. (2d) 380. In this case the appellant received a salary increase by virtue of Acts of 1937, Ch. 45. The 1937 Act contained no emergency clause and became law on the seventh day of June, 1937. The County Council then made an emergency appropriation for the purpose of providing additional funds to pay the appellant an increase in his salary for the remainder of the year 1937. The State Board of Tax Commissioners disapproved the additional appropriation. The appellant filed suit on the theory that he was entitled to the increase in salary from the seventh day of June, 1937, the date that Acts of 1937, Ch. 45, became law. The Board of Commissioners of Lake County, on the other hand, took the position that the Act clearly contemplated that the county council could not fix and determine the amount of the additional salary granted by the 1937 Act until its annual meeting in September, 1937, and an appropriation would be made at that time for payment of the new salary on and after the first day of January, 1938. Moreover, the Board of Commissioners of Lake County felt that the increase in salaries was not sufficiently urgent to require an emergency appropriation. Although the decision of the Court rested primarily upon the decision of the State Board of Tax Commissioners, the Court did agree with the interpretation of the law by the appellee [Board of Commissioners of Lake County]. Thus the act increasing the salary became law in June, 1937, but the salary payable under the new law was not payable until January first of the following year in order that appropriations might be made by the county council at its regular September meeting.

Similar questions were answered with respect to the effective date of statutory salary increases in 1945 O. A. G., page 136, No. 29 and 1957 O. A. G., page 69, No. 16. In each Opinion it was stated the salary law then under consideration became effective immediately. However, contrary to Acts of 1957, Ch. 319, those acts contained emergency clauses and other features indicating the intent of the Legislature to have the salaries increased immediately.

Section 18 of Ch. 319 of the Acts of 1957 clearly shows that the act was not to be in full force and effect until January

1961 O. A. G.

first of the following year; thus there was no emergency clause and the county council had adequate opportunity to appropriate the funds necessary to meet the new salaries occasioned by the act. This would be true for each and every year after the passage of the act, for the amount of payment is based upon the classification of the unit of government, and this classification may change from year to year. If the classification certification, made on or before July first of each year by the State Board of Accounts, causes any change in the salary due to a classification change, the county council has the opportunity to provide for this change in their September meeting. Thus, the effective date of salary payments under Acts of 1957, Ch. 319, was intended to be, always, until changed by the Legislature, the first day of January of each year following the required July certification by the State Board of Accounts. There is no indication that this situation was changed, or intended to be changed, by Acts of 1961, Ch. 166.

Therefore, it is my opinion that the effective date of Acts of 1961, Ch. 166, insofar as any increase in salary occasioned thereby, is January 1, 1962, even though the amendment became law on July 6, 1961 by operation of the Indiana Constitution, Art. 4, Sec. 28, *supra*. Any other conclusion would necessitate emergency appropriations by the counties, in some instances, in order to meet salary increases. The Legislature did not contemplate this at the time Acts of 1961, Ch. 166, was enacted.

OFFICIAL OPINION NO. 43

September 8, 1961

Honorable Dorothy Gardner
Auditor of State
State House
Indianapolis, Indiana

Dear Mrs. Gardner:

This is in response to your request for an Official Opinion concerning the question of your authority to make distribu-