

OFFICIAL OPINION NO. 53

July 21, 1952.

Mr. Otto K. Jensen, State Examiner,
State Board of Accounts,
Room 304, State House
Indianapolis 4, Indiana.

Dear Mr. Jensen:

Your request for an official opinion on the following question has been received:

“Does a Board of County Commissioners have the authority to fix the salary of a County Service Officer or is such salary to be fixed by the County Council upon recommendation of the Board of County Commissioners?”

The statute providing for the appointment of a County Service Officer is Section 11, Chapter 122, Acts 1945 (Burns' 59-1111) which reads as follows:

“In addition to the foregoing, in any County in the State of Indiana, the county commissioner of such county may employ a county service officer and/or assistants and in any city of the State of Indiana the council of such city may provide for the employment by the Mayor of a city service officer and/or assistants to render service to the veterans of said county and/or city provided that the remuneration and expenses of such county and/or city service officer and/or assistants are paid from the funds of such county and/or city wherein such employment is made, but in such event such service officer shall have the same qualifications and be subject to the same regulations as the district veterans affairs officers as provided herein, and shall serve under the supervision of the director of veterans' affairs herein provided. The county council of any county and/or the common council of any city is hereby authorized to appropriate the necessary funds for such purposes.”

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It is noted that the legislature in the above statute has authorized the county commissioners to employ a service officer and assistants if they so desire. The limitations as to employment of such service officer and assistants are that the person or persons employed must be citizens of the State and United States and a veteran who has been honorably discharged with at least six months service in the armed forces of the United States. If the county commissioners employ a county service officer, the statute provides that they shall be under supervision of the state director of veterans affairs in their respective duties. The legislature has authorized the county council "to appropriate the necessary funds for such purposes."

If the County Commissioners of any county desire to employ a county service officer, they must first submit to the county council their request for an appropriation from which the commissioners can pay the salary of such service officer. The County Council will then consider the request so submitted to them and it is within their authority to either grant such appropriation, reject it, or grant only a portion of the request as submitted. Since the legislature in this instance did not set the salary of a county service officer nor a salary range, nor make it mandatory upon the county council to appropriate, then such county council can use its discretion in passing on such appropriation request.

Board of Commissioners of Allen County v. State *ex rel.* Lockhart, 216 Ind. 125, 23 N. E. (2d) 494.

The authority to employ given to the County Commissioners in this instance authorizes the commissioners to enter into an employment contract with a proposed county service officer provided such person meets the qualifications set forth by the statute. Since compensation is a vital part of an employment contract then it is implied that the County Commissioners have the authority to set the salary rate in the absence of legislative direction. However, before any salary rate in a contract for employment can be set, the county commissioners must have an appropriation for such purpose.

State *ex rel.* Davis v. Board of Commissioners of Newton County, 165 Ind. 262, 74 N. E. 1091.

Once the appropriation is obtained the rate at which it is expended is a matter wholly within the discretion of the county commissioners and not the county council or any other county officer.

The county government body known as the county council was created by the Acts of 1899 commonly referred to as the County Reform Law. Such law was enacted for the purpose of placing checks upon the expenditure of county revenues.

Lund v. Board of Commissioners of the County of Newton, 47 Ind. App. 175, 93 N. E. 179.

Thus it is not the general function of the county council to set salaries unless express authority is given to it by the legislature in particular situations. Although it is true that often the county council will reduce requested appropriations for personal services. Such reduction places a check on expenditures rather than setting salaries of the persons who are to be paid from such appropriations.

In view of the above, it is my opinion that the Board of County Commissioners have the authority to fix the salary of a County Service Officer. The county council is given authorization to make an appropriation for such purposes but the amount so appropriated by the county council is not to be construed as the setting of the salary rate. The Board of County Commissioners cannot bind the county in a contract for personal services in excess of the appropriation nor can they bind the county in a contract in the absence of a valid appropriation.