

v. Illinois (1901), 180 U. S. 208, 241; and that this state has by compact with the other states of the Ohio valley specifically assumed the obligation to prevent pollution from its shores, (Section 68-601 ff. Burns' (1943 Repl.)), it is apparent that the power of the stream pollution board to prevent pollution of the Ohio river falls not only within the letter but also within the spirit and purpose of the Act.

It is, therefore, my opinion that the powers of the stream pollution board extend to the pollution of the Ohio river equally and to the full extent as to the pollution of any other streams or waters which lie within the territorial boundaries of Indiana, and that your question must be answered in the affirmative.

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OFFICIAL OPINION NO. 96

September 6, 1945.

Hon. C. E. Ruston,  
State Examiner  
State board of Accounts,  
Room 304 State House,  
Indianapolis 4, Indiana.

Dear Mr. Ruston:

I have your letter dated August 24, 1945, in which you ask an official opinion upon the following question:

“Is the city treasurer of a city which owns and operates a sewage disposal plant or a utility or utilities eligible to receive additional compensation from the funds of such sewage disposal plant or utility, provided the common council would authorize same by ordinance?”

In answering your question reference must first be made to Chapter 271 of the Acts of the Indiana General Assembly for the year 1945. Section 1 of that Act provides as follows:

“\* \* \* The common council of each and every city shall, by ordinance duly enacted on or before the first day of April of the year in which elections for the

election of city officers are held, fix the annual salaries of all officers provided for in this act, and such salaries when so fixed shall not be changed by the common council during their respective terms of office. The salaries as herein authorized shall be in full for all services performed for the city: *Provided, however,* That in any city which owns or operates a sewage disposal plant or any other utility or utilities, the common council shall, by ordinance duly enacted, provide that the mayor, city attorney, city engineer, city controller, and city clerk or city clerk-treasurer of such city may receive, from the funds of such sewage disposal plant or other utility or utilities, a compensation in addition to the annual salary herein otherwise authorized, which additional compensation shall not exceed the sum total of one thousand two hundred dollars (\$1,200) per year; *Provided, further,* that in cities of the fifth class having three utilities not including a sewage disposal plant said additional compensation shall not exceed \$1,500.00. *Provided, however,* that nothing herein contained shall be so construed as to prevent the employment of the city engineer in a supervisory or managerial capacity with any utility, utilities, street department, park department or sewage disposal plant owned and operated by such city and to receive compensation therefor in addition to any other amount provided herein when such employment is authorized and additional compensation is fixed by an ordinance adopted by the common council."

It is evident from the foregoing statute that a city treasurer is not included among those officers who are entitled to the additional compensation provided for in the Act. It is a familiar rule of statutory construction that where certain persons or things are enumerated in a statute the statute will be construed as including only those persons or things enumerated and as excluding all others (*Inclusio unius, exclusio alterius*).

This principle is well illustrated in the case of *Conter v. Post* (1934), 207 Ind. 615, at page 619, where the Supreme Court of Indiana said as follows in construing a statute:

“\* \* \* By the provision ‘the elective officers of cities of the second class shall consist of a mayor, a city clerk, a city judge and members of common council’ the General Assembly of 1933 indicated a clear intent to limit elective officers to the ones enumerated, (*Inclusio unius, exclusio alterius*) and there is no authority in paragraph two for the continuance or creation of the office of city treasurer as an appointive office. \* \* \*”

It has also been decided that before a public officer is entitled to compensation, he must point to the particular statute authorizing it.

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

Applegate, County Auditor v. State *ex rel.* Pettijohn (1933), 205 Ind. 122, 123.

Moreover, in at least two official opinions the Attorney General of Indiana has ruled that under the same statute set forth above, before its amendment, only those officers who are enumerated in said statute are entitled to the additional compensation provided for therein. In 1942 Indiana O. A. G., p. 60, the Attorney General of Indiana construed the statute set out above as it existed in 1941, before its amendment in 1945, and held that a city clerk of a city which owns and operates a public utility or utilities was not entitled to the additional compensation provided for in that statute since he was not enumerated as one of the officers to receive such additional compensation. Also, in 1937 Indiana O. A. G. the Attorney General of Indiana construed this same statute as it existed in 1933, and held that a city clerk-treasurer was not entitled to the additional compensation provided for in the statute since he was not enumerated as one of the officers entitled to receive such compensation.

It, therefore, appears that a city treasurer is not entitled to the additional compensation provided for under Chapter 271 of the Acts of 1945, unless an analysis of that statute, and other statutes relating thereto, would indicate that the legislature intended to include such an officer. An analysis of the

statutes relating thereto clearly shows that the legislature did not intend to provide additional compensation for such officer.

Chapter 271 of the Acts of 1945, first quoted above, is amendatory of Chapter 233 of the Acts of 1933, which provided for classification of civil cities and towns. Under the 1933 Act, as amended, it is clear that the office of city treasurer as such only exists today under certain circumstances in cities of the second and third class.

