

OPINION 20

OFFICIAL OPINION NO. 20

May 15, 1961

Honorable Noble K. Littell
State Representative
44 Church Street
Mooresville, Indiana

Dear Representative Littell:

Your letter of May 3, 1961, has been received and reads as follows:

"I would appreciate your construction of the law pertaining to the office of the County Superintendent of Schools as set forth in Burns' 28-701.

"The question is whether a person who appears will be eligible under the Statute in the near future to hold the office of County Superintendent, but who does not at the time of making application hold either a first or second grade Superintendent's license. In short, must a candidate for the office of County Superintendent be able to put his license 'on the table' at the time of his election to such office."

Acts of 1935, Ch. 258, Sec. 1, as found in Burns' (1948 Repl.), Section 28-701 provides as follows:

"No person shall be eligible to or shall hold the office of county superintendent of schools who has not had five [5] years successful experience as a teacher in the public schools, and who does not hold, at the time of his election, a first or second grade superintendent's license: Provided, That nothing contained in this act shall apply to or disqualify any incumbent of the office of county superintendent."

In considering a prior statute on the question of the qualifications for county superintendent of schools, which statute contained very similar provisions, the Supreme Court of Indiana in the case of State *ex rel.* Benham v. Bradt (1908), 170 Ind. 480, 84 N. E. 1084, held the person was required to have such qualifications at the time of election.

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I am, therefore, of the opinion that a person must possess at the time of his election as county superintendent of schools the qualifications above provided by the 1935 statute.

OFFICIAL OPINION NO. 21

May 16, 1961

Mr. Joe McCord, Director
Department of Financial Institutions
1024 State Office Building
Indianapolis, Indiana

Dear Mr. McCord:

This will acknowledge receipt of your letter dated May 5, 1961, wherein you request my Official Opinion regarding the legal effective date of Chapter 182 of the Acts of 1961, approved March 8, 1961, Section 34 of which Act reads as follows:

“SEC. 34. Effective Date. This act shall be in full force and effect on and after July 1, 1961.”

Your inquiry raises the question as to whether or not said section can be legally construed so as to qualify as a declaration of an emergency, thereby making said Act effective July 1, 1961, rather than at the time the Acts of 1961 are formally promulgated by the Governor of Indiana.

The wording employed in Section 34 of said Act suggests an apparent effort by the Legislature to declare an emergency and make the act effective on and after July 1, 1961. Regardless of such intent, I am of the opinion that any act of the Indiana Legislature, which attempts to make an act effective prior to the date of a formal promulgation thereof, must meet the test of the Indiana Constitution, Art. 4, Sec. 28, which reads as follows:

“No act shall take effect, until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble or in the body, of the law.”