

As you know, any rules or regulations to become effective shall be first submitted to the Attorney General for approval as to legality and approved by the Governor (Chapter 213, Acts of 1943.)

Comparative legislation may serve as a guide in the matter of determining the minimum coverage which should be required under the section of the law which you are required to administer by rule. Operators of motor vehicles in this State are required to furnish financial responsibility, in Chapter 175, Section 14, Acts of 1943, Section 47-1057 Burns' Replacement statute. Satisfaction of judgments for such liability as is imposed upon motor vehicle operators by law is also fixed as to amounts in Section 7 of said Chapter 175, Acts of 1943 (Section 47-1049 Burns' 1940 Replacement statute.) The requirement is five thousand dollars (\$5,000.00) for bodily injury to or death of one (1) person and ten thousand dollars (\$10,000.00) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and one thousand dollars (\$1,000.00) because of injury to or destruction of property in any one (1) accident.

In my opinion it would be a reasonable rule to require under Section 39 of the Act in question that such a standard of minimum coverage be provided by applicants described in said Section, in both the forepart and latter part of said Section.

Trusting that this satisfactorily answers your question, I am

OFFICIAL OPINION NO. 50

June 9, 1945.

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

Dear Mr. Jensen:

Your letter of April 12, 1945, received in which you request an official opinion as to whether or not the mayor of any fourth or fifth class city, now in office, who continues to act

as Judge of the city court is entitled to receive the additional compensation provided by Chapter 277 of the Acts of 1945, during the remaining part of his present term as mayor.

Section 2, Article 15 of the Constitution of Indiana, as amended November 2, 1926, is in part as follows:

“* * * 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.)

Section 1 of Chapter 277 of the Acts of 1945, provides as follows:

“That in cities of the fourth and fifth class, the powers and duties of city judge shall be held and exercised by the mayor, unless he shall choose to be relieved of such duties and shall declare such action at a common council meeting and such declaration shall become a part of the minutes of that meeting as recorded by the clerk-treasurer, in which case the powers and duties of city judge shall be conferred upon a city judge, appointed by the mayor for a period of one year, such city judge to possess the usual qualifications for judge. The salary of such city judge may be fixed by the city council.

“In any such cities, where the mayor acts as city judge, he may receive, for such services, additional compensation as follows: In cities of the fourth class, city council may fix an amount not to exceed nine hundred dollars per annum and in cities of the fifth class, the city council may fix an amount not to exceed six hundred dollars per annum.”

Section 2 of said Act exempts from its provisions an Act concerning city courts in cities of the fourth class in certain townships of the state, same being Chapter 52 of the Acts of 1923, approved March 2, 1923.

Section 48-1201 Burns' 1943 Supplement provides for the classification of cities by population and among other things provides a city having a population of ten thousand (10,000)

or over and less than twenty thousand (20,000) population, according to the last preceding United States census shall be classed as a fourth class city, and cities having a population of two thousand (2,000) or over and less than ten thousand (10,000) population, according to the last preceding United States census shall be denominated cities of the fifth class.

Sections 48-1228 to 48-1232 inclusive, Burns' 1933, same being Sections 16 to 20 inclusive, of Chapter 233, Acts 1933, provide for the annual salaries of mayors in cities under twenty thousand (20,000) population, the pertinent parts of each of said statutes as far as the question now being considered is concerned, are identical, with one exception, and provide: "* * * the annual salaries for the officers herein named shall be fixed by the common council, as hereinafter provided, at not to exceed the following amounts: * * *."

Thereafter the maximum amount of salary that may be so fixed by the common council varies according to the population classifications therein fixed for such cities.

Section 48-1238 Burns' 1933, same being Section 24, Chapter 233, Acts 1933, provides as follows:

"Wherever, by any provision of this act, it is provided that the common council of any city shall fix the salary of any officer or employee at an amount not exceeding the amount herein prescribed such provision shall be construed to mean that the salary so fixed shall in every case be equal to at least eighty (80) per cent of the salary as herein prescribed."

The effect of the last quoted section of the statute is to establish a minimum salary for mayor in cities of each of the foregoing classifications. The common council of such cities may therefore fix the salary of mayors in such cities at not less than the minimum nor more than the maximum prescribed in such statutes.

The exception contained in such salary statutes aforesaid heretofore noted, is found in Section 48-1229 Burns' 1933, same being Section 17, Chapter 233, Acts 1933, which contains the following proviso:

"* * * Provided, That in all cities of the fourth class located in any county having a population of more than two hundred and fifty thousand (250,000) and

less than four hundred thousand (400,000), and which city has an assessed valuation of twenty million dollars (\$20,000,000) or more, the mayor of such city shall receive an annual salary of twenty-eight hundred dollars (\$2,800) and the clerk shall receive an annual salary of two thousand dollars (\$2,000)."

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 thereby distinguished from the fixing of a salary "pursuant to law."

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

In all cities of the fourth and fifth class, excepting those within Section 48-1229 Burns' 1933, *supra*, the salaries of the mayors must be fixed by ordinance within the minimum and maximum amounts authorized, and hence if fixed at more than the minimum, they are fixed "pursuant to law" and not "by law." Therefore they are not within the prohibition of the Constitution.

1945 Ind. O.A.G., p. 145, Opinion No. 30,

1945 Ind. O.A.G., p. 179, Opinion No 39.

An exception to the above rule exists where the salary fixed by the common council is the minimum salary authorized by statute. In such case the minimum salary has been fixed by the Legislature, and is fixed "by law."

1945 Ind. O.A.G., p. 145, Opinion No 30.

I am therefore of the opinion the mayors of fourth and fifth class cities may receive such additional amounts as may be authorized by the common council of the city, under the provisions of Chapter 277 of the Acts of 1945, providing the mayor continues to act as the city Judge of such city. This, of course, would not include mayors in cities coming within the provisions of Section 48-1229 Burns' 1933, *supra*, nor could such additional compensation be paid to mayors whose salaries are fixed at the minimum amount authorized by statute.