

## OFFICIAL OPINION NO. 46

August 16, 1947.

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

Dear Mr. Ruston:

I have your letter of July 9th in which you ask the following questions based upon Chapter 333 of the Acts of 1947:

“1. Does this department have authority to take an official action on petitions for reclassification filed prior to the date on which the act becomes effective?

“2. If your answer to question number one (1) is in the affirmative, when would this department be authorized or required to officially state the proper classification of the township from which the petition came?

“3. If your answer to question number one (1) is in the negative, when would this department be authorized or required to state the proper classification of a township pursuant to a petition being filed after the law becomes effective?

“4. Does a township which was classified in class 10 by Chapter 251, Acts of 1945, which operates or participates in the operation of a commissioned high school automatically come into the status of a class 9 township on the date on which Chapter 333, Acts of 1947 becomes effective, or, is it necessary that a petition be filed requesting the change and affirmative action be taken by this department before such change can be effective?

“5. If the change in classification referred to in question four (4) is automatic under the law, would the compensation of the trustee, allowance for assistants, rents and expenses allowable in a class 9 township begin on the date on which the law becomes effective or would such compensation and other allowances permitted by law begin on January 1 next after such automatic change in classification?

"6. In case the classification of a township is changed during a term of office of township trustee pursuant to the law referred to and the salary of the township trustee as fixed by law is higher in the class to which the township is transferred than in the class from which transferred, can the township trustee lawfully receive the increase in salary during his term of office?"

"7. In case the classification of a township is changed during a term of office of a township trustee pursuant to the law referred to and the salary of the township trustee as fixed by law is loss in the class to which the township is transferred than in the class from which transferred, would the township trustee be required to accept the decrease in salary during his term of office?"

1. The law applicable to your first question is stated in Corpus Juris in the following language:

"\* \* \* The general rule is that a statute speaks from the time it goes into effect and not otherwise, whether that time be the day of its enactment or some future day to which the power enacting the statute has postponed the time of its taking effect. \* \* \* While a statute may have potential existence, although it will not go into operation until a future time, until the time arrives when it is to take effect and be enforced, a statute which has been passed by both houses of the legislature and approved by the executive has no force whatever for any purpose. *Before that time no rights may be acquired under it and no one is bound to regulate his conduct according to its terms, and all acts purporting to have been done under it prior to that time are void.*"

59 Corpus Juris, paragraph 673, pages 1137-1138;

Smith v. Thomas (1925), 317 Ill. 150, 157, 147 N. E. 788;

Dunne v. County of Rock Island (1918), 283 Ill. 628, 636, 119 N. E. 1103;

People v. Rose (1897), 166 Ill. 422, 431, 47 N. E. 64;  
 Price v. Hopkin (1865), 13 Mich. 318, 326.

The Supreme Court of Indiana has declared the same rule by holding that an act of the legislature must be construed to speak and operate from the time it takes effect in exactly the same manner as a will speaks and operates from the time of the death of the testator.

Evansville, etc., R. R. Co. v. Barbee (1877),  
 59 Ind. 592 on 593;  
 Evansville, etc. R. R. Co. v. Barbee (1881),  
 74 Ind. 169 on 171;  
 McCalment v. State (1881), 77 Ind. 250.

Section 28 of Article 4 of the Indiana Constitution provides as follows:

“No act shall take effect, until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble or in the body, of the law.”

The answer to your first question is, therefore, in the negative.

2. Your first question being answered in the negative, your second question need not be answered.

3. As Chapter 333 of the Acts of 1947 did not contain an emergency clause and said law was not effective on July 1, 1947, the earliest time when the State Board of Accounts is authorized or required to state the proper classification of a township pursuant to a petition would be on or before the last day of July, 1948. The applicable language of said Chapter 333 of the Acts of 1947 is as follows:

