

OFFICIAL OPINION NO. 57

June 25th, 1945.

Hon. Otto K. Jensen,
State Examiner,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of June 25, 1945 is received. In this letter, you ask for an official opinion upon the following question:

“Are the members of the county election board while acting as members of the county board of canvassers entitled to receive compensation for their service as such members of the board of canvassers in addition to their compensation as members of the county election board?”

The Indiana Election Code, being chapter 208 of the Acts of 1945, was enacted as an attempt completely to codify the election laws of the state. By section 16 of that act, a county election board is created in each of the counties of the state. By section 19, it is provided that such board is “vested with the power and charged with the duty of conducting elections and administering the election laws within the county.” Their compensation is fixed by section 24 of this act which will be later noticed. Section 291 of the Election Code provides that the election board shall constitute a county board of canvassers and section 293 specifies that the members of the county election board “shall receive for their services as board of canvassers such amount as may be fixed by the board of county commissioners.”

Prior to 1935, the board of election commissioners received compensation for sitting as a board of canvassers under chapter 113, section 3, page 100 of the Acts of 1905. The provisions in that section as to compensation are practically identical with the provisions of section 293 of the Election Code and it appears that section 293 of the Code was derived from that section. This office interpreted that section in 1922, 1925 and 1935 as providing a separate compensation for the election board when it sat as a canvassing board (Opinions of the Attorney General—1921-22, page 634; 1925-26, page 292;

1935, page 320). In chapter 220, page 1038 of the Acts of 1935, specific compensation was provided for the county boards of election commissioners and section 24 of the Code is obviously derived from that act. Pertinent parts of that act are:

“The members of the county board of election commissioners of each county, shall receive for their services as such members, *including their services as members of the boards of canvassers*, the following compensation *and none other*, to-wit: * * * provided that each of such election commissioners shall receive no additional compensation on account of city or town elections in such counties, but the compensation provided for herein shall cover the compensation for the entire services of such election commissioners in their respective counties.” (Emphasis Ours.)

With the exception of the provisions emphasized in the above quotation, (which were omitted in the Code) the provisions of section 24 are practically identical with the provisions of the 1935 act.

The General Assembly of 1945 therefore reenacted the provisions of the Acts of 1905 authorizing a compensation for the members of the county election boards sitting as boards of canvassers and, at the same time deleted the provisions that their compensation as members of the election board included their services as members of the board of canvassers. This would indicate a clear legislative intent that they should receive compensation both as members of the election board and as members of the board of canvassers.

The proviso in the end of section 24 does not impair the clarity of this intent as that proviso concerns the quotation as to whether the members of the election board should receive additional compensation on account of city or town elections when sitting as such election board and is not pertinent to the question of whether they should receive additional compensation for serving on the canvassing board.

I am, therefore, of the opinion that members of the county election board, while acting as members of the county board of canvassers, are entitled to receive for their services as canvassers such amount as may be fixed by the board of county commissioners and that such compensation is in addi-

tion to their compensation as members of the county election board.

OFFICIAL OPINION NO. 58

June 27, 1945.

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

Dear Sir:

Your letter of May 10th requesting an official opinion with reference to the Criminal Division of the Municipal Court of Marion County, Indiana states the following specific questions:

"1. If a defendant deposits money with the clerk in lieu of giving an appearance bond with freehold surety thereon, is the ten days notice after forfeiture, as provided by Section 9-722 Burns' 1942 Replacement, required?

"2. If a defendant deposits money with the clerk in lieu of giving an appearance bond with freehold surety thereon and the court enters an order of forfeiture of record is the clerk authorized to pay the amount thereof to the county treasurer for the school funds without further proceedings?

"3. If an appearance bond is given in a case wherein the surety thereon in lieu of making the affidavit prescribed by Section 9-722 Burns' 1942 Replacement deposits with the clerk the amount of the bond, is the ten-day notice after forfeiture required?

"4. If in the Municipal Court of Marion County the court enters of record an order of the forfeiture of an appearance bond does the court have authority to set aside the forfeiture on a date subsequent thereto?

"5. If by the judgment of the court a defendant is given a sentence of fine and costs and time in jail or on the penal farm, and such defendant is committed