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Funds once lawfully vested in the Common School Fund are beyond recall. In view of the foregoing, I am of the opinion that fines and forfeitures vest in the Common School Fund at the time they are paid into the county treasury and a report thereof made to the Auditor of State.

Since it appears that, in the instance to which you refer, no report had been made to the Auditor of State, the Governor had authority to remit and the county auditor should make a refund from the fines and forfeitures account.

OFFICIAL OPINION NO. 30

April 2, 1952.

Honorable Lytle J. Freehafer, Director,
State Budget Committee,
302 State House,
Indianapolis 4, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

“Section 21½ of Chapter 217, Acts of 1951, provides for a \$15 per month cost of living increase for certain ‘full time’ State employees.

“I should like to have your official opinion as to whether Secretaries of the various licensing boards, who receive a nominal amount for their services as Secretary to the Board, and who also practice their profession, are entitled to the \$15 cost of living increase. It is my understanding that the Secretaries of the Licensing Boards generally are paid amounts for certain clerical work, or the supervision of certain clerical work that must be performed by the Boards between the official meetings of the Boards. In addition many of the Secretaries receive a *per diem* as members of the Boards when the Boards are in session.

“Generally, these Secretaries have operated on the theory that they are not full time employees, and I have

had only one request from a Board Secretary who feels that he is entitled to the cost of living increase."

Section 21½ of Chapter 217 of the Acts of 1951, found on page 626 of the Acts of that year, provides in part as follows:

"There is hereby appropriated, from funds not otherwise appropriated, from each of the various funds from which appropriations are made, for salaries for the period July 1, 1951 to June 30, 1953, a sufficient amount to pay to each full time officer, (other than elected officials) and to each full time employee whose salaries are paid by the State Auditor's Warrant, Fifteen Dollars (\$15.00) per month in addition to regular salary as a 'cost of living' salary adjustment; such salary adjustment to be in addition to any regular increase based upon existing established plans of salary increases." (Our emphasis.)

There is a wide divergence in the provisions for the appointment or selection of secretaries on various boards. The provisions applicable to the Board of Dental Examiners and to the State Board of Registration for Professional Engineers and Land Surveyors points up the differences that exist.

The Board of Dental Examiners was created by Chapter 138 of the Acts of 1913 and has subsequently been amended a number of times. As presently amended Section 1 of the Act, same being Burns' 63-502, provides for the appointment of five properly qualified persons by the Governor. Section 11, as last amended by Section 2 of Chapter 120 of the Acts of 1951, same being Burns' 63-511, provides in part as follows:

"* * * The board shall elect a president and a secretary, and the secretary shall be *ex-officio* treasurer of the board. For their services the members shall receive the sum of twenty dollars (\$20.00) per day and their expenses necessarily incurred.

"It shall be the duty of the board to keep a record of all applications for certificates and such records shall contain all the facts set forth in said application, including the action of the board thereon, and it shall also retain all examination papers for a period of one

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(1) year from the date upon which the examination is held; and said board may employ a clerk and such other person, or persons, as may be necessary, in the discretion of the board to enable said board to properly carry out and enforce the provisions of this act, and said board shall allow and pay out of its own funds a reasonable compensation for such work. The secretary of the board shall receive a reasonable salary to be fixed by the board.”

It is to be noted that the secretary, pursuant to the above quoted section of the statute, is but one of the members of the board to whom certain additional duties are assigned. In view of the fact that he is merely one of the members of the board, appointed by the Governor, to whom the board assigns by its election certain additional duties, it is clear that he is no more a full time officer than are the other members of the board. Throughout the act numerous provisions lead to the inescapable conclusion that the members of the Board of Dental Examiners are not expected to be full time officers.

The applicable provisions as to the Engineers' Board, which was created by Chapter 148 of the Acts of 1935, are found in Section 6 of that Act, same being Burns' 63-1522, which reads as follows:

“The board shall, subject to the approval of the governor, employ a competent secretary who shall be a registered professional engineer and who shall not be a member of the board. The secretary of the board shall keep a true and complete record of all proceedings of the board, and shall perform such other duties as are prescribed in this act (§§ 63-1517—63-1553) and as may be assigned by the board. The secretary of the board shall give a surety bond to the state of Indiana, in the sum of five thousand dollars (\$5,000), conditioned for the faithful performance of his duties and the accurate accounting of all money which may, at any time, come into his possession. The premium on such bond shall be paid out of the professional engineer's fund. The secretary of the board shall receive such salary as the board may determine, subject to the approval of the governor, and, in addition thereto, all

expenses certified by the board as properly and necessarily incurred in the discharge of his duties. The board may, subject to the approval of the governor, employ such clerical or other assistants as may be necessary for the proper performance of its work."

An examination of Section 21½ shows the question involved is not whether the particular individual is an officer or employee but whether he is full time. *Webster's New International Dictionary*, Second Edition, Unabridged, defines "full time" as follows:

"The amount of time considered the normal or standard amount for working during a given period, as a day, week, or month."

In this regard it is important to note the use of the term "cost of living." The clear implication of that term, when used to describe the salary adjustment in question, is that it is to apply to salaries which are the sole or principal source of income upon which the recipient can be expected to live.

As previously pointed out, the Secretary to the Board of Dental Examiners is a member of the board and it is clear that the legislature did not intend him to be a "full time officer," while the Secretary of the Board of Engineers is an appointee of the board and the act gives no indication as to whether the legislature expected such person to devote his full time to the duties required by virtue of his position. Thus it is a question of fact from the terms of employment as to whether the Secretary of the Board of Professional Engineers and Land Surveyors is a full time employee or officer or is a part time employee or officer. Thus, although it would appear that the secretaries of most boards are not full time employees or officers within the meaning of Chapter 217 of the Acts of 1951, in some cases it would be a question of fact to be determined under the particular operations of the board involved.