Indiana Law Journal

Volume 4 | Issue 2 Article 4

11-1928

Workmen's Compensation Act: Effect of an Advisory Opinion of Appellate Court Declaring an Act Unconstitutional

Bernard C. Gavit

WORKMEN'S COMPENSATION ACT: EFFECT OF AN ADVISORY OPINION OF APPELLATE COURT DECLARING AN ACT UNCONSTITUTIONAL

Chapter 76 of the Acts of 1923 is an attempt to place all employees, even although illegally employed, within the provisions of the Workmen's Compensation Act. Prior to the passage of this Act, by the express provisions of Section 76-B of the Workmen's Compensation Act,[1] one who was illegally employed did not come within the provisions of the Act.

In the case of in Re: Industrial Board,[2] in an advisory opinion the Appellate Court held the Act of 1923 unconstitutional. It is submitted that this decision is erroneous and has no effect whatever upon the Act.

The Appellate Court has held innumerable times that it has no jurisdiction to decide a constitutional question.[3] For this reason, it would seem quite certain that the decision was rendered without jurisdiction and is not a precedent.[4]

The question of the authority of the Appellate Court to answer certified questions from the Industrial Board has been raised but not decided,[5] although there would seem to be little doubt about the validity of the Workmen's Compensation Act on this question.[6]

The decision of the Appellate Court, moreover, appears to be erroneous upon the merits. The Act was attacked on the ground that it violated Section 21 of Article 4 of the Constitution of the State of Indiana, which provides that: "No act shall ever be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth and published at full length."

In the case of Langdon v. Applegate,[7] it was held that under this Section of the Constitution any act which amended or revised a previous act had to set out in full the act which was intended to be amended or revised, and also set out the act in full as amended and revised. This case, however, was overruled

---

1 Acts of 1919, page 175.

2 79 Ind. App. 669, 139 N. E. 387.

3 *Pittsburgh & Etc., R. R. Company v. Peck*, 44 Ind. App. 62; *Marmon Motor Car Co. v. Sparks*, — Ind. App. —, 161 N. E. 647.

4 7 R. C. L., p. 1005, Sec. 32.

5 *Martz v. Grasselli Chemical Co.*, 158 N. E. 926.

6 See 2 R. C. L., p. 301 to 304, Sections 256 to 258.

7 5 Ind. 327.

in the case of Greencastle Southern Turnpike Co. v. State,[8] where the doctrine was announced that all that was necessary was that the act be set out in full, as amended, and that it was not necessary to set out the first act. It was there said that the evil aimed at by the Constitution was the amending of an act by reference to its title only.

It has been held repeatedly in subsequent cases that all that is necessary to comply with the Constitution is that the act or section sought to be amended must be identified by reference to its title in full and by setting out the new act or section in full.[9]

The Court in the instant case says that the new act is insufficient because, (1) several subsections of Section 1 of the Act of 1919 would be materially *modified* by the added section of the Act of 1923, and, (2) Section 2 of the Act of 1923 purports to repeal clause (b) of Section 76 of Section 1 of the Act of 1919 without setting out Section 1 as amended.

The Act of 1923 attempted to amend the Workmen's Compensation Act by bringing within its provisions all persons legally or illegally employed by adding a section to the Act of 1919 and repealing the conflicting clause in the old law. The repeal and the amendment took effect simultaneously, and the new section was in effect a supplemental act. Subsection 76 (b) was a definition of the word 'employee,' and upon its repeal the Workmen's Compensation Act was still complete and workable (though subject to judicial interpretation on that word). The new act then certainly was to all intents and purposes a supplemental act, and the title was, therefore, valid on that ground. The Appellate Court, however, without argument denies this, and the applicability of McCleary v. Babcock.[10]

The argument of the Court to the effect that the Workmen's Compensation Act would be *modified* by the provision of the new Act would most certainly seem to be without weight. The Constitution specifically allows the amendment of a section of an act, by setting out the section as amended in full in the new act. It would be unusual if the amendment did not affect other portions of the act or repeal them by implication, but that is a question of modification and repeal and not amendment. The authority cited by the Court as authority for its conclusion,[11]

[8] 28 Ind. 382.

[9] *Lingquist v. Estate*, 153 Ind. 542.

[10] (1907) 169 Ind. 228, 82 N. E. 453.

[11] 153 Ind. 542, 55 N. E. 426.

is directly contrary. The Supreme Court held in that case that an Act which amended a Section of the Criminal Code by reference to its complete title and by setting out the new section in full was sufficient. If the argument of the Court in the instant case on that score is followed then in amending a section of the Act on Cities and Towns, for instance, it would be necessary to set out the entire Act, because some previous provision of the Act might be modified or repealed by the new act.

The serious question is on the Court's last proposition. Can a *sub*-section of an act be amended without setting out the entire section in the new act? No previous decision seems to have turned on this point. The constitution says that 'the act or section amended shall be set forth and published at full length.' There is presented a question of the proper interpretation of the constitution. In the case of Greencastle Southern Turnpike Co. v. State,[12] the constitution was given its present interpretation on the ground that the evil aimed at was the amending of statutes by mere reference to the title, so that in looking up the law one would not be forced to look at two or three acts to get the full language of the act or section. The division of a section into subsections is quite arbitrary; each subsection could well be a separate section (at least in the present case). The same reason would seem to apply, and 'the reason being the same, the rule is the same.' One gets a complete definition of 'employee' in the new act without reference to the old.

It is submitted that the act is in reality a supplemental act, and good on that theory, or that the constitution should be construed to allow the amendment of a subsection which is complete in itself, by setting out merely the subsection as amended, and not the entire section.

The act has considerable bearing upon actions for damages for the illegal employment of children under the school laws.[13]

It is submitted that the Act of 1923 destroys the cause of action given in the school laws and places any causes of action arising out of the illegal employment of children under the Workmen's Compensation Act, and that the decision of the Appellate Court in In Re: Industrial Board,[14] is not a precedent and is in fact erroneously decided.

BERNARD C. GAVIT.

Hammond, Indiana.

---

12 28 Ind. 382.

13 Section 6475, Burns' Annotated Indiana Statutes, 1926; Section 28 of the Acts of 1921, p. 337.

14 79 Ind. App. 669.