“\* \* \* All changes in classifications of townships shall be made as hereinbefore provided, except, that upon a petition being filed with the State Board of Accounts by the trustee or by ten or more resident taxpayers of any township *on or before the first day of July of any year*, setting forth his or their reason

or reasons why such township is entitled to a change in classification, the state board of accounts shall, on or before the last day of July of such year, or as soon thereafter as possible, make a computation on the basis hereinbefore provided and the state board of accounts shall thereupon be authorized to transfer such township or townships into the proper class; provided, however, that no change upon petition shall be made in the classification of any township unless the total factor shall increase or decrease in excess of five per cent of the total factor of such township made at the last general reclassification in the year in which township trustees are elected, and provided further that in any year prior to the first regular reclassification made under this act, no change upon petition shall be made in the classification of any township unless the total factor shall increase or decrease in excess of five per cent of the total factor of the township computed as of March 7, 1945." (Our emphasis).

4. In answer to your fourth question, I call your attention to the following provisions in said Chapter 333:

"\* \* \* Any township which operates a commissioned high school shall not be designated to be contained within a class lower than the ninth class of the above named classes; Provided, however, that in the event of two or more townships participating in the operation of a commissioned high school, each said township participating in the said operation shall not be designated to be contained within a class lower than the ninth class of the above named classes.

"On or before the last day of July or as soon thereafter as possible, in each year in which township trustees are elected, the state board of accounts shall make a computation on the basis hereinbefore provided, and whenever on the basis herein stated, the classification factor of any township as hereinbefore set forth in a lower class increases to that equal to or above the lowest classification factor of a higher class, or the classification factor of any township as

hereinbefore set forth in a higher class decreases to that equal to or below the highest classification factor of a lower class as may be shown by the report of the state board of accounts after this act becomes effective, said state board of accounts is hereby authorized to transfer such township to the proper class. \* \* \*

“\* \* \*

“Whenever the classification of any township is changed pursuant to the provisions of this act, the state board of accounts shall notify the trustee of the township affected thereby, and the county auditor and the county superintendent of schools shall also be notified of such change.”

Under the above quoted provisions it is not accurate to state the township which is in class 10 would automatically come into class 9, but on or before the last day of July or as soon thereafter as possible in the year in which township trustees are elected it would be transferred by the State Board of Accounts to the proper class, which would be a class not less than class 9 where the township operated or participated in the operation of a county high school and the State Board of Accounts would notify the township trustee, the county auditor and the county superintendent of schools of such change.

It is not necessary that a petition be filed requesting the change as it is the duty of the State Board of Accounts to reclassify on or before the first day of July or as soon thereafter as possible in each year in which township trustees are elected. However, this would not prevent a petition being filed as provided for in that part of the act quoted in our answer to your question No. 3.

5. Your question No. 5 is answered by what is said in answer to your questions number 4 and No. 6. Changes in classification, either where done under the duty imposed by statute upon the State Board of Accounts without a petition or where made pursuant to a petition, become effective the first day of January next following. However, whether the official could receive an increase in salary or whether such increase would be held in abeyance until the beginning of the

next term of office is discussed in answer to your question No. 6.

6. The answer to your question No. 6 involves a consideration of Section 2 of Article 15 of the Indiana Constitution which, as amended in 1926, is as follows:

“When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the general assembly shall not create any office, the tenure of which shall be longer than four (4) years, *nor shall the term of office or salary of any officer fixed by this constitution or by law be increased during the term for which such officer was elected or appointed.*” (Our emphasis).

Chapter 333 of the Acts of 1947 amends Chapter 251 of the Acts of 1945 (Burns' 1945 Supplement, Sections 65-208 to 65-222) by adding thereto a new section called 14 (a). The 1945 Act divided the townships of the state into ten classes and specifically named the townships in each class. It then, by Section 14, provided the amount of the salary of the township trustee for those townships in each several class. There was no provision in the 1945 law for townships being changed from one class to another either by virtue of a change in population or in accordance with a formula.

Section 16 of the 1945 Act provided that it should not affect salaries and office rent allowance as provided for under the prior law until January 1, 1947. The apparent purpose of that section was to prevent any question of change in compensation of those trustees in office at the time of its passage and to make it apply to the terms which would commence on January 1, 1947.

