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I am therefore of the opinion that the Board of Sanitary Commissioners is the proper body authorized by law to formulate and publish the budget for the sanitary district and to establish the tax rates and levies in accordance with the provisions of the Municipal Budget Law, Burns' 64-1331, *supra*. I am of the further opinion that the Board of Sanitary Commissioners is authorized to file such budget together with a statement of tax levies and rates with the county auditor pursuant to Burns' 64-311, *supra*, and that the county auditor should, pursuant to Burns' 64-310, *supra*, lay such budget together with the tax levies and rates fixed thereon before the County Tax Adjustment Board on the second Monday of September of each year.

In view of the foregoing, your first two questions are answered in the negative. My answer to your third question is as follows: In the event both the Common Council of the City of Indianapolis and the Board of Sanitary Commissioners have adopted and fixed a budget for sanitation purposes, then the county auditor should refer the budget fixed by the Board of Sanitary Commissioners to the County Tax Adjustment Board, providing, of course, that all of the provisions of Burns' 64-1331, *supra*, and Burns' 64-311, *supra*, have been fully complied with by said Board of Sanitary Commissioners.

OFFICIAL OPINION NO. 76

September 15, 1953.

Mr. H. L. Solberg,
School of Mechanical Engineering,
Purdue University,
Lafayette, Indiana.

Dear Mr. Solberg:

This is in reply to your letter of August 14, 1953 in which you inquire as to the following:

1. "In the first paragraph of Section 9 of Chapter 66 of the Acts of the General Assembly appears the following statement: '* * * inspector qualified and commissioned as hereinafter provided and regularly so employed * * *'

“Does the term ‘regularly so employed’ imply that the inspector employed by any one of the inspection agencies must be employed on a full time basis for the sole purpose of making such inspections or can he devote part of his time to other duties?”

2. “If you rule that in your opinion an inspector may engage in inspection duties on a part time basis and do other forms of work during the remainder of the time, then: Is it within the authority and powers of the Board of Rules to set up standards covering the inspection agency described in paragraph (3) of Section 9 which would require that the inspectors employed by this category of inspection service devote full time to such inspections and have no other interests or form of employment?”

Chapter 66 of the Acts of the General Assembly of 1953 as found in Burns' Indiana Statutes Annotated (1950 Repl., 1953 Supp.), Sections 60-632 to 60-664 provides in part:

“SECTION 1. From and after the 1st day of July, 1953, no person shall manufacture, import or sell for installation in this state nor install nor cause to be installed in this state any steam boiler, hot water heating boiler, hot water supply boiler, or unfired pressure vessel which does not meet the standards of design, construction and installation therefor as prescribed or provided for in this Act.

“SEC. 2. From and after the 1st day of July, 1953, it shall be the duty of the owner or user of each steam boiler, hot water heating boiler, hot water supply boiler, or unfired pressure vessel installed, used, or operated in this state to maintain or cause the same to be maintained in safe operating condition in accordance with the applicable standards prescribed or provided for by this Act pertaining to inspection, repair, and allowable working pressures of boilers and unfired pressure vessels in service; and to that end to cause the same to be inspected pursuant to said standards and where indicated by such inspection to cause the same to be repaired, reconditioned, or rerated and

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to subsequently require the same to be operated under service conditions no more severe than those for which such boiler or vessel meets the requirements of this section; and to keep posted or on file in the establishment in which each such boiler or vessel is installed either a valid certificate of inspection issued by the administrator or a true record or copy of the report of the latest of each such inspection signed either by the inspector who made such inspection or by a qualified engineer under whose supervision such inspection was made. If upon the inspection of any boiler or unfired pressure vessel it is found that the same does not conform to said standards for the service in which said boiler or vessel is being used and for any reason same is not to be repaired, reconditioned, or rerated as above provided, then the boiler or vessel shall be retired from service and shall not again be used for any service within the purview of this Act unless and until the same is inspected for the intended service and is found to conform to the applicable requirements of this Act.

“If upon the inspection of any boiler or unfired pressure vessel it is found that the same cannot safely be used for any service covered by this Act, the inspection agency making the inspection shall immediately report the same to the administrator in such form and manner as the administrator shall by regulation prescribe and the administrator shall thereupon condemn the boiler or pressure vessel for further use within the purview of this Act.

* * *

“SEC. 7. Inspection Standards—Other Boilers in Service. The standards for required inspection of those types of boilers for which no inspection standards are provided in this Act shall be prescribed by the Board of Rules and Appeals hereinafter created.

* * *

“SEC. 9. * * *

“(3) Any firm or corporation which is regularly engaged in the business of inspection for others of boil-

ers or pressure vessels of the type which is the subject of such inspection, and whose inspection service personnel, equipment and supervision meet the requirements prescribed therefor by the Board, or * * *.

