OPINION 51

OFFICIAL OPINION NO. 51

December 13, 1960

Hon. Samuel H. Power
State Representative
900 East Clinton Street
Frankfort, Indiana

Dear Representative Power:

I am in receipt of your request for my Official Opinion in answer to the following question:

"Upon consideration of the Board of Commissioners of Clinton County of the qualifications of an individual who has petitioned for appointment as a justice of the peace under the provisions of Burns' Indiana Statutes Annotated 5-109 (1933), shall the Commissioners determine such qualifications according to the 1959 statute, Burns' Indiana Statutes Annotated (1960 Cum. Supp.) 5-132 (1959, ch. 252, #1, p. 595) even though Acts 1957, ch. 322, #7, p. 960 was held unconstitutional in In re Petition of Justice of the Peace Assn., 237 Ind. 436, 147 NE2d 16 (1958)?"

The first sentence of Section 7 of the Acts of 1957, Ch. 322, provided for the payment of an additional salary to justices of the peace if such salary was appropriated by the township advisory board and paid by the township trustee. The section then purported to list three qualifications, any one of which was sufficient to establish a person's eligibility as a candidate for or to hold the office of justice of the peace. That part of the section read as follows:

"* * * Hereafter no person shall be eligible as a candidate for, or to hold the office of the justice of the peace in any township of this state unless, in addition to other prerequisites to eligibility as now provided by the Constitution and laws of this state, he shall have at least one of the three qualifications provided in this section:

"(a) (1) Who is an attorney in good standing of the Bar;"
“(2) Who has completed one full term of office as justice of the peace after January 1, 1948; or

“(3) Who has received a passing grade in an examination approved by the Supreme Court of Indiana.”

The constitutionality of the above-quoted language was tested in In re Petition of Justice of the Peace Assn. of Indiana, Inc. (1958), 237 Ind. 436, 147 N. E. (2d) 16. The Court held that a justice of the peace is a township officer and, further, that the Indiana Constitution, Art. 6, Sec. 6, provides that all township officers shall reside and keep their offices within their respective townships. The Court concluded as follows on page 442:

“We believe it was beyond the constitutional power of the General Assembly to provide qualifications for the office of justice of the peace in addition to those which were prescribed by the Constitution of Indiana. In construing our Constitution this court has decided ‘that which is expressed makes that which is silent to cease.’ Robison v. Moser (1931), 203 Ind. 66, 179 N. E. 270; State v. Patterson (1914), 181 Ind. 660, 105 N. E. 228.

“That part of § 7 of Ch. 322 of the 1957 Acts which purports to provide additional qualifications for eligibility for justices of the peace is unconstitutional and void.”

Thereafter, the 1959 Legislature amended Section 7 of the Acts of 1957, Ch. 322, supra, such amendment being Acts of 1959, Ch. 252, Sec. 1, as found in Burns’ (1959 Supp.), Section 5-132. This amendment added a proviso to the first sentence of the section, said proviso prohibiting the payment of additional salary to a justice of the peace in townships having a population of one thousand or less. In enacting this amendatory act it was necessary for the Legislature, in compliance with the Indiana Constitution, Art. 4, Sec. 21, to set forth and publish at full length the section amended. Under these circumstances the above-quoted qualifications for eligibility for office were re-enacted. Such re-enactment does not show a legislative intent to reinstate the language so re-enacted but rather, according to well established rules of statutory con-
struction, the unchanged portions of the section continue in force with the same meaning and effect after the amendment as they had before.

Thompson et al. v. Mossburg et al. (1923), 193 Ind. 566, 139 N. E. 307;

Worth v. Wheatley (1915), 183 Ind. 598, 108 N. E. 958.

Moreover, any attempt by the Legislature, by an original or amendatory act, to provide qualifications for the office of justice of the peace in addition to those prescribed in the Indiana Constitution would be beyond its constitutional power under the ruling in In re Petition of Justice of the Peace Assn. of Indiana, Inc., supra.

Therefore, in answer to your question, it is my opinion, based on the above-cited ruling of our Supreme Court, that the qualifications for the office of justice of the peace, as re-enacted by the 1959 Legislature and found in Burns’ 5-132, supra, are unconstitutional and void and it is not necessary for any person to have one of such qualifications to be eligible for appointment as a justice of the peace.

OFFICIAL OPINION NO. 52

December 14, 1960

Hon. William P. Birchler
State Representative
Armistice Hill
Cannelton, Indiana

Dear Representative Birchler:

Your letter requesting an Official Opinion construing Burns’ (1956 Repl.), Section 9-726 and (1959 Supp.), Section 9-2227 and Burns’ (1946 Repl.), Section 4-2402, has been received. The specific question you ask is:

"'At what rate per day are fines imposed by Justice of the Peace Courts and City Courts, to be laid out by imprisonment in the County Jail.'"