Chapter 333 of the Acts of 1947 provides a formula which takes into consideration certain factors, including population, geographical area, assessed valuation and other matters, which would authorize changing a township from one class to another where the population and other matters increased or decreased sufficiently to bring it within the formula set forth in the act. The act also provided a method for the

determination and application of the formula as set forth in the answer to question No. 4.

In addition, as shown by the quotation contained in number 3 above, provision is made for petitioning the State Board of Accounts on or before the first day of July of any year to make the computations provided for and reclassify if the computations warrant.

It is also provided in said act as follows:

“Beginning on the first day of January next after any change made pursuant to this act, the officials affected thereby shall be entitled to receive the compensation as provided for the class to which such townships are transferred, and in like manner, the allowance for assistants, rents and expenses, or any other allowance provided by law, shall be that of the class to which they are transferred.”

The problem then is to determine whether if the classification of a township is changed during the term of office of a township trustee putting such township in a classification where the salary of the trustee would be greater than in the prior classification, it would be illegal for the trustee to receive the increase during his said term.

Chapter 125 of the Acts of 1911 provided that in counties having a population of more than 150,000, according to the last preceding United States census, the salary of the clerk of the Circuit Court should be \$31,000.00. Thereafter the 1930 census showed St. Joseph County to have a population in excess of 150,000. The question was presented to the Supreme Court as to whether the clerk should receive this increase during his term. In the case of *Crowe v. Board of Commissioners of St. Joseph County* (1930), 210 Ind. 404, the court said at page 408:

“There is no merit in the contention that an increase in the salary of an officer during his term is involved. The salary was fixed before he was elected. The amount he was to receive from time to time was made to depend upon the population of the county. It is as though the statute in existence when the officer was elected had provided that he should receive \$1,000 the first year and \$2,000 the second

year of his term. In the statute under consideration the Legislature chose to make the amount of salary dependent upon population shown by the United States census. It might continue during the latter part of the term the same as before the census. It might be more if the population increased. It might be less if it decreased. \* \* \*

The question also was before the Supreme Court in the case of Board of Commissioners of St. Joseph County v. Crowe (1938), 214 Ind. 437 where the court said at page 446:

“As we view this question, the salary of the county clerk or the auditor of St. Joseph County was not changed during the term within the meaning of the constitutional inhibition. The statute fixing the salary of the above officers was passed before appellees were elected. At that time the salary was fixed and determined. If the census taken by the Government showed an advancement into a higher class the salary of the county officers would be a certain amount. If the census showed a decrease, such as would place St. Joseph County in a lower class, the salary would be decreased to a different amount. We hold that § 125, Acts 1911, does not offend the constitutional provisions against increase of salary during the term of office.”

The court in its opinion on rehearing also quoted from numerous cases from other jurisdictions.

Based upon the foregoing authorities, it is my opinion that as to those township trustees whose terms begin after the effective date of Chapter 333 of the Acts of 1947, they could obtain an increase in salary where the township is classified in a class which under the statute provides for a higher salary. However, as we have pointed out, there was no provision in the Acts of 1945 for reclassification but its effect was to fix by law specifically the salary in each of the townships of the state. As to those trustees whose terms of office began before the effective date of Chapter 333, *supra*, the rule announced in the decisions above quoted would not

apply and any increase in salary during their term would violate Section 2 of Article 15.

Ind. O. A. G. 1935, page 60-64;  
 Ind. O. A. G. 1936, page 265-268;  
 Ind. O. A. G. 1941, page 352-363;  
 Ind. O. A. G. 1943, page 445-446;  
 Ind. O. A. G. 1943, page 481-483;  
 Ind. O. A. G. 1943, page 517-518;  
 Ind. O. A. G. 1943, page 683-686.

In answer to your seventh question I call your attention to the following quotation from the opinion of the Appellate Court in the case of Board v. Chapman (1898), 22 Ind. App. 60, at page 63:

“\* \* \* A public officer is entitled to the salary provided by law, because the law attaches the salary to the office as an incident thereof, and not by force of a contract, and the compensation of the officer, as such, may be regulated, altered, increased, or diminished by the lawmaking power at any time, *unless the Constitution provide otherwise.* \* \* \*” (Our emphasis).