Section 6 of the 1933 Act (Burns' I. S. A. 1933, Section 48-1216 (Pocket Supp.)), as last amended by Chapter 232 of the Acts of 1945, provides that the elective officers of cities of the third class shall consist of a mayor, a city clerk, a city judge, members of the common council, and a city treasurer; however, said Act provides that any such city may by proper ordinance create, abolish or re-create the office of clerk-treasurer who shall be the city clerk at such time and who shall thereupon at once perform all the duties now provided by law for the office of city clerk and the office of city treasurer, and who shall receive the salary now provided for city clerk. From this statute it is quite clear that the office of city treasurer is an office separate and distinct from the city clerk, and that the office of city treasurer is separate and distinct from the office of city clerk-treasurer which may be created by ordinance whereby the city clerk performs the office of the city treasurer at the salary provided for the city clerk. The office of city treasurer is clearly not the office of city clerk-treasurer.

Section 15 of the 1933 Act, last amended by Chapter 304 of the Acts of 1943 (Burns' I. S. A. 1933, Section 48-1227, (Pocket Supp.)) provides specifically for the annual salary of the officers for cities of the third class and then contains this proviso:

“Provided, however, That in any of such cities which owns and operates two (2) or more municipal utilities or plans, notwithstanding any of the provisions of the act of which this act is amendatory, the mayor of any such city for additional services rendered by reason thereof, shall be paid an aggregate annual salary of twelve hundred dollars (\$1,200) by such plants or utilities in addition to the annual salary herein otherwise authorized; the city attorney, city clerk and city civil engineer, for additional services rendered by reason

thereof, shall each be paid an aggregate annual salary of one thousand dollars (\$1,000) by such plants or utilities in addition to the annual salaries herein otherwise authorized; And, provided further, That the proportionate amount of the aggregate salaries to be paid by each of such plants or utilities, shall, in each instance be determined by the governing board of each such plants or utilities."

This last statute specifically providing for additional compensation for certain officers of cities of the third class where such cities own or operate public utilities, omits the city treasurer as one of the officers entitled to the additional compensation provided for therein.

Section 5 of the 1933 Act, as amended by Chapter 99 of the Acts of 1943 (Burns' I. S. A. 1933, Section 48-1215, (Pocket Supp.)) provides that in cities of the second class the county treasurer shall be *ex officio* city treasurer and shall perform the duties now provided by law for the office of city treasurer. However, said Section exempts cities of the second class owning and operating a municipal water works and electric light plant. This exemption was held valid in the case of *Conter v. Post* (1934), 207 Ind. 615, where the court held that in such cities there may be a valid reason for retaining the office of city treasurer.

Section 1, Chapter 23 of the Acts of 1927, as amended by Chapter 84 of the Acts of 1943 (Burns' I. S. A. 1933, Section 48-1226, (Pocket Supp.)) provides that in cities of the second class having a population of more than 35,000 and an assessed valuation of more than \$75,000,000, and which own and operate three or more municipal utilities, additional compensation may be provided for the mayor, city attorney, city controller, members of the board of public works, deputy controller, clerk of the board of public works, city clerk and civil city engineer, for additional services necessarily rendered by them by reason of such utilities. This statute, likewise, omitted the city treasurer as one of the officers entitled to additional compensation by reason of the ownership and operation of such utilities by the city.

Section 21 of the 1933 Act (Burns' I. S. A. 1933, Section 48-1233, (Pocket Supp.)) is a general provision authorizing

additional compensation in all cities for certain officers where such cities own or operate public utilities. It was this Section that was amended by Chapter 271 of the Acts of 1945, and, as previously shown, omitted city treasurers among the officers entitled to the additional compensation provided for therein.

An analysis of the foregoing statutes, and a study of the development of such statutes, as amended from time to time by the legislature, indicates a consistent intention on the part of the legislature to omit the office of city treasurer from those provisions authorizing additional compensation in those cities which operate public utilities.

Based upon the foregoing reasons and authorities, it is my opinion that a city treasurer of a city which owns and operates sewage disposal plants or utilities is not eligible to receive additional compensation from the funds of such sewage disposal plant or utility, provided the common council would authorize the same by ordinance.

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OFFICIAL OPINION NO. 97

September 10, 1945.

Col. Austin R. Killian,  
Superintendent of State Police Department,  
As Commissioner of Public Safety,  
Division of Public Safety,  
Room 49, State House,  
Indianapolis 4, Indiana.

Dear Sir:

Your recent letter requests an official opinion concerning legal duties of the Commissioner of the Division of Public Safety under Chapter 175 of the Acts of 1943, (Section 47-1044, Burns' 1940 Repl. (Supp.)), known as the "Indiana Motor Vehicle Safety-Responsibility Act," as amended by Chapter 355 of the Acts of 1945. Your request is based upon the following facts:

An individual "X" was the owner and operator of five motor vehicles duly registered, license plates issued therefor, and being operated in his dairy business. He