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OFFICIAL OPINION NO. 52

December 7, 1956

Honorable Eugene Bainbridge
State Senator
8309 Northcote Avenue
Munster, Indiana

Dear Senator Bainbridge:

This is in response to your recent request for an Official Opinion on the following questions:

“Does section 48-1506 of Burns' Indiana Statutes in which the office of the mayor of a second class city has jurisdiction over the budget of the various departments of government in that city, include control over the budgets of the various elective officers of a second class city or are the budgets of such elective city officials subject only to the common council of that city?”

The Acts of 1905, Ch. 129, Sec. 84, as amended, as found in Burns' Indiana Statutes (1950 Repl.), Section 48-1506, to which you refer, says:

“It shall be the duty of each executive department, at the time provided by law, to submit to the joint meeting of the heads of the departments and of the various boards, an estimate of the amount of money required for their respective departments for the ensuing fiscal year, stating with as great particularity as possible each item thereof. The controller shall at the same time submit an itemized statement or estimate of city expenditures for other purposes, for the ensuing year, over and above the money proposed to be used by the various executive departments. After such meeting, and reports and consultation, the city controller shall proceed to revise such estimates for the ensuing year, and shall then prepare a report to the mayor of the various estimated amounts required, in such controller's opinion, for each executive department, and for other city expenses, together with an estimate of the necessary per cent of taxes to be levied. The mayor shall at the next meeting of the common council present such

report with such recommendations as he may see fit. It shall be the duty of the committee of finance of the common council thereupon to prepare an ordinance fixing the rate of taxation for the ensuing year, and also an ordinance making appropriations by items for the use of the various executive departments and other city purposes for the ensuing year. Such ordinance may reduce any estimated item for any executive department, from the figure submitted in the report of the city controller, but shall not increase the same unless recommended by the mayor. Such appropriation ordinance shall thereafter be promptly acted upon by the common council. If at any time after the passage of such ordinance an emergency should arise for further appropriations for the use of any department, on the representation of such department, as hereinbefore provided, or for other purposes during the year, such additional appropriations may be made on the recommendation of the controller, by a two-thirds vote of the council. At any time during the year for which such budget shall have been adopted, the common council, by ordinance, or the mayor, by an executive order, may decrease the appropriation made for the use of any department or any item thereof; Provided, always, That any action under the provisions of this act shall not in anywise be undertaken or done if the effect thereof shall increase, or tend to increase, the aggregate levy for taxes as theretofore made."

It is my understanding that you are principally interested in knowing whether the common council of the city is bound by the mayor's report of the various estimated amounts required for the operation of the elective city offices and his recommendations in regard thereto, made to the council under the statute set out above.

The executive departments in cities of the second class were established by the Acts of 1905, Ch. 129, Sec. 82, as amended and found in Burns' Indiana Statutes (1950 Repl.), Section 48-1504, and do not include the elective offices of such city, which are a mayor, a city clerk, a city judge and the members of the common council; Acts of 1933, Ch. 233, Sec. 5, as

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amended and found in Burns' Indiana Statutes (1955 Supp.), Section 48-1215 *et seq.*

Since the elective offices of the city are not classed as city executive departments, the funds for the use of the various elective offices would be classed as, "city expenditures for other purposes," under Burns' 48-1506, *supra*.

Said statute specifically states that the appropriation ordinance may reduce any estimated item for any of the executive departments from the figure submitted in the city controller's report but shall not increase the same unless recommended by the mayor. No statutory restriction is imposed upon the city council with respect to expenditures of the various elective offices.

In the absence of an express statutory restriction upon the common council with regard to the estimates of city expenditures for the various elective offices, I am of the opinion that the common council may either increase or decrease the amount to be expended for said elective offices since the management of the finances of the city is under the jurisdiction of the common council. Acts of 1905, Ch. 129, Sec. 55, as amended and found in Burns' Indiana Statutes (1950 Repl.), Section 48-1410.

All actions of the city, by and through its duly authorized officers, departments and board, with respect to the city budget, must, of course, be taken under and pursuant to the provisions of the other laws now in force concerning city budgets. However, I find no provisions in any other laws relating to the municipal budget which would affect the conclusions stated above with respect to your specific question.