As pointed out in our answer to your question No. 6, the constitutional provision therein discussed only prohibits an increase of salary during the term and does not prohibit a decrease. There is no provision in the constitution of this state which restrains the power of the legislature to diminish the compensation of any officer other than that of judges of the Supreme and Circuit Courts. This question was before the Supreme Court in the case of State *ex rel.* Wadsworth v. Wright (1936), 211 Ind. 41 and in that case the court said at page 45:

“It is contended by appellant that the legislature may not decrease the salary of a constitutional officer during the term for which he is elected. Section 13 of article 7 of the Constitution of Indiana provides that the compensation of judges of the Supreme and Circuit courts shall not be diminished during their continuance in office. There is no provision in the

Constitution which expressly restrains the power of the legislature to diminish the compensation of any other officer. In the case of *Gilbert v. Board of Commissioners, etc.* (1846), 8 Blackf. 81, 82, the court said: 'When the plaintiff accepted the office of county auditor, he took it subject to whatever regulations the legislature might afterwards make respecting it. The compensation, and the duties to be performed, might be increased or lessened as the public good, in the opinion of the legislature, should require. The Constitution provides that the compensation of certain officers shall not be diminished during their continuance in office. This provision is of itself sufficient to show that the compensation of all other officers is entirely at the will of the legislature.' A county auditor is a constitutional officer. Article 6, § 2, Constitution of Indiana. In *Turpen v. Board of Commissioners of Tipton County* (1855), 7 Ind. 172, 173, a case involving the compensation of a county recorder, a constitutional officer, the court said: 'But it is clearly competent for the legislature to require more official labor for the same compensation, or reduce the compensation for the same labor.' In the case of *Sudbury v. Board of Commissioners of Monroe County* (1901), 157 Ind. 446, 456, 62 N. E. 45, 48, 49, which involved the compensation of a county treasurer, a constitutional officer, the court said: 'For fifty-five years it has been held in this State that a county officer accepts his office subject to whatever regulations the legislature may afterwards make respecting it. New duties may be imposed upon an incumbent without additional compensation, and his compensation as fixed by law when elected may be either increased or decreased.' And again in *Board of Commissioners of Perry County v. Lindeman* (1905), 165 Ind. 186, 191, 73 N. E. 912, 914, a case involving the compensation of a clerk of a circuit court, a constitutional officer, this court said: 'It is settled that the legislature, if not restrained by some provision of the Constitution, has the power to increase or diminish the compensation of public officers during the term for which they were elected.' "

It is, therefore, my opinion that where the classification of a township is changed during a term of office of a township trustee pursuant to the provisions of said Chapter 333 of the Acts of 1947 that the township trustee would be required to accept the decrease in salary during the remainder of his term of office. As pointed out in the case of *State ex rel. Wadsworth v. Wright, supra*, in connection with the reduction of the salary of the prosecuting attorney involved in that case, the reduction would be by virtue of the fact that the extent of his duties is reduced by reason of the reduction in the population and other factors considered.

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OFFICIAL OPINION NO. 47

August 18, 1947.

Miss Anne M. Dugan, R. N., Secretary,  
Indiana State Board of Registration  
and Examination of Nurses,  
638 K. of P. Building,  
Indianapolis, Indiana.

Dear Miss Dugan:

Your letter of August 6, 1947, received as follows:

“The law governing the examination and registration of nurses as amended by the Acts of 1921, page 470, states that applicants must be given examinations which shall include the following subjects: medicine, surgery and children’s diseases, obstetrics, dietetics, hygiene, bacteriology, ethics, materia medica, anatomy, physiology, and practical nursing.

“In the examinations now being used, the terminology has been changed in accord with that used in the current nursing curriculum. All of the above subjects are included in the examinations, but in several instances the titles have been changed.

“In view of the statement in our Law, will you please give an official opinion regarding the legality of using the following examinations for licensure: anatomy and physiology, microbiology, nutrition and