

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.”

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In view of the foregoing constitutional provision, in my opinion, it is immaterial that Section 34 of the Acts of 1961, *supra*, may have been intended by the Legislature to declare an emergency. On this point I find the following language in the case of *Hendrickson v. Hendrickson et al.* (1855), 7 Ind. 13, 15:

“* * * It is hardly necessary to say that the declaration of emergency here contemplated could not be taken by implication; it must be expressly declared in substantial conformity to the requirement of the Constitution. It is therefore obvious that declaring the act in force at a future day, as in this case on the 1st day of August, 1852, is no declaration of emergency, but simply fixing a distant period with the view of giving sufficient time for the act to be published and circulated by authority. * * *”

In support of this ruling of the Indiana Supreme Court is a statement of text found in *Indiana Law Encyclopedia*, Vol. 26, Statutes, § 192, p. 376, which provides:

“Under the Indiana Constitution the Legislature may declare statutes in force and effect from and after their passage in cases of emergency. The declaration of an emergency must be expressly declared in substantial conformity with the requirements of the Constitution, that is, it should be declared in the preamble or body of the law, and a declaration by the Legislature that an act shall take effect on a future day is not of itself a declaration of an emergency within the meaning of the constitutional provision.”

In construing a statute the courts will endeavor, by every rule of construction, to ascertain the meaning of, and to give full force and effect to, every enactment of the Legislature which is not obnoxious to constitutional prohibitions.

State v. Rice (1956), 235 Ind. 423, 134 N. E. (2d) 219;

Indiana Law Encyclopedia, Vol. 26, Statutes, § 111, pp. 312, 313.

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Since your inquiry does involve the Indiana Constitution, Art. 4, Sec. 28 it must be determined whether the act in question is in conflict therewith. A conflict is apparent for the reason that the act in question discloses no express declaration of an emergency in the body of the act, and the act contains no preamble.

In view of the foregoing it is my opinion Acts of 1961, Ch. 182, fails to meet the mandatory requirements of the Indiana Constitution, Art. 4, Sec. 28 with respect to the declaration of an emergency, as required by said constitutional provision. Accordingly, the provisions of Section 34 of said Act providing for the effective date of Acts of 1961, Ch. 182, must be disregarded, and said act cannot become effective until the 1961 Acts of the Indiana General Assembly are duly promulgated by the Governor of Indiana, after distribution of same as required by the Indiana Constitution.

It is my further opinion that if the Acts of 1961 are duly promulgated by the Governor prior to July 1, 1961, then, and in that event, the effective date of Ch. 182 of the Acts of 1961, *supra*, would be July 1, 1961, for the reason that such date would constitute a *legal effective date*, and not an *emergency date* in conflict with any statements contained in this Opinion.

OFFICIAL OPINION NO. 22

May 16, 1961

Mr. Donald E. Foltz, Director
Indiana Department of Conservation
603 State Office Building
100 North Senate Avenue
Indianapolis, Indiana

Dear Mr. Foltz:

This is in answer to your request for an Official Opinion concerning the authority of the Indiana Department of Conservation over natural and man-made channels connected with the various lakes in this state. After reciting that your authority is limited by law to the shore line of the lake your first two questions read as follows: