

OFFICIAL OPINION NO. 1

January 16, 1947.

Hon. C. E. Ruston, State Examiner,  
State Board of Accounts,  
Room 304, State House,  
Indianapolis, Indiana.

Dear Mr. Ruston:

Your letter of November 29th, 1946, has been received requesting an official opinion on the following questions:

"1. Is an advisory board required to appropriate the full amount of the estimates of the township trustee for clerical hire, office rent, and travel allowance, telephone tolls and telegrams whenever the respective estimates do not exceed the maximums set forth in Chapter 251 of the Acts of 1945, or may the advisory board appropriate amounts less than the estimates of the trustee for these purposes?

"2. In what classes of townships, if any, may the township trustees rent offices in their own residences or in their own properties and be paid therefor from township funds?

"3. Is the amount appropriated by the advisory board for travel allowance, telephone tolls and telegrams a flat annual allowance to the township trustee for the year for which the appropriation has been made?

"4. If your answer to question 3 is in the negative, what is the basis for claim and payment of travel allowance to the township trustee?"

You have further advised me you are only concerned with cases that may be presented to your office for that period of time subsequent to the enactment of Chapter 251 of the Acts of 1945.

Section 65-221, Burns' 1945 Supplement, same being Section 14, Chapter 251, Acts 1945 provides as follows:

“The township trustee, for all his services shall receive, in townships of the first class, a salary of four thousand five hundred dollars (\$4,500) a year; in townships of the second class, a salary of three thousand three hundred dollars (\$3,300) a year; in townships of the third class, a salary of two thousand seven hundred dollars (\$2,700) a year; in townships of the fourth class, a salary of two thousand two hundred dollars (\$2,200) a year; in townships of the fifth class, a salary of one thousand eight hundred dollars (\$1,800) a year; in townships of the sixth class, a salary of one thousand six hundred fifty dollars (\$1,650) a year; in townships of the seventh class, a salary of one thousand five hundred dollars (\$1,500) a year; in townships of the eighth class, a salary of one thousand two hundred dollars (\$1,200) a year; in townships of the ninth class, a salary of one thousand dollars (\$1,000) a year; and in townships of the tenth class, a salary of seven hundred fifty dollars (\$750) a year: Provided, however, That in all townships of the state wherein the township trustee is ex officio township assessor twenty-five (25) per cent of the salary of such trustees, as herein provided, shall be paid from the county general fund as a part of the expense of assessing and the county council shall make appropriation therefor; in all such townships only the remaining seventy-five (75) per cent of the salaries as herein provided shall be paid from the township fund. In all townships of the state the township advisory board shall annually appropriate for the employment of clerical assistance the amount of the estimate of the township trustee: Provided, That the amount so appropriated and allowed for clerical assistance shall not exceed, in townships of the first class, five thousand dollars (\$5,000) a year; in townships of the second class, two thousand one hundred dollars (\$2,100) a year; in townships of the third class, one thousand two hundred dollars (\$1,200) a year; in townships of the fourth class, nine

hundred dollars (\$900) a year; in townships of the fifth class, six hundred dollars (\$600) a year; in townships of the sixth class, three hundred dollars (\$300) a year; in townships of the seventh class, two hundred dollars (\$200) a year; in townships of the eighth class, one hundred dollars (\$100) a year; in townships of the ninth class, seventy-five dollars (\$75) a year; and in townships of the tenth class, fifty dollars (\$50) a year: Provided, That the amounts provided herein for assistants shall be in addition to any supervisors, investigators and other assistants authorized by chapter 208, Acts of 1937 (Sections 52-183, 52-193). In all townships in the state, the township advisory board shall annually appropriate the amount of the estimate of the township trustee for the rent of an office for the trustee: Provided, That the amount so *appropriated and allowed for office rent* shall not exceed, in townships of the first class, nine hundred dollars (\$900) a year; in townships of the second class, seven hundred twenty dollars (\$720) a year; in townships of the third class, five hundred dollars (\$500) a year; in townships of the fourth class, three hundred sixty dollars (\$360) a year; in townships of the fifth class, three hundred dollars (\$300) a year; in townships of the sixth class, two hundred forty dollars (\$240) a year; in townships of the seventh class, one hundred eighty dollars (\$180) a year; in townships of the eighth class, one hundred twenty dollars (\$120) a year; in townships of the ninth class, ninety dollars (\$90) a year; and in townships of the tenth class, sixty dollars (\$60) a year. In all townships of the state the township advisory board shall annually appropriate the amount of the estimate of the township trustee *for travel allowance*, telephone tolls and telegrams: Provided, That the amount so appropriated and allowed for travel allowance, telephone tolls and telegrams, shall not exceed, in townships of the first class, seven hundred dollars (\$700) a year; in townships of the second class, six hundred dollars (\$600) a year; in townships of the third class, five

hundred dollars (\$500) a year; in townships of the fourth class, four hundred dollars (\$400) a year; in townships of the fifth class, three hundred dollars (\$300) a year; in townships of the sixth class, two hundred forty dollars (\$240) a year; in townships of the seventh class, two hundred dollars (\$200) a year; in townships of the eighth class, one hundred eighty dollars (\$180) a year; in townships of the ninth class, one hundred fifty dollars (\$150) a year; and in townships of the tenth class, one hundred twenty-five (\$125) a year. (Acts 1945, ch. 251, Sec. 14, p. 1126.)”

Section 16, Chapter 251 of the Acts of 1945, found in the footnotes to Section 65-222, Burns' 1945 Supplement provides that Chapter 159 of the Acts of 1917, is repealed, with the proviso “That until January 1, 1947, the salary of township trustees and office rent allowance shall be as now provided by Chapter 159, Acts of 1917.”

