Mr. Cecil Bolinger, Executive Secretary  
Public Employes' Retirement Fund  
145 W. Washington St.  
Indianapolis 4, Indiana  

Dear Mr. Bolinger:  

Your letter requesting an Official Opinion has been received and reads as follows:  

"We respectfully request that an Official Opinion be rendered covering the questions as cited below:  

"1. Are elected township assessors employees of the county or employees of the township in which they are elected?  

"2. Are the deputies of such elected township assessors employees of the county or employees of the township?  

"3. In cases where the township trustees receive a portion of their salary from the county for acting as township assessors, are they considered to be employees of the county for that portion of their salary or not?  

"4. Are deputy assessors appointed by the township trustees employees of the county or employees of the township?  

"For your information the elected township assessor, his deputies and deputies of the elected township trustee acting as an assessor are paid by the county. Also, the elected township trustee acting as an assessor receives a portion of his salary from the county.  

"Answers to the above questions are necessary in order to determine which political subdivision is responsible for making employee deductions, compiling wage reports and paying the employer's portion for social security purposes."

Acts of 1919, Ch. 59, Sec. 134, as amended, as found in Burns' (1951 Repl.), Section 64-1001, provides that a town-
ship assessor shall be elected in each township. Burns' Section 64-1002 provides he may employ assistants necessary to carry out the provisions of the act when he cannot complete the duties himself. Section 64-1003 provides the township assessor shall be paid out of the county treasury. Other sections provide that the county council is to fix the amount of the salary within the limits prescribed by statute. However, if the county council fails to fix the salary, the assessor shall receive the minimum set by statute, or the amount set previously by the county council.

In townships of less than 5,000 population, the office of assessor has been abolished, and the rights, powers and duties of the assessor have been transferred to the township trustee. Acts of 1933, Ch. 77, Sec. 1, as amended, as found in Burns' (1951 Repl.), Section 64-1031, in transferring such duties, also states:

"* * * Such trustees, in performing their duties as township assessor, are hereby authorized to employ such assistants as may be necessary to perform their respective duties, in the same manner and subject to the same restrictions as are provided by law for other township assessors."

Acts of 1945, Ch. 251, Sec. 14, as amended, as found in Burns' (1957 Supp.), Section 65-221, provides that in all townships where the township trustee is ex officio township assessor twenty-five per cent of the salary of such trustee shall be paid from the county general fund, and the remaining seventy-five per cent from the township fund. The township also provides the rental for an office, travel allowance, telephone tolls and telegrams, and clerical assistance. The title to this act and its first section both refer to "township officers."

The election laws in Indiana have long considered both the township assessor and trustee to be officers of the township, although in some instances such officers are closely allied with the county. The Indiana Constitution, Art. 2, Sec. 14, provides as follows:

"All general elections shall be held on the first Tuesday after the first Monday in November, but township
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elections may be held at such time as may be provided by law * * *.”

The Indiana Constitution, Art. 6, Sec. 9 provides that vacancies in township offices may be filled as provided by law. The Indiana Legislature, from time to time, has exercised its constitutional authority and has passed numerous statutes providing for township elections and filling vacancies in township offices. Formerly, township trustees were not always elected at the general election. Acts of 1859, Ch. 133, p. 220, provided for the election of the township trustee in April and set out his duties. The title to the act stated that it was “AN ACT to provide for the more uniform mode of doing township business, prescribing the duties of certain officers in connection therewith, * * *.” The title to Acts of 1893, Ch. 107, p. 192, reads as follows:

“AN ACT providing for changing the time of electing township officers from the April election to the general election in November, * * *.” (Our emphasis)

This act specifically referred to township trustees, justices of the peace, assessors, constables, road supervisors and such other officers of the township as may be provided for by law.

The title to Acts of 1897, Ch. 50, p. 64, reads as follows:

“AN ACT providing for changing the time of electing certain township officers, fixing the time when they shall qualify and assume the duties of their respective offices, providing for separate ballots and ballot boxes, and repealing all laws, and parts of laws in conflict therewith.” (Our emphasis)

This act changed the time of electing township trustees and assessors from the general election in November, 1898, to the general election in November, 1900, and every fourth year thereafter.

Acts of 1945, Ch. 208, Sec. 175, as found in Burns’ (1949 Repl.), Section 29-4501, reads as follows:

“Township trustees, township assessors, justices of the peace, constables, three [3] members of the township advisory board, and such other township officers
as may be provided for by law, shall be elected at the
general election held on the first Tuesday after the
first Monday in November, in the even-numbered year
preceding the expiration of their term of office, and
every four [4] years thereafter, and such election shall
be conducted under the provisions of this act governing
general elections. The term of office of all township
officers shall be four [4] years and such term shall
begin on the first day of January succeeding their elec-
tion.” (Our emphasis)

All of the acts quoted above have treated the township asse-
sor and trustee as township officers.

In 1955 O. A. G., page 141, No. 37, it was determined by
the Attorney General that an order of the Board of County
Commissioners prescribing the office hours of various county
officials would not affect the office of the township assessor
since the latter officer holds a township and not a county office,
although it is very eminently related to certain county offices
and functions.

The Indiana Constitution, Art. 6, Sec. 6, provides that all
county, township and town officers shall reside within their
respective counties, townships and towns. In 1944 O. A. G.,
page 242, No. 58, the conclusion reached in an earlier Official
Opinion regarding township trustees was reaffirmed when it
was stated that a person serving as a township trustee sur-
rendered his right to the office when he moved from the town-
ship in which he was elected and of which he was an officer.

It is therefore my opinion that elected township assessors
and township trustees are officers of the townships in which
they are elected.

The question remaining to be determined is whether depu-
ties of elected township assessors and of township trustees are
employees of the township or of the county. It has long been
decided that persons who are appointed deputies under a
statute are public officers.

Wells v. The State of Indiana ex rel. Peden (1911),
175 Ind. 380, 94 N. E. 321.
The deputies of these elected officials stand in virtually the same position as the officials themselves as far as duties and obligations are concerned. Therefore, the deputies are employed by the same governmental units as the named officers under whom they serve.

In conclusion, it is my opinion that:

1. Elected township assessors are officers of the township in which they are elected, despite the fact they are paid by the county.

2. Deputies of such elected township assessors are likewise officers of the township.

3. Township trustees who receive a portion of their salaries from the county for acting as assessors in the township remain township officers.

4. Deputies appointed by township trustees to assist in carrying out assessor’s duties are officers of the township.

Since the Indiana statutes make the county liable for salaries and expenses of township assessors, as a matter of administrative convenience the employer’s share of FICA taxes for such township assessors should continue to be paid by the county as part of the expenses incident to such office.

OFFICIAL OPINION NO. 28
April 28, 1958

Board of Medical Registration and Examination of Indiana
538 K. of P. Building
Indianapolis, Indiana

Gentlemen:

Your letter of April 11, 1958, has been received and reads as follows:

“The Board of Medical Registration and Examination of Indiana, in executive session on April 9, directed the writer to forward this request for an Official Opin-