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LEGISLATION

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The legislature enacted a statute which postponed elections of officials for all cities and school cities in the state except those of the first class. The enactment was attacked as being in violation of constitutional provisions forbidding the passing of special legislation on certain enumerated subjects and on any subject where a general act could be made applicable. *Held*, the act was special legislation in violation of the constitution. *Ettinger et al. v. Sturdevent, Hole et al. v. Dice*, 38 N.E. (2d) 1000, (Ind. 1942).

The Indiana legislature is forbidden to enact special laws in regard to 17 enumerated subjects; IND. CONST., Art. IV, § 22; and special legislation can not be enacted in any case where a general law would be applicable; IND. CONST. Art. IV, § 22. The matter of municipal elections is not one on which special legislation is expressly forbidden, thus the present statute, Cr. 86, Acts 1941, IND. STAT. ANN. (Burns, Supp. 1942) § 29-1813 *et seq.*, can be invalidated only on the grounds that a general law could be made applicable.

Under the doctrine of *Gentile v. State*, 29 Ind. 409 (1868), and a long line of cases which followed it, *Indianapolis v. Navin*, 151 Ind. 139, 47 N.E. 525 (1898); *Wade v. Beasley*, 143 Ind. 306, 42 N.E. 727 (1895); *State v. Kolsem*, 130 Ind. 434, 29 N.E. 595 (1891). *Contra*: *Thomas v. Clay County*, 5 Ind. 4 (1854); *Fountain Park v. Hensler*, 199 Ind. 95, 155 N.E. 465 (1926), the legislature was the sole judge of whether or not a general law could be applicable. This doctrine, however, was forsaken for the view that the matter was a proper subject of judicial review. *Heckler v. Conter*, 206 Ind. 187 N.E. 878 (1933). *Contra*: *Groves v. Lake County*, 209 Ind. 371, 199 N.E. 137 (1936). This more recent and better stand is followed by the court in the present case.

It has been generally held that subjects may be classified for legislative purposes as long as (1) the classification is reasonable, *Fountain Park v. Hensler*, 199 Ind. 95, 155 N.E. 465 (1926), *Longview v. City of Crawfordsville*, 164 Ind. 117, 73 N.E. 78 (1904), and (2) the act is applicable to all within the class. *Spencer v. Knight*, 177 Ind. 564, 98 N.E. 342 (1911); *Strange v. Board of County Comrs.*, 173 Ind. 640, 91 N.E. 242 (1910). It is further held that the limits of the class must not be such as to exclude others from the class forever. *Rosecrans v. Evansville*, 194 Ind. 499, 143 N.E. 593 (1923). However, the fact that there is at the time of enactment only one city within a class made the subject of legislation does not render the act invalid as special legislation. *Bumb v. Evansville*, 168 Ind. 272, 80 N.E. 625 (1907).

In the past the court has not been consistent where the problem of special legislation has been involved, and the result is almost hopeless confusion. *Horack, Special Legislation: Another Twilight Zone* (1936) 12 IND. L. J. 109, 183.

The Court refers to both section 22 and 23 but fails to distinguish between them in regard to applicability here. Since section 22 is not

involved, the real issue is whether or not a general law could be made applicable, and this problem is virtually ignored. The Court contents itself with saying that the act is invalid because the bases of the classification are arbitrary. It is unfortunate that the connection between this fact and the problem of whether a general law could be made applicable was not clearly shown.

However, it is submitted that the result in the present case is a correct one. As the Court said, the classification was arbitrary, *i.e.*, it had no connection with the purpose of the act. Therefore, the classification could be destroyed without preventing or hindering accomplishment of the act's purpose. If this is true, it seems clear that a general law could be made applicable, and the act contravenes Section 23.