

when issuing hunting, trapping and fishing licenses but as duly authorized representatives of the Director of the Division of Fish and Game.

Therefore, the answer to your first question is in the affirmative; and, such being the case, it is unnecessary to answer your second question.

OFFICIAL OPINION NO. 62

August 28, 1952.

Mr. Sam J. Bushemi,
State Representative,
Court House,
Crown Point, Indiana.

Dear Sir:

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

“1. If the policemen and firemen are granted a cost of living increase in salary, are the pensioners entitled to an increase in their pensions?”

“2. Do pension payments of retired policemen and firemen increase or decrease with the increase or decrease of salaries, of active policemen and firemen?”

An examination of the laws pertaining to pensions of policemen and firemen shows that minimum salaries were raised by Chapter 93 of the Acts of 1951, same being Burns' 1951 Supp., Section 48-6151a. There is no statutory authority for the payment of any allowance to be known as the cost of living allowance which could not be considered part of the salary of the policemen or firemen receiving such compensation. Throughout the Acts affecting payment of the pension the sole term used is the term “salary.” The total salary is not subdivided on the basis of reason for which it is to be paid.

For these reasons in answer to your first question it is my opinion that “cost of living increase in salary” is to be treated as any other salary increase. Salary increases are discussed in answer to your second question.

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In answer to your second question, I would like to call your attention to a portion of the wording of Section 3, Chapter 51 of the Acts of 1925 as amended by Section 3, Chapter 188 of the Acts of 1941, same being Burns' 48-6403 which reads as follows:

“* * * Provided, however, That the board of trustees of said pension fund of any city may, by majority vote, at any regular meeting, adopt a resolution providing for the payment to any member of such police force who shall ever have been in the service of such city as a member of such police force for a period of twenty (20) years, if such member shall, after such twenty (20) years of service, whether already retired, or to be hereafter retired, apply in writing to said board of trustees to be retired, or state that he has been retired from such police force, the sum of fifty (50) per cent per month of such salary as is at the time of such application paid to a first class patrolman, and to the payment of any such police officer of the sum of two (2) per cent per month additional for each full year of service on such police force in excess of such twenty (20) years' service: Provided, That such additional compensation, in addition to the fifty (50) per cent of such salary of such first class patrolman above provided for, shall not be based or paid upon any service in excess of twenty-five (25) years, to the end that no police officer so retiring as above provided for shall receive in excess of sixty (60) per cent of the salary received by such first class patrolman at the time of such application.”

In 1949 a bill was passed which became Chapter 4, Acts of that year. That Act reads as follows:

“Section 1. All resolutions made in good faith by boards of trustees of police pension funds under color of paragraph (3) of section 1 of Chapter 58 of the 1931 Acts, or of Paragraph (3) of section 3 of Chapter 107 of the 1937 Acts, or of Paragraph (3) of section 3 of Chapter 188 of the 1941 Acts providing for police pension payments are fully legalized and validated and all persons are relieved from liability on

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account of the payment or receipt of any police pensions made pursuant to any such resolution.

“Section 2. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage.”

In construing pension laws in the light of the curative act set out above, the Attorney General in 1949 in Opinion No. 88, same being 1949 O. A. G. Nos. 329, 336 concluded as follows:

“Based upon the foregoing authorities it is my opinion that the various pension boards have the discretionary power to pass a resolution in accordance with the Act of 1941, *supra*, and that upon passage of such a resolution, those on retirement may file an application each time an increase in salary is rendered to those on active service and to participate in the benefits in accordance with the acts in question each time an application is filed.”

The result of this opinion is that a resolution may be adopted accepting the 50 per cent plan of pension calculation and if such a resolution is adopted the retired policemen and firemen may then reapply anytime the salary currently being paid to policemen respectively is changed. If a change is in the nature of an increase it would seem highly probable that most retired policemen and firemen would reapply to take advantage of increased benefits. They would not be entitled to the increased benefits without reapplying. If the change was in the nature of a decrease it would seem probable that most retired policemen would fail to reapply. Should they fail to reapply their pension payment would not be diminished to correspond with the decrease in the salaries of active officers.

Section 11, ch. 31, Acts of 1937, same being Burns' 48-6528 specifically provides that the pay of retired firemen shall vary with the pay of firemen on active duty without the need of subsequent applications.

On the basis of authority cited herein it is therefore my opinion that if the proper procedure is followed retired

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policemen may elect whether or not they will have pensions increased or decreased with corresponding changes in the compensation of active officers and the pensions of retired firemen will vary automatically with the pay of active firemen.

OFFICIAL OPINION NO. 63

August 29, 1952.

Honorable Clinton Green, Director,
Department of Veterans Affairs,
431 North Meridian Street,
Indianapolis, Indiana.

Dear Sir:

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

“The Veterans Bonus Law, as passed by the 1949 Indiana General Assembly and subsequently amended by the 1951 regular and special sessions, contains the following statement as quoted from Section 3 (c) of the original law:

“The Commission hereby is authorized to direct the payment of such claims and fix the date upon which payment of such claims shall begin but no such direction or order shall be made by the Commission until it shall find that the monies in the World War II Bonus Fund are sufficient to pay in full all claims, allowed or to be allowed as herein later provided. Until the effective date of any such order of the Commission so directing the payment of such claims and fixing such date, neither any member of the armed forces of the United States nor the next-of-kin of any such member shall have or acquire any right, vested or accrued, to the bonus provided for under this act nor any such right in or against the State of Indiana, the Commission or the funds appropriated to the World War II Bonus Fund.’