

OFFICIAL OPINION NO. 30

April 13, 1945.

Hon. Otto K. Jensen, State Examiner,
Department of Inspection and
Supervision of State Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I am in receipt of your letter dated March 29, 1945, in which you ask the following questions:

“(1) Do the provisions of said Chapter 363, Acts of 1945, violate the provision of Article 15, Section 2 of the constitution of Indiana that the salary of any officer fixed by the constitution or by law shall not be increased during the term for which such officer was elected or appointed?”

“(2) If your answer to question No. 1 is in the negative is the maximum amount allowed in 1945 limited to an amount proportionate to the total annual maximum authorized as the part of the year following the effective date of the act is to the entire year?”

Section 2, Article 15 of the Constitution of Indiana, as amended November 2, 1926, reads 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.)

Since the opinion of *In Re Todd* (1935), 208 Ind. 168, 193 N. E. 865, the above amendment has been in force. See:

Board of Commissioners of St. Joseph County, *et al.* v. Crowe (1938), 214 Ind. 437, 446.

A public official accepts public office subject to having his duties diminished or increased at the discretion of the legislature.

Although Chapter 363, Acts of 1945, provides for increased compensation for township assessors for "additional duties" imposed upon them since the passage of Chapter 59, Acts of 1919, this fact does not, in and of itself, justify the increase in compensation for incumbent township assessors where such increase is in violation of the Constitution of Indiana.

State *ex rel.* v. Duncan (1911), 175 Ind. 661, 663;
 46 Corpus Juris, Sec. 263, p. 1025;
 43 Am. Jur., Sec. 363, p. 146, Sec. 363, p. 151;
 Opinions of Attorney General (1943), p. 444.

When an Act provides for additional compensation for public officers and becomes effective during the term of some of the public officers, the courts construe the Act as being held in abeyance during the term of the incumbent officers, but does become effective for any public officer subsequently beginning a term.

1943 Ind. O. A. G., p. 453, 462;
 46 C. J., p. 1022.

If there should be a vacancy in the office of township assessor, which vacancy should, after the effective date of Chapter 363, Acts of 1945, be filled by appointment, it is clear that the appointed official would be entitled to the additional compensation provided by the Act in question, since his term was not in existence at the time the Act became effective.

Carter v. State, 77 Okla. 31, 186 Pac. 464;
 1944 Ind. O. A. G., p. 171. (April 19, 1944.)

It is necessary to consider the law in existence concerning the fixing of salaries of various township assessors at the time Chapter 363 of the Acts of 1945 became effective. Secs. 64-1003, 64-1004, 64-1005 and 64-1006 of Burns' Revised Statutes, 1943 Replacement, provide for the various salaries

and per diems of township assessors. There is no uniformity in the various classifications, and the statutory provisions are so lengthy they are not set forth in this opinion. In some instances the statutes provide for a salary of not less than a named amount, or more than a named amount, to be determined by the Board of County Commissioners in which the township is situated.

The constitutional prohibition herein considered applies to a salary "fixed by the Constitution or by law." "By law" has been construed to mean by statutory law, and to be distinguished from the fixing of a salary "pursuant to law."

1943 Ind. O. A. G., p. 453, 460, 461.

If the County Commissioners, pursuant to law, have fixed the salary of a township assessor at more than the minimum and within the range permitted by the maximum, the salary is then fixed "pursuant to law," and in this event the provisions of Chapter 363 of the Acts of 1945 in providing for additional salaries are valid during the term of the incumbent.

Therefore, to summarize my answer to your first question, it is my opinion that the increases granted by Chapter 363 of the Acts of 1945 are valid in the case of (a) a township assessor who received only a per diem; (b) a township assessor whose salary was fixed in an amount greater than the minimum by the Board of County Commissioners; (c) and a township assessor who was appointed to fill out an unexpired term.

However, the provisions of Chapter 363 of the Acts of 1945 would be inoperative to grant an increase in salary to an incumbent whose salary was fixed by statute or an incumbent whose salary was fixed at the minimum amount permitted by statute.

In answer to your second question, the courts of this state have uniformly construed statutes to be prospective in operation, unless by the plain wording of the statute the legislature intended a retroactive effect.

Henderson v. State (1884), 96 Ind. 437, 442-443;
Chadwick v. City of Crawfordsville (1940), 216
Ind. 399.

In the case of State *ex rel.* Fowler v. Eggers, State Controller, *et al.* (1910), 33 Nev. 535, 112 Pac. 699, the court construed a statute affecting the salary of a Deputy Attorney General, which became effective March 23, 1909, and fixed an annual salary in the sum of \$2,400.00 per annum. The contention was made that the Nevada Statute should have a retroactive effect, but the court held the statute was to be construed prospectively and the salary should be prorated from the effective date of the Act to the end of that year. The court there said:

“* * * Words in a statute simply specifying that an officer shall receive a designated compensation have no retroactive effect, unless there is something in the language indicating it. * * .”

State *ex rel.* Fowler v. Eggers (1910), 112 Pac. 699, 701, *supra*;
 Accord: 46 C. J. 1019.

Therefore, in answer to your second question, it is my opinion that in cases where Chapter 363 of the Acts of 1945 becomes effective for the township assessor, the amount of the additional salary is prorated from the effective date of the Act to the end of this year.