

clothed the commission with the powers granted in Section 1 of Chapter 106 is the fact that the grant of authority in Section 12 is specifically described as being "In addition to the other powers and authority granted to the Indiana Department of Conservation. \* \* \*.", including, of course, the powers transferred by Section 5, so that if the powers granted to the old commission by Chapter 106 were transferred to the new commission by Section 5, then the same power granted in Section 12 would not be "in addition to" such power.

Section 5 is a general section as to all powers of the old commission, while Section 12 refers to certain specific powers. It is a well settled rule of statutory construction that the specific mention of a matter in one part of an act will control over general provisions contained in another part of the act.

Peoples T. & S. Bank v. Hennessey (1938), 106 Ind. App. 257, 275;

State v. Shanks (1912), 178 Ind. 330, 335.

I am, therefore, of the opinion that in Section 5 of Chapter 353 the Legislature did not intend to, or contemplate, that it was transferring to the new commission this power granted in Chapter 106 to the old commission but, on the contrary, granted such power directly to the new commission. In so granting such power directly it omitted all limitations upon it. Consequently, the Indiana Department of Conservation is not required to comply with the limitations and procedures established in Chapter 106.

---

OFFICIAL OPINION NO. 65

July 17, 1945.

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

Dear Sir:

I have a letter dated June 5, 1945, from your predecessor in office asking an official opinion upon the following question:

"I would appreciate it if you would give us your opinion as to whether or not it is within the province of the board or administrative officer of a local unit of government to grant vacations to their employees employed on a per diem basis or on an hourly wage."

It has been decided many times that local units of government and its boards or administrative officers possess only such powers, expressed or implied, as are provided for by statute.

State, *ex rel.* VanHoy v. Able (1931), 203 Ind. 44, 50;

Local Union No. 26 v. City of Kokomo (1936), 211 Ind. 72, 79.

It is also well settled that before a public officer, agent or employee is entitled to compensation for the performance of the duties appertaining to his office or employment, he must be able to point to some provision of law authorizing it.

City of East Chicago v. Seuberli (1940), 108 Ind. App. 581, 588-589;

Applegate v. State, *ex rel.* Pettijohn (1933), 205 Ind. 122, 123-124;

37 Am. Jur. Sec. 255, p. 879;

43 Am. Jur. Sec. 383, p. 164.

Moreover, the terms "wages" and "per diem" are generally distinguished from the term "salary". The term "salary" is generally defined as the per annum compensation to men in official and some other situations. (Cowdin v. Huff (1857), 10 Ind. 83, 84; Board of School Commissioners v. Wasson, Treasurer (1881), 74 Ind. 133, 141.) Also, salary is an incident of a public office and does not depend upon the performance of the duties of the office. (Morton v. City of Aurora (1932), 96 Ind. App. 203, 214; Leonard v. City of Terre Haute (1911), 48 Ind. App. 104, 114.) The term "salary" generally refers to a superior grade of service and implies something more permanent than "wages". (First Nat'l. Bank v. Barnum (1908), 160 F. 245, 247.)

On the other hand, the term "per diem" means compensation paid by the day, and the term "wages" means compensa-

tion paid by the hour, day, week, etc. (*Cowdin v. Huff, Ibid.; Board of School Commissioners v. Wasson, Treasurer, Ibid.*) The class of those who are employed by the hour or day, receiving wages as such, is restricted largely to laborers and workmen engaged in manual labor, or to some person employed in comparatively subordinate positions. This manner of employment denotes a degree of temporary employment. (*Daub v. Maryland Casualty Co. (1941), 148 S. W. (2d) 58.*)

Under the statutes it is generally necessary for the employee, in order to receive his wages, to submit a duly itemized and verified claim setting forth a detailed statement as to hours or days, and services actually performed for which the compensation attaches. As there is no implied continuity of employment, only the time of actual service can be considered.

A vacation is considered as a period of rest or leisure—a stated interval in a round of duties or employment. Its definition clearly implies a continuation of service rather than that the services had ended. (*Gutzwiller v. American Tobacco Co. (1923), 97 Vt. 281; 122 A. 586.*) If this hourly or day employee's time is interrupted his contract of employment ceases.

It is generally recognized that a public officer or employee employed upon a per diem basis is not entitled to receive compensation during holidays, vacations or recesses.

See Annotation, 1. A. L. R. 278.

Under the above authorities it is clear that unless the statute dealing with the particular local unit of government and its officers and employees, expressly or by implication, authorizes the payment of compensation during vacation periods to such officers or employees who are working on a per diem basis or on an hourly wage, then such payment cannot be made. Since there are numerous statutes dealing with the many local units of government and its officers and employees, it would render this opinion too lengthy to apply this general rule to each case. Accordingly, the statute in each case dealing with the particular local unit of government, its offices and employees, must be examined and the general rule applied.

In connection with this matter I call your attention to the State Personnel Act, the same being Chapter 139 of the Acts of 1941, as amended, (*Burns' 1943 Repl., Sec. 60-1301, et seq.*). Section 37 of that Act (*Burns' 1943 Repl., Sec. 60-1337*) provides that the director may enter into agreements with any

municipality or political subdivision of the state to furnish services and facilities of the division to such municipality or political subdivision in the administration of its personnel on merit principles. Municipalities and local units of government are expressly authorized under this section to enter into such agreements, and thereby make the Personnel Act applicable to its employees. Section 30 of said Act (Burns' 1943 Repl., Sec. 60-1330) provides for the adoption of rules concerning hours of work, holidays and vacations. Therefore, if any local units of government have entered into such agreements it would seem that the provisions of the Personnel Act, and the rules adopted pursuant thereto concerning vacations, would be applicable to such local units of government.

---

OFFICIAL OPINION NO. 66

July 17, 1945.

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

Dear Sir:

Your letter has been received in which you request an official opinion on the following question:

“If the wife of a member of the armed forces engaged in World War II dies, is the husband or other interested person entitled to the benefits of Section 1, Chapter 55, Acts of 1943?”

Section 59-1009 Burns' 1943 Replacement, same being Section 1, Chapter 55, Acts 1943, provides as follows:

“Whenever any honorably discharged soldier, sailor or marine, who may have at any time served as a regular or volunteer soldier, sailor or marine, in the army or navy of the United States, or the wife, or widow of any such soldier, sailor or marine, resident of any county of this state, other than the inmates of the Indiana State Soldiers' Home or the National Mili-