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OFFICIAL OPINION NO. 37

August 22, 1955

Honorable W. O. Hughes
State Representative
403 Standard Building
Fort Wayne, Indiana

Dear Representative Hughes:

This is in reply to your letter of July 7, 1955, which reads as follows:

"Chapter 144 of the Acts of 1955 provides that the Board of County Commissioners may provide for the office hours of the various county officials, but it makes no mention of the Township Assessor who is also housed in the Court House. The statute provides that all township offices must be opened every day of the week except Sundays and legal holidays.

"May I please have your official opinion on the following questions:

"1. Would a ruling by the County Commissioners to close on Saturdays have any bearing on the office of the Township Assessor? If the answer is in the affirmative, would the Township Assessor have legal authority to pay per diem employees who do not report to the office for work but are assigned work that they may do at home or on the outside?

"2. Could county officials pay per diem employees for six days work if employee worked five days only but worked the same number of hours in five days as he previously worked in six days?

"3. Chapter 144 of the Acts of 1955 seems to relate to days but not hours. Do the County Commissioners have the power to set the opening and closing hours including the county and township tax offices?

"4. The title of Chapter 144 says: 'An Act concerning county officials,' whereas the body of the bill relates to days instead of hours. Does this discrepancy invalidate the act?"

As a general proposition, it should be remembered that elected officials are by statute charged with the administration of certain laws and the performance of statutory duties and, *unless contrary to statute*, the office hours and working days of elected officials and their staff should be and are, to a large degree, subject to the discretion of the official upon whom the responsibility rests for performing the functions of his office. In other words, unless controlled by a statute which is *mandatory* in character, an elected official has not only the right but the duty to keep his office open at such times and for such a duration as is necessary for carrying on duties imposed upon him by law.

It should be noted that Acts of 1955, Ch. 144, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Sections 49-606 and 49-607, is a statute which is *permissive* in character rather than mandatory, whereby officials "may" close their offices on such days as the County Board of Commissioners may order in accordance with the custom and practice of the county. Section 1 and Section 2 of the aforementioned Act provide as follows:

"SECTION 1. It shall be the duty of the county treasurer, county auditor, county assessor, county recorder and the county surveyor to keep their offices open at the county seat, in a building provided for such purposes by the county board of commissioners, every day of the year except on Sundays and on legal holidays: Provided, however, Such officials *may* close their offices on such days as the county board of commissioners may order in accordance with the custom and practice of the county: Provided further, That any legal action required to be taken in such offices during the time said offices are closed pursuant to the provisions of this act, can be taken on the next following day said offices are open pursuant to the provisions of this act to the same effect as if this act had not become law.

"SEC. 2. It shall be the duty of the clerks of the circuit courts to keep their offices open at the county seat, in a building provided for that purpose by the county board of commissioners, every day of the year except on Sundays and legal holidays: Provided, however,

Such clerks *may* close their offices on such days as the judges of the circuit court of their counties may order in accordance with the custom and practice of the county: Provided further, That any legal action required to be taken in the office of the clerk of any circuit court during the time said office is closed pursuant to the provisions of this act, can be taken on the next following day said office is open pursuant to the provisions of this act to the same effect as if this act had not become law: Provided further, That the clerk of the circuit court shall keep his office open on such days and at such time that it may be necessary for the proper administration of the election laws of the state." (Our emphasis)

Your first question, as to whether a ruling by the County Commissioners to close on Saturdays would have any bearing on the office of the township assessor, is no doubt occasioned by the fact that the title of the aforequoted act confines its applicability to "elected county officials" and the body of the Act designates only the County Treasurer, County Auditor, County Assessor, County Recorder, County Surveyor and the Clerk of the Circuit Court. I do not, however, believe that these facts would prohibit the township assessor from closing his office on days when other county offices in the court house are closed according to an order of the Board of Commissioners. The office of township assessor, even though it be a township office rather than a county office, is very eminently related to certain county offices and functions in that the salary of the township assessor is fixed by the county council and paid from funds of the county treasury upon the warrant of the County Auditor as provided by the Acts of 1955, Ch. 172, Sec. 2, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 64-1038. Also the Acts of 1949, Ch. 245, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-1005d provides that the salaries of the deputies of the township assessor shall be fixed by the county council within certain minimum and maximum limits and within the limits provided at the time of the adoption of the annual county budgets.

The Acts of 1919, Ch. 59, Sec. 153, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-1023, makes

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the township assessor accountable to the County Auditor for the filing of the reports and information required by said section. In other words, the township assessor is to a degree an arm or agent of both the County Auditor and County Assessor.

Further, the Acts of 1955, Ch. 144, Sec. 3, is not only a general repealing section, merely repealing all laws in conflict with the Act, but also specifically repeals certain laws among which is the Acts of 1907, Ch. 294, Sec. 2, as found in Burns' Indiana Statutes (1951 Repl.), Section 49-602, which authorized state, county, city and township offices to close their doors for business at noon on each and every Saturday from June through October, in counties having a county seat of 100,000 population or more. It is not reasonable to believe that the Legislature intended to grant the latitude for closing offices as found in the Acts of 1955, Ch. 144, to the specific offices therein named and, by repealing the former 1907 Act, to prevent the office of township assessor also located in the same court house, from closing even at noon on each and every Saturday, as formerly authorized by the 1907 Act.

From the above and foregoing, it is my opinion that the Acts of 1955, Ch. 144, *supra*, while not specifically naming the office of township assessor, does not for that reason prohibit that office from closing on Saturdays, nor does the order of the County Board of Commissioners adopted pursuant to the above Act and applicable to the county offices therein designated, mandate that the office of township assessor must likewise be closed on Saturdays.

With respect to the second part of your first question, as to whether the township assessor would have legal authority to pay per diem to employees who do not report to the office for work but are assigned work that they may do at home or on the outside, please be advised as follows: Acts of 1949, Ch. 245, Sec. 5, as amended, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 64-1005h, authorizes township assessors to employ special assistants, technical advisors, clerical help and other employees of certain classes on a per diem basis. Among the classes of employees authorized are residential supervisors, residential rate setters, commercial and industrial supervisors and rate setters, urban land assess-

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ing teams and fieldmen. This statute clearly contemplates that some of the employees will be given assignments outside of the office location of the township assessor. Further, the Acts of 1949, Ch. 245, Sec. 2, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-1005e provides for the salaries and per diems of township assessor deputies and contains no requirement that their services must be carried on within the office location of the township assessor and states that whenever the employment is not on an annual basis that the claim shall show the actual number of days employed.

Therefore, it is my opinion that the township assessor does have legal authority to pay per diem to employees who are assigned to and working on jobs for and on behalf of the township assessor, even though such work be carried on from a location outside of the office of the township assessor. In other words, they would be entitled to their per diem for every day actually engaged in the performance of duties for the township assessor, regardless of where those duties are performed.

In answer to your second question, it seems clear and it is my opinion, that county officials could not pay per diem employees a per diem for six days of work if the employee only works for five days, regardless of the number of hours during which the employee may work per day.

In answer to your third and fourth questions, it is to be noted that the title of the Acts of 1955, Ch. 144 is "An Act concerning the office hours of elected county officials." The fact that the body of the Act refers to days rather than office hours, would not, in my opinion, invalidate the Act in question and the Board of County Commissioners would have the authority to designate the opening and closing hours of all offices within the court house, subject, however, to the approval of the elected official upon whom the responsibility rests for fulfilling his statutory duties and, of course, when not in conflict with an existing statute designating specific hours during which the office must remain open.