June 7, 1949

Mr. James M. Propst,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in reply to your recent communication dated May 20, 1949, which is as follows:

"Section 10, Chapter 129, Acts of 1949 reads as follows:

"In all judicial circuits of this state composed of one county, whether for circuit, superior, probate, criminal or juvenile court, whenever twenty or more resident freeholders of any such county shall, by their petition filed with the board of commissioners of such county, represent that the annual salary of any judge, as otherwise provided by this act, is not an adequate compensation for the services of such judge and should be increased in the sum to be specified in such petition, then it shall be the duty of the board of commissioners of such county, in open session without delay at any term of such board, to consider such petition and hear evidence thereon, and thereupon, such board of commissioners may, by entry of record, fix and allow a certain sum as an addition to or increase of the annual salary of such judge: Provided, That such sum shall not be in excess of fifty per cent of the annual salary fixed by this act for said judge, and, in no event shall be in excess of the sum specified in such petition: Provided further, That in no event shall the total annual salary of any judge of any circuit, superior, probate, criminal, or juvenile court, pursuant to sections 2, 3, 4, 5, 6, 7, 8 or 9 and this section, be more than ten thousand five hundred dollars. No appropriation by the county council shall be required to authorize such allowance or the payment thereof.'
"Section 14, Chapter 129, Acts of 1949 reads as follows:

"There shall be appropriated from the general fund of the state not otherwise appropriated, and without regard for the general appropriation act enacted or to be enacted by the 86th General Assembly of Indiana, a sum sufficient to pay the salaries provided for in Section 2 to Section 13A inclusive, of this act for the biennial beginning July 1, 1949"

"1. In light of the language used in Section 14 shall the Auditor of State pay the increased salaries made by the County Commissioners on a petition signed by 20 or more resident freeholders pursuant to Section 10, Chapter 129, Acts of 1949 as set out above?"

"2. In the event your answer to question number one is in the affirmative, what kind of document shall the Auditor of State require from the respective counties to authorize the writing of a state warrant in payment of the increased salaries granted by the County Commissioners?

"Will you please give us your official opinion."

It is a settled rule of statutory interpretation that the intent of the legislature is the object sought, and in seeking the intent of the legislature in enacting a law the courts will look to the act as a whole, to its title, its general purpose and will consider the importance of the titled act.

Smith v. State, ex rel. Ross et al., 202 Ind. 185, 172 N. E. 911;
Johnson v. City of Indianapolis et al., 174 Ind. 691, 93 N. E. 17;

The salaries of most public officers are fixed by the legislature. By Sections 2 to 9, inclusive of the act, the legislature has fixed the annual salary of judges in judicial circuits and by Section 13A has fixed the annual salary of each of the judges of the Supreme and Appellate court. By Section 10 and Section 11 the legislature has seen fit to delegate the discretion of increasing salaries fixed by this act to the Board of
County Commissioners. Sections 10 and 11 of the act provides also that “no appropriation by the county council shall be required to authorize such allowance or the payment thereof.” Section 14 of the act provides: “there shall be appropriated from the general fund of the state not otherwise appropriated, and without regard for the general appropriation act enacted or to be enacted by the 86th General Assembly of Indiana, a sum sufficient to pay the salaries provided for in Section 2 to Section 13A inclusive, of this act for the biennial beginning July 1, 1949."

It is the discretionary power given to the county commissioners under Section 10 and 11 and especially the provision of said sections that “no appropriation by the county council shall be required to authorize such allowance or the payment thereof” and the provisions of Section 14 that we find the apparent conflict and which has necessitated your asking for an official opinion. The problem presented is whether or not when the county commissioners see fit in their discretion to grant added compensation or increase the amount definitely fixed by the legislature in Sections 2 to 9 of the act, shall the same be paid by the county granting the increase of salary or by the state. In applying the statutory rule of construction cited above we note that Section 15 of the act is as follows:

“The annual salaries of judges as fixed by the provisions of Section 2 to Section 13A inclusive of this act shall be payable monthly in equal payments out of any money in the general fund of the state treasury not otherwise appropriated.” (Our emphasis.)

Section 14 speaks of a sum sufficient to pay the salaries provided for in Section 2 to Section 13A inclusive of this act and Section 15 speaks of the annual salaries of the judges as fixed by the provisions of Section 2 to Section 13A inclusive of this act. Now the only salaries provided or fixed by the act are those salaries provided or fixed by the act and Section 15 speaks of the annual salaries of the judges as fixed by the provisions of Section 2 to Section 13A inclusive of this act. Now the only salaries provided or fixed by the act are those salaries found in Section 2 to Section 9 and Section 13A. Sections 10 and 11 do not speak of definite salaries or fixed salaries but states that if the annual salary as provided is not adequate compensation for the services of such judge it can be increased within the discretion of the county commissioners if a petition be filed with them by twenty or more resident freeholders of the county. Also it can be seen that
the legislature has stated by Sections 2 to 9 and Section 13A what they believe is an adequate salary for which the state should pay and they have given discretionary power by Sections 10 and 11 to the county commissioners, if it be thought from their judgment and wisdom that the sum provided and fixed by the legislature is not sufficient because of local conditions, to fix and allow a sum as an addition to or increase of the annual salary of such judge.

