

is given the authority to fix the compensation of the assistants. The limitations upon the authority are set forth in the statute. The salary fixed must be within the range established by the Indiana Personnel Board and approved by the State Budget Committee, and there must be an appropriation available. In this case an appropriation is at present available and for that reason I have expressed no opinion as to deficiencies in appropriations.

3. Your third question is answered in the affirmative. In the example quoted, it is my opinion that the salary has been fixed according to law and is due and owed to the employee when the services have been given and an appropriation is available for its payment. It should be allowed by the commissioners and when so allowed comes under the terms of Sec. 26-813 Burns' I. S. which reads as follows:

"Upon the allowance of any claim against any county in the State of Indiana by the board of commissioners of such county, and for the payment of which claim appropriation has been made by the proper authority, the county auditor of such county shall issue his warrant therefor."

OFFICIAL OPINION NO. 59

September 24, 1947.

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

Dear Sir:

I am in receipt of your letter of September 4th requesting my official opinion as follows:

"The Cannelton News and the Perry County Democrat are both published in the city of Cannelton, Indiana.

"The Library Board of the city of Cannelton caused the budget to be published in both newspapers.

"It is now brought to our attention that both newspapers are Democratic and the Perry County Democrat has been in operation less than one year.

"As a further point of information, the second publication of the library budget in the Cannelton News was run on August 20 and Chapter 275 of the Acts of 1947 became effective upon the proclamation of the Governor at 12:30 P.M. Central Standard Time August 20.

"With these facts before you I respectfully request your official opinion upon the following questions:

"1. In view of the fact that both newspapers are Democratic, would it be legal to publish such budget in both newspapers?

"2. Would there be any difference in your answer to question 1 prior to and after the effective date of Chapter 275, Acts of 1947?

"3. If your answer to question 1 is in the negative which newspaper published in the city of Cannelton should be given preference?

"4. Would there be any obligation to pay out of public funds the cost of advertising in one of the newspapers if you determine that there was no legal authority for such publication in such newspaper?

"I am attaching a letter from the Cannelton News relative to this question, together with the publishers claim and a copy of the advertisement."

Section 200 of Chapter 59 of the Acts of 1919 as subsequently amended by Section 64-1331, Burns' 1943 Replacement contains the following applicable provisions as to publication of notice:

"* * * Ten (10) days notice by publication of such budget, levies and rates and of such public hearing in two (2) newspapers of opposite political parties published in such taxing district or in one (1) such paper if only one (1) be there published, and in case no newspaper is there published, then the same shall be published in any two (2) newspapers representing

the two (2) leading political parties, published in the county and having a general circulation in such taxing unit, * * *

Section 1 of Chapter 275 of the Acts of 1947 amended the above provision so that the first portion thereof now reads as follows:

“Notice shall be given by publication of such budget, levies and rates and of such public hearing in two newspapers of opposite political parties published in such taxing district, or in one such newspaper if only one be there published, and also in some other newspaper of general circulation, and of opposite political faith, if there be such, published in the county and circulated in such taxing district * * *”

In Opinions of the Attorney General (1944) page 17, it was held that the provisions of Chapter 59 of the Acts of 1919, as amended, governed the publication of budgets and that to the extent that this act is inconsistent with the provisions of the general act on publication of legal notices (Chapter 96, Acts of 1927; Sec. 49-701 et seq., Burns' 1933) the provisions of this act control. It was there held:

“It is, therefore, my opinion that the legal publication of notice of the *budget, levies and rates*, of a taxing district, are controlled by Chapter 95 of the Acts of 1927, as amended by Section 1, Chapter 150 of the Acts of 1935, same being Section 64-1331, Burns' 1943 Supplement. In the event only one newspaper is published in such taxing district, it shall be sufficient to publish such notice in such newspaper without it being necessary to publish same in another newspaper published in the county.”

However, section 49-701 et seq., Burns' (1933) is an act purporting to completely cover the field of legal advertising including the compensation to be paid and the number, intervals and placement of notices. As pointed out in the above opinion, section 64-1331 supersedes section 49-701 et seq. only where there is an irreconcilable conflict between

them and then only to the extent of such conflict. Therefore, the definition of a newspaper contained in section 49-704:

“The term ‘newspaper’ as used in this act shall be construed to mean a weekly, semiweekly, triweekly or daily newspaper which shall have been published for five (5) consecutive years in the same city or town:
* * *”

would appear to be controlling as the definition of a newspaper for the purposes of publication of legal notices under Section 64-1331, unless otherwise amended or repealed.

Chapter 84 of the Acts of 1939 (Sections 49-710 to 49-713, Burns' 1945 Supp.) specifies that it shall be unlawful to publish legal notices in a newspaper that is not entered in the mails as second class matter, adds an additional requirement as to the size of its circulation in certain counties and provides a penalty for its violation. However, section 49-713 specifically provides:

“This act shall not be deemed to alter, amend or repeal any other act of the state of Indiana, but shall be supplemental and in addition to any other law now in force requiring all legal notices to be published in a newspaper of general circulation.”

Therefore, it can hardly be held that this act repeals the requirement of five years publication in the same city. Consequently, the Perry County Democrat, since it has been published only about a year, would not qualify as a legal publication except, possibly, in those locations where there is no other newspaper of the same political faith. See Opinions of Attorney General (1936), p. 413; 1934, p. 260.

It has further been held that public officers are without power to publish legal notices except as required by statute.

Opinions of Attorney General, 1944, p. 177;

Wren and Clawson v. Board (1880), 24 Kan. 301;

Orlando v. Equitable B. & L. Ass'n (1903), 45 Fla. 507, 33 So. 986.

Specifically:

1 and 2. No legal authority exists, either before or after the effective date of Chapter 275 of the Acts of 1947, for publishing legal notices in more than one newspaper of the same political affiliation.

3. Since the Perry County Democrat is not a legal newspaper within the definition of that term by the statute, the Library Board of the city of Cannelton may not publish notice in the Perry County Democrat unless and until it does qualify as a legal newspaper.

4. The law does not authorize the payment of public funds for legal notices unless there is statutory authority for such publication of legal notices in the newspaper in which they are published. Therefore, the payment of publication costs to the Perry County Democrat out of public funds is not authorized.

OFFICIAL OPINION NO. 60

October 1, 1947.

Hon. John D. Pearson,
Insurance Commissioner,
State House,
Indianapolis, Indiana.

Dear Mr. Pearson:

I have your letter of September 17, 1947, in which you request an official opinion upon the following question:

“An opinion is desired relative to the provisions of Chapter 269 of the Acts of the General Assembly session of 1947.

“Specifically, is it mandatory that all rating organizations organized and operating for the purpose of establishing rates under the provisions of Chapter 111 of the Acts of the General Assembly as a requirement for license in the State of Indiana to comply with the provisions of Chapter 269 where subscribers and members are not domestic insurance corporations?”