Section 17, Chapter 251, Acts 1945, found in the footnotes to Section 65-222, Burns' 1945 Supplement, provides: “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: Provided, however, That nothing herein contained shall affect the salary and office rent allowance as now provided by Chapter 159, Acts of 1917 (Sections 65-201, 65-207) prior to January 1, 1947; and Provided, further That the advisory boards are authorized to meet immediately and make appropriations for clerical assistance, and travel allowance, telephone tolls and telegrams.”

It is also pertinent to note that under the provisions of Section 2 of said statute, same being Section 65-209, Burns' 1945 Supplement, authority is given the township officers to appoint such deputies and assistants necessary to discharge the duties imposed upon them. It provides the township advisory board shall annually make appropriation in township offices affected by said act. It further provides that “payments shall be made to assistants monthly upon vouchers duly verified by the claimant and approved by the official in whose office he is employed.”

Section 65-210, Burns' 1945 Supplement, same being Section 3, Chapter 251, Acts 1945 provides as follows:

"The several townships of the state for the purpose of fixing the compensation of the township trustees, the allowance for clerical assistance, rent and expense are hereby divided into ten (10) classes as hereinafter in this act (Sections 65-208, 65-222) provided."

A statute which is clear and unambiguous on its face need not and cannot be interpreted by a court, and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory interpretation.

Sutherland Statutory Construction, 3rd Edition, Section 4502;

Hord v. State (1907), 167 Ind. 622, 641;

Citizens Trust and Savings Bank v. Fletcher American Co. (1934), 207 Ind. 328, 334.

1. In answer to your first question, it is clear from the language used by the legislature that the township advisory board is required to appropriate the full amount of the estimates of a township trustee for clerical hire, office rent, travel allowance, telephone tolls and telegrams, whenever the respective estimates do not exceed the maximums set forth in Chapter 251 of the Acts of 1945.

2. In answer to your second question, it is necessary to point out that under Section 65-221, Burns' 1945 Supplement, *supra*, it is provided "The township advisory board *shall* annually appropriate the amount of the estimate of the township trustee for the rent of an office for the trustee: Provided, That the amount so *appropriated and allowed for office rent* shall not exceed, (then follows a designated maximum for each of the ten classes of townships provided for in said statute)."

It is to be noted that under the first proviso of Section 16, Chapter 251, of the Acts of 1945, *supra*, the provisions for office rent allowance are governed by the provisions of Chapter 159 of the Acts of 1917, until January 1st, 1947,

when the provisions of Chapter 251 of the Acts of 1945 become applicable.

The allowance for office rent under Chapter 159, Acts of 1917 is found in Section 4 of said Act, same being Section 65-204, Burns' 1933, which provides that the township advisory board shall appropriate and allow the estimate of the township trustee for office rent, with a maximum amount designated for each of the ten townships referred to in the statute, and contains the additional provision as follows: "In townships of the *ninth* and *tenth* classes, the township trustee may rent an office in his residence and may be allowed not to exceed sixty dollars (\$60) a year therefor."

The foregoing provisions of the 1917 statute regarding allowance for office expenses of a township trustee, in a township of the *eighth* class, was construed by the Indiana Supreme Court in the case of Marion Township v. Howard (1924), 196 Indiana 167. The court in substance held the statute contemplated the township trustee maintaining an office and if he was unable to secure an office for rent for the amount of money appropriated therefor, he could use the amount of money appropriated for rental purposes in renting an office in his own home, without violating the provisions of the penal statutes prohibiting public officers from entering into contracts in which they have a personal interest.

It is to be noted the legislature in enacting Chapter 251 of the Acts of 1945 failed to make any provision or exception in favor of township trustees renting offices in their own residences in townships of the ninth and tenth class. This would be construed to mean the legislature was aware of the interpretation the Supreme Court of Indiana had previously placed upon a like statute and that if such offices were not available for the amount of money appropriated, then and in that event the township trustees could rent an office in their own residences. (Stith Petroleum Co. v. Dept. of Audit and Control (1936), 211 Ind. 400, 405.) Of course under the proviso of Section 16 of Chapter 251 of the Acts of 1945, *supra*, township trustees in the ninth and tenth class are specifically authorized to rent offices in their residences until January 1st, 1947. After that time it becomes a question of fact as to whether or not offices are avail-

able to them, other than in their own homes, for the amount of money appropriated.

3. In answer to your third question, it is to be noted in Section 65-221, Burns' 1945 Supplement, it is provided "In all townships of the State the township advisory board shall annually appropriate the amount of the estimate of the township trustee *for travel allowance, telephone tolls and telegrams*: Provided, That the amount *so appropriated and allowed* for travel allowance, telephone tolls and telegrams, shall not exceed," (then follows a designation of the maximum amount to be appropriated and allowed for such items). It is to be noted this statute provides that such amount shall be "appropriated and allowed" for such items.

I am therefore of the opinion the amount of the estimate, not to exceed the amount specified in the act, should be "appropriated and *allowed*" for such items.

4. The answer to question No. 3 obviates any answer to your question No. 4.

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## OFFICIAL OPINION NO. 2

February 4, 1947.

Hon. John H. Lauer, Chairman,  
State Highway Commission,  
State House Annex,  
Indianapolis, Indiana.

Dear Mr. Lauer:

Re: *Purchase of Automobiles*

I have your written request for an official opinion, which arises under the provision of the Appropriation Act (Acts 1945, p. 467) governing the purchase of equipment.

The provision in question reads as follows:

"Contingent fund for equipment:

"For the fiscal year beginning July 1, 1945, fifty-six thousand two hundred seventy-five dollars (\$56,275). For the fiscal year beginning July 1, 1946, eighty-nine thousand nine hundred fifty dollars