“SEC. 10. Registration of Inspection Agencies—Bond Fee. No such inspection agency (other than the State of Indiana and authorized insurance companies) shall engage in any required inspection [of] boilers or unfired pressure vessels in this State, unless and until such agency is registered with the administrator. Such registration shall show the name of such agency and its principal address in this State, and the name and address of the person or persons having supervision over inspections made by such agency. Changes in such supervision personnel shall be reported to the administrator within thirty days after any such change. Each such registration shall be accompanied by, and shall continue to be valid during the time that there is in effect and on file in the office of the administrator, a bond in the penal sum of \$5,000:

“(1) Upon which the surety is a surety company duly qualified under the laws of this state,

“(2) Upon which such inspection agency shall be the principal obligor and the State of Indiana shall be the obligee; and

“(3) Conditioned that said principal obligor will conduct, with personnel qualified as required by the provisions of this Act, all inspections made by it for purposes of this Act, in accordance with the standards provided therefor in this Act and will execute and deliver to the owner or user a true report of each such inspection made by such agency and will promptly notify the administrator of any boiler or unfired pressure vessel which does not meet the requirements of safe operating condition.

“Each of such registrations shall also be accompanied by a registration fee in the sum of \$25.00.

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“SEC. 17. In addition to any powers otherwise delegated to it by this Act, the Board shall have the following powers and duties:

* * *

“(5) It shall prescribe the qualifications to be possessed by each person employed as chief inspector or as state inspector or commissioned as authorized inspector in the employ of an authorized inspection agency, and the examination to be passed by such persons. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. It shall conduct such examinations at such reasonable times and places within the state to be determined by the Board as will tend to conserve the travel and time of any members of the Board supervising such examination and of the inspection agency personnel taking such examination. It shall prescribe the conditions under which such examinations shall be conducted, supervised and graded and provide for transmitting the results of each person’s examination to the administrator. It shall prescribe the fee not to exceed \$10.00 to be collected from each applicant for a commission as authorized inspector in the employ of an authorized inspection agency. Examinations may be waived for an applicant who holds a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination which in the opinion of the Board is substantially equal to that of the State of Indiana or a certificate as an inspector of boilers from the National Board of Boiler and Pressure Vessel Inspectors.”

The term “regularly employed” within Workmen’s Compensation Act does not mean continuously or occasionally, but connotes usually and systematically employed.

Palle v. Industrial Commission (1932), 79 Utah 47,
7 P. (2d) 284.

“Regularly employed” as used in the Massachusetts Statutes of 1873, Chapter 284, Section 1, exempting a vessel regularly

employed in the coasting trade from compulsory pilotage, did not necessarily mean continuously so employed, but would include the case of a vessel actually and legally so employed at the time the services of a pilot are tendered, though the word "employed" is more commonly used as signifying continuous occupation, and the use of the word "regularly" strengthens this construction.

Wilson v. Gray (1878), 127 Mass. 98.

One employed from time to time as salesman, who had drawing account for necessary expenses, and who received a commission, was not "regularly employed" within Compensation Act.

Roberts v. Rumpke (1940), 65 Ohio App. 22, 29 N. E. (2d) 221.

The word "regularly" means in accordance with some constant or periodic rule or practice.

France v. Munson (1938), 125 Conn. 22, 3 A. (2d) 78.

Taking into consideration the decisions heretofore set out where the words "regularly employed" were construed, the general construction of the words would appear to be that one could work either full time or part time and still be regarded as "regularly employed" if there was some system of regularity to the employment.

Sub-section 5 of Section 16 of Chapter 66, *supra*, provides that the Board of Rules and Appeals shall prescribe the qualifications to be possessed by the person employed as an authorized inspector.

In speaking of the rule making power of Administrative Boards, the Supreme Court of Indiana recently said in *State ex rel. Standard Oil Co. v. Review Board of the Indiana Employment Security Division et al.* (1951), 230 Ind. 1, 8, 101 N. E. (2d) 60:

"While a law as enacted must be complete, where the legislature has laid down a standard which is as definitely described as is reasonably practicable, it may

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authorize an administrative agency to amplify or implement that legislation, within prescribed limits, by adopting rules and regulations of general application to all alike, and it may authorize an administrative agency to determine whether facts or circumstances exist upon which the law makes or intends to make its own action depend, *but it cannot confer upon any body or person the power to determine what the law shall be.* As has been said, there is a clear distinction between the delegation of power to make a law, which necessarily involves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution, to be exercised under and in the pursuance of the law." (Our emphasis.)

In view of the decision reached in answer to question number 1 that under the statute an employee could be employed full time or part time, if the Board of Rules was allowed to enact a rule requiring an employee to be employed full time the effect would be that the Board was amending the statute.

I wish to call to your attention the penal bond which is required of agencies under Sub-section 3 of Section 9 of Chapter 66, *supra*.

I am therefore of the opinion:

1. The term "regularly so employed" may be interpreted to apply to a part time, as well as a full time employee so long as such employment is in accordance with some constant or periodic rule or practice.

2. It is not within the authority and powers of the Board of Rules to require that inspectors employed under Sub-section 3 of Section 9 of Chapter 66 must devote full time to such inspections and have no other interest or form of employment as they would be exercising a legislative function which can be performed only by the legislature.