OFFICIAL OPINION NO. 83

August 22, 1946.

Hon. Ross Teckemeyer,
Executive Secretary,
Public Employees' Retirement Fund,
307 Board of Trade Bldg.,
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 22, 1946 which reads as follows:

"Section 14, Chapter 340 of the Acts of 1945 contains the following phrase:

"** The compensation of all persons so appointed by the board and all other expenses of the board necessary for the proper and efficient operation of the fund shall be paid at such rates and in such amounts as the board and the budget department shall determine.'

"In your opinion does the 'Budget Department' as referred to above mean the Budget Director and his staff, or does it mean the Budget Committee and the Budget Director.

"If your answer is that the Budget Department means the Budget Committee and the Budget Director, should all requisitions for supplies, traveling expenses, etc., be approved by the department before the expense is created?"

In determining the meaning of Budget Department it is necessary to study the law applicable to the Budget Director and the Budget Committee. The present Budget Law was passed in 1941 and is found in Chapter 106 of that year's Acts, also in Sections 60-412 to 60-421 inclusive, Burns' 1943 Replacement Volume Supp. The portion of the law pertaining to the Budget Director was amended by Chapter 152, Acts of 1945 (Sec. 60-419 and Sec. 60-421 Burns' 1943 Replacement Volume Supp.) A careful analysis of these statutes reveals the following:
The composition of the State Budget Committee is determined by Chapter 106, Acts of 1941, page 269 (60-412 Burns' 1943 Replacement Volume):

"Within ten (10) days after each general November election, the governor shall appoint two (2) members-elect or hold-over members of the state senate and two (2) members-elect of the house of representatives who are persons of known probity and business capacity and who, together with the budget director appointed pursuant to sec. 8 (sec. 60-419) of this act, shall constitute the state budget committee. * * *"

The Budget Committee as such is authorized and empowered to investigate the various departments of the state which are operating on appropriations of the preceding general assembly. As such, it is required to peruse comprehensive reports submitted by the departments and draw a budget report, recommending increases or decreases in appropriations for proposed expenditures. Upon the basis of said report the Budget Committee is further required to prepare a Budget Bill and have it printed. With respect to salaries the law provides, in Section 60-412, Burns' 1943 Replacement Volume:

"* * * The salaries of all appointive state officers and employees, except those now being paid as fixed by statute, shall be fixed by the appointing power or if otherwise provided by law then in the manner provided subject to the approval of said committee consisting of the governor and the budget committee. In any case of any state officer or employee whose compensation has heretofore been determined in biennial appropriation acts and there is no other authority to fix such compensation, the same shall be fixed by said committee. * * *"

In so far as the Budget Director is concerned no provision is made anywhere in the law for his acting with the members of his staff as a unit in approving or disapproving expenditures for salaries, expenses, etc. Since the members of his staff consist partially of clerks, stenographers and other employees having no administrative duties it would hardly
seem reasonable the Budget Director and his staff would operate as a department in determining matters which are usually attended by the Governor, department heads and special committees. Where two or more constructions or interpretations of a statute are possible the more or most reasonable is the one to be adopted by our courts.

Lost Creek School Tp. Vigo County v. York, 215 Ind. 636; 21 N. E. (2d) 58;

I am of the opinion from the factors cited that the Budget Committee is the unit intended to be designated by the Legislature by the term Budget Department. The intentions of the Legislature in such cases are now protected by a special statute. Section 1 of Chapter 14 of the Acts of 1945, page 20 provides:

"That whenever in any Act of the General Assembly of the State of Indiana, any board, bureau, commission, division, department, officer, agency, authority, or instrumentality of state government, or any political subdivision thereof, shall be designated by name, which name is incorrectly stated, or at the time of the effective date of such act, or subsequently thereto, the rights, powers, duties or liabilities placed with such board, bureau, commission, division, department, officer, agency, authority or instrumentality were transferred to a different board, bureau, commission, division, department, officer, agency, authority or instrumentality, then such named board, bureau, commission, division, department, officer, agency, authority or instrumentality whether correctly named in said act at the time of its effective date or not, shall mean and be construed to mean the properly or correctly named or designated board, bureau, commission, division, department, officer, agency, authority or instrumentality, or the one to which such rights, powers, duties, and liabilities were transferred."

It is well to bear in mind that the powers given a committee, board or commission must be exercised by that group
as a unit and not by the individual members. Under the statutory rules governing statutory construction "words importing joint authority to three or more persons shall be construed as authority to a majority of such persons, unless otherwise declared in the law giving such authority."

Sec. 1-201 Burns' 1933 R. S.

The Indiana Supreme Court has supplemented this rule by saying the authority of the majority can only be exercised through duly organized meetings where all the members of the body can attend and be heard if they so desire. A meeting of the majority to which the minority members were excluded or not notified would have no authority. In other words the members of the deliberative body must have an opportunity to participate in its action and that action must arise from the body as a unit, not as individuals.

Terre Haute Gas Corp. v. Johnson (1942), 221 Ind. 499;

In answer to your second question, the language of the statute "shall be paid" and "shall determine" is mandatory. The use of the word "shall" in a statute usually imports imperative, rather than directory obligation.

State ex rel. De Armond v. Superior Court of Madison County (1940), 216 Ind. 641, 25 N. E. (2d) 642.

Since it is required that the Budget Committee participate in determining the rates and amounts of the compensation of all persons appointed by the board and the expenses of the board necessary for the proper and efficient operation of the Fund, it is incumbent upon that committee and the board to work out the proper procedure and mechanics for compliance with the law. Once such rates and amounts are so determined, the requisitions and vouchers may be made and approved by the proper officer of the board without specific prior approval of the budget committee of the particular requisition or voucher where the expenditure is within the rates and amounts theretofore approved.