In the case of Lee Bros. v. Jones (1944), 114 Ind. App. 688 at 702, the court said:

"* * * In construing a statute it is not to be presumed that any part thereof is intended to be meaningless, and every part of the statute must be considered in connection with the whole, so as to make all parts harmonize, if practicable, and give sensible and intelligent effect to each. * * *"

The court in the case of State v. Mears (1937), 213 Ind. 257, at page 259 said:

"* * * Effect should be given to every word and clause, and, if possible, such a construction avoided as will make a proviso plainly repugnant to the body of the act. * * *"

This principle of statutory construction compels me to hold that when the provision "No appropriation by the County Council shall be required to authorize such allowance or the payment thereof" is given effect and meaning it must mean but one thing and that is if increases be fixed and allowed by county commissioners then the same must be paid by the county granting said increases. In the case of State, ex rel. Test v. Steinwedel et al., 203 Ind. 457 at 473, it was said: "It is true that the 'county council act' limits appropriations at special meetings to emergency appropriations; and we assume that such act must be followed in all cases where the county council may, in its discretion, refuse to make an appropriation for payment of a claim. But the General Assembly has the power to require a county council to make specific appropriations without regard to usual procedure and, in such cases, the General Assembly, in effect, makes the appropriation, and
the act of the council amounts merely to registering in proper form the will of the General Assembly. In State, *ex rel. v. Meeker* (1914), 182 Ind. 240, 105 N. E. 906. Our Supreme Court made the following statement: "Although it is true that the county council alone is authorized to make appropriations of money to be paid out of the county treasury, that fact does not prohibit the legislature from requiring the council, under stated conditions, to make such an appropriation and without reference to the usual procedure under the county council act. The members of such council are officers of a political subdivision of the State and are subject to the mandate of the sovereign power." See also Blue *et al. v. State, ex rel. Powell et al.* (1936), 210 Ind. 486.

The effect of the language used in Sections 10 and 11 with reference to the appropriation is the same, in my opinion, as though the legislature itself mandated the county council to appropriate and the so called Reform Act would not apply to any increase of salaries fixed by the county commissioners. It is therefore, my opinion that under Sections 14 and 15 of the act the amount to be paid by the state is the sum of those annual salaries provided and fixed by the legislature in Sections 2 to 9 inclusive and 13A and that if there be any additions granted by the commissioners by power granted to them by Sections 10 and 11, said additions shall be paid by the county granting said additional sum.

I am further fortified in this opinion in that the legislative history of the act shows that when the original bill of the act in question was introduced there was attached thereto the following digest or synopsis:

"This bill fixes the salaries of the Circuit, Superior, Criminal, Probate, Juvenile, Supreme, and Appellate Judges.

"It divides judicial circuits of the state into eight classes based on population. It fixes salaries accordingly from $5400 in the smallest bracket graduated upward to a maximum of $9600 in the largest bracket.

"It provides that salary so fixed may be supplemented by contribution of county or counties in any judicial circuit. (Many counties now paying such contribution might be saved part or all such expense, but
where the load is or may become increased by conditions peculiar to the local unit, this provision provides a ‘safety valve.’

“The salary of Supreme and Appellate Judges is fixed at $15,000 and the act is made effective on July 1, 1949.”

While this digest is not a part of the law it may be construed in the light that if there be additional increases to the fixed salaries set by the legislature then the county granting said increase should make the necessary appropriation and assume the obligation of paying said increase.

Any other interpretation would present a very serious constitutional question as to the validity of the act, at least as to Sections 10 and 11. Section 22 of Article IV of the Constitution of this State provides that: “The General Assembly shall not pass local or special laws, * * *” among other cases, “In relation to fees or salaries: * * *.” It is most improbable that the various county commissioners that have been granted this discretionary power will all act alike. Some may deny petitions for increases and others may see fit to grant an increase. It is very unlikely that those increases granted will be uniform. We will therefore have situations wherein judicial circuits, as classified under Sections 2 to 9 of the act, will not have the same increase of compensation within each classification and therefore the act would not operate uniformly in all parts of the state. See State, ex rel. Hargrave v. Reitz, Auditor (1878), 62 Ind. 159 at 168.

Therefore in answer to your specific questions, in my opinion, the state is not obligated under the act in question to pay any increase of salaries that might be made by the county commissioners but that same must be paid by the county granting the increase.

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