

OPINION 39

OFFICIAL OPINION NO. 39

May 29, 1952.

Honorable Sam J. Bushemi,
State Representative,
3500 Connecticut Street,
Gary, Ind.

Dear Sir:

I have your request for an official opinion in which you ask in substance the following questions:

“(1) From what source should the Lake County Inheritance Tax Appraisers and the Lake County Inheritance Tax Clerk be paid?”

“(2) How is the compensation of these officials determined?”

“(3) From what source should the necessary expenses for office furniture, fixtures, files, records, maps, platbooks and other articles necessary for the proper conduct of business pertaining to inheritance tax be paid?”

The Indiana Inheritance Tax Act, same being Chapter 75 of the Acts of 1931, as subsequently amended and supplemented by numerous statutes, including Chapter 230 of the Acts of 1949, apparently provides the answers to your problems. Section 8 of that act, as last amended, being Burns' 1951 Pocket Supplement, Section 6-2408, provides in part as follows:

“In all counties in this state containing a population of more than two hundred fifty thousand (250,000), according to the last preceding United States census, the county assessor shall appoint competent full time or part time stenographic assistants and an inheritance tax deputy to assist him as inheritance tax appraiser, whose salaries shall be within the prescribed limits for stenographic assistants and deputies as now provided by law for such County, and shall be fixed by the Judge of the Probate Court of such County, or by the Judge of the Circuit Court of any county not having a Probate

Court, and shall be paid monthly out of the county treasury, *as a part of the expense of the collecting such inheritance tax.*

“Such county assessor shall be allowed his actual and necessary expenses for office furniture, fixtures, files, records, maps, platbooks, and other articles necessary for the proper conduct of the business, to be paid out of the county treasury as a part of the expenses of collecting the tax: * * *” (Our emphasis.)

Section 14 of the act, same being Burns' 6-2414, provides in part as follows:

“Each county treasurer shall make a report, under oath, to the state board of tax commissioners on the first days of January, April, July and October, of each year, of all taxes received by him in the three (3) months next preceding under this act, in resident decedents' estates, *and credited to the state of Indiana*, stating for what estate and by whom and when paid. The form of such report shall be prescribed by the state board of accounts. At the same time the county auditor shall issue his warrant payable to the treasurer of state for the amount of taxes so received by the county treasurer under this act, which warrant shall be stamped and countersigned by the county treasurer as required by law and transmitted to the state board of tax commissioners with his said report. The secretary of the board shall receipt and account for all warrants collected under the provisions of this act and shall deposit the same when received with the state treasurer in a special account to be created and known as the Inheritance Tax Account. * * *” (Our emphasis.)

Section 9 of the act, same being Burns' 6-2409, concludes as follows:

“* * * *The fees and expenses, so allowed, shall be paid by the county treasurer out of any funds he may have in his hands on account of any tax imposed under the provisions of this act:* Provided, That estates in which there is no transfer subject to any tax the ap-

OPINION 39

praisement cost shall not be at the expense of the state." (Our emphasis.)

The directions contained in the above quoted portions of the statute make it clear that all necessary expenses, including the salaries of the Lake County Inheritance Tax Clerk, are to be paid "out of the county treasury." This would appear to refer to the general fund of the county. However, it is clear that the ultimate burden falls on the state and that all such expenses are a charge against the taxes collected for the state by the county. It is to be noted that Lake County has no Probate Court. Therefore, pursuant to the portion of Burns' 6-2408 previously set out the Judge of the Circuit Court of Lake County is required to fix the salaries of the Inheritance Tax Appraisers and stenographic assistants and deputies within the salary range now allowed for similar employees of the county assessor.

Burns' 6-2408 makes similar provision for all actual and necessary expenses in collecting inheritance tax.

To specifically answer your questions the salaries of inheritance tax appraisers and inheritance tax clerks are required to be paid from the treasury of the county, for which expense the county is allowed to reimburse itself from inheritance tax funds. Salaries of these employees are fixed by the Judge of the Lake Circuit Court within the limits prescribed for similar employees of the Lake County Assessor. All actual and necessary expenses of the type enumerated in your third question, incurred in the collection of inheritance tax, are to be paid from the county treasury and the county treasurer is to be reimbursed from inheritance tax funds collected.