

OFFICIAL OPINION NO. 22

March 15, 1946.

Public Employe's Retirement Fund of Indiana,
307 Board of Trade Building,
Indianapolis 4, Indiana.

Gentlemen:

I am in receipt of your letter of February 21, 1946 requesting my official opinion upon the following question:

"* * * Can the county council by its own motion, without a request from any officer, county department or county board, initiate an ordinance electing membership or an ordinance making an appropriation to pay the prior service and membership cost, or enter into a contract with this Board for future payments?"

The pertinent provisions of the Public Employes' Retirement Act which appears as Chapter 340, page 1589 of the 1945 Acts are as follows:

"Section 4. * * * 'Governing Body' shall mean the county council, the city council, the trustees of a town, the township trustee and the township advisory board, board of school trustees, board of school commissioners or library board, as the case may be.
* * *"

"Section 19. Any municipality may elect by ordinance or resolution adopted by the *governing* body as defined herein to become a participant in the Fund established by this act. * * *"

"Section 22. Any municipality as herein defined is hereby authorized and empowered to elect to become a participant in the Fund by an ordinance or resolution adopted by the governing body of such municipality which by law is authorized to determine, establish and fix a rate of taxation on the taxable property of such municipality. Such ordinance or resolution shall designate by departmental, occupational or other definable classifications, the employes who are to become members of the Fund. When any such municipality shall

be admitted to membership in the Fund, such municipality shall be and it is hereby authorized and empowered *by its proper legal officers* to make appropriations, to make any and all payments and to do any and all things required by the provisions of this Act without any limitation other than as contained in this Act.
* * *” (Emphasis mine.)

It would seem that these provisions are clear and unambiguous in that the county council is authorized without qualification to make the initial election to become a participant in the Fund, and no requirement is set forth which would necessitate any action by any other officer.

Following this action by the county council, appropriations and all other things required by the provisions of the Public Employes' Retirement Fund Act are authorized to be done by the proper legal officers of the county. As to appropriations, I am of the opinion that this means that such appropriations are to be made by the county council upon proper estimates or requests by the executive officers in charge. (See Sections 26-515 to 26-521 Burns' 1933 R. S.)

As to the execution of contracts with the board for future payments, the question is more difficult. The only contract in regard to future payments which appears to be necessary from the text of the Public Employes' Retirement Fund Act is an arrangement for the elimination of a reserved deficiency in the Fund. (See Section 23.)

There is no statutory authority designating any particular officer or board as being authorized to execute such a contract, or designating which would be the proper legal officer to make such contracts. Therefore, in order to be safe, I would recommend that such a contract be executed or authorized by the county council, the county commissioners, and the officer and/or board having charge of the employes covered by the election of the county to participate.

In summary, it is my opinion your question should be answered as follows:

(1) The county council may by its own motion, without a request from any officer, county department, or county board, initiate an ordinance electing membership in the Public Employes' Retirement Fund.

(2) All appropriations should be made by the county council upon estimate or request by the proper legal officer in like manner as other appropriations are made by the county.

(3) The power of the county council to enter into contracts with the Public Employes' Retirement Fund is questionable and therefore, all such contracts should be executed by the county council, the county commissioners, and the officer and/or board which employs the county employes who are covered by the membership election.

OFFICIAL OPINION NO. 23

March 16, 1946.

Hon. Clarence E. Ruston, State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Mr. Ruston:

Your letter of February 13, 1946, has been received, in which you request an opinion regarding Chapter 295 of the Acts of 1945.

In your letter you state that in certain of the counties of this state defense plants have closed and are no longer furnishing products for use by the military services. You specifically desire to know if officers in counties who were qualified to receive the per diem authorized by the above statute at the time of its enactment are still entitled to receive such benefits where such defense plants have ceased to engage in such production of military products.

The preamble of Chapter 295 of the Acts of 1945 reads as follows:

"Whereas, the 1933 fee and salary bill fixed fees and salaries at a time of world-wide depression; and

"Whereas, since that time the United States Supreme Court has decided that salaries of officers and employees of political subdivisions of the state