

OFFICIAL OPINION NO. 126

December 7, 1945.

Hon. Clarence E. Ruston, State Examiner,
 State Board of Accounts,
 Room 304, State House,
 Indianapolis, Indiana.

Dear Sir:

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

"1. What, if any, compensation are the members of the board of election commissioners, provided for by Chapter 144, Acts of 1917, entitled to receive?

"2. "Is the county Auditor entitled to receive and retain compensation for his services as a member of the board of election commissioners provided for by Chapter 144, Acts of 1917?

"3. What, if any, compensation are the members of precinct election boards, at an election held as provided by Chapter 144, Acts of 1917, entitled to receive?

"4. Is an appropriation for that purpose required before payment of the expenses of a special election held pursuant to Chapter 144, Acts of 1917?"

The questions are particularly directed to the establishment of such a hospital in Adams County, Indiana, which has a population of twenty-one thousand two hundred fifty-four (21,254) according to the 1940 United States Census.

Section 1 of Chapter 144 of the Acts of 1917, as amended, same being Section 22-3215 Burns' 1933, provides for the holding of an election, upon order of the Board of County Commissioners, to determine whether the hospital petitioned for as provided in said Act shall be established. Said section of said statute, in part provides:

"* * * and such election shall be governed in all respects by the general laws of this state concerning elections in so far as the same are applicable, except that when the election is held as a special election, the election board in each precinct shall consist of two (2)

members only, a clerk and an inspector, who shall be appointed by the board of county commissioners, not less than one (1) week before such election is held. The board of election commissioners for such election shall consist of the auditor and two (2) commissioners to be appointed by the board of county commissioners, and they shall prepare and cause to be printed the ballots therefor, and distribute the same in the manner required by law. * * *"

1. In answer to your first question it is submitted that since Chapter 144 of the Acts of 1917 provides that such election shall be governed by the general laws of the State concerning elections in so far as applicable that the compensation of the members of the Board of Election Commissioners provided for by Chapter 144 of the Acts of 1917 would be controlled by the provisions of Section 24 of Chapter 208 of the Acts of 1945, being the General Election law, which provides in part as follows:

"The members of the county election board of each county shall receive for their services as such members, the following compensation, to-wit: * * *

"In counties having a population of twenty thousand and one (20,001), and not more than forty thousand (40,000), as shown by the last United States census, the members of such board shall receive for their services at any primary election the sum of one hundred and twenty-five dollars (\$125), and for their services at any general or special election the sum of one hundred and twenty-five dollars (\$125)."

I am therefore of the opinion the County Board of Election Commissioners provided for by Section 1, Chapter 144 of the Acts of 1917, as amended, would be one hundred twenty-five dollars (\$125.00) for each member.

2. An answer to your second question as to whether or not the county auditor as a member of said County Board of Election Commissioners established under the provisions of Section 1, Chapter 144, Acts 1917, requires a consideration of the following statutes:

Section 49-1004 Burns' 1933, which is Section 4, Chapter 21, Acts 1933, in part provides as follows:

"In each of the counties of the State of Indiana, the annual salaries of officials hereinafter named shall be as follows:

"Adams County: Auditor, twenty-one hundred sixty dollars (\$2,160); treasurer, eighteen hundred forty dollars (\$1,840); clerk of circuit court, eighteen hundred forty dollars (\$1,840); sheriff, eighteen hundred forty dollars (\$1,840); recorder, twelve hundred dollars (\$1,200); surveyor, nine hundred fifty dollars (\$950); county assessor, ten hundred eighty dollars (\$1,080); county superintendent, seventeen hundred twenty dollars (\$1,720); county commissioner, three hundred twenty dollars (\$320)."

Section 49-1005 Burns' 1933, which is Section 5, Chapter 21, Acts 1933, provides in part as follows:

"The compensation provided in the foregoing section shall be in lieu of all salaries, fees, and per diem now provided by statute for the officials therein designated, their deputies and other assistants in the several counties of the State of Indiana, except as herein otherwise provided. All fees and remuneration of whatsoever kind or character, for official services or involving official authority, now provided by statute or otherwise, shall be charged and collected by such officers and shall be the property of the county and shall be covered into the general fund of the county except as herein otherwise provided; * * *

From a consideration of the provisions of the last two quoted statute I am of the opinion any such fee received by the auditor for his services as a member of the County Board of Election Commissioners for the holding of an election for the establishment of a hospital pursuant to Section 1, Chapter 144 of the Acts of 1917, as amended, could not be retained by such auditor but would become the property of the county to be covered into the general fund of the county.

3. Since Chapter 144 of the Acts of 1917 does not provide for the compensation of the members of the precinct election board at an election to be held pursuant to the provisions of said statute, the same would also be subject to the provisions of Chapter 208 of the Acts of 1945, being the General Election statute, Section 39 of which statute provides as follows:

“Each judge, each clerk and each assistant clerk of any general election may be allowed and paid the sums of five dollars (\$5.00); and each sheriff of any such election may be allowed and paid the sum of three dollars (\$3.00); and each inspector of such election may be allowed and paid the sum of eight dollars (\$8.00) for the performances of all the duties of his office imposed on him by this act, which are performed by him on election day and eight dollars (\$8.00) for his services in calling at the county clerk’s office for the precinct election supplies and the return of same to the clerk’s office after the election whether the same is rendered before, on the day of or after such election: *Provided, however,* That the county commissioners in counties in which are situated cities of the first, second, third, fourth or fifth classes, may, by order of such board made and filed with the auditor of any such county not less than fifteen (15) days prior to the date of any primary or general election, provide for allowances and pay not to exceed the following amounts: Each judge, each clerk and each assistant clerk, the sum of nine dollars (\$9.00); each sheriff, the sum of six dollars (\$6.00); and each inspector, the sum of twelve dollars (\$12.00). *Provided further,* That in school, district and elections other than those above specified, except town elections, the county commissioners may fix the compensation of the precinct election officers at any determinate amount not to exceed the pay schedule first provided in this section. In town elections the compensation shall be fixed by the board of town trustees not in excess of the first above mentioned schedule.”

I am therefore of the opinion that under Section 39 of Chapter 208 of the Acts of 1945, the compensation of the members

of the precinct election board, which under the provisions of Section 1, Chapter 144 of the Acts of 1917, as amended, consists of a clerk and inspector, would be for such clerk to receive five dollars (\$5.00), and for such inspector to receive eight dollars (\$8.00) for his services on election day and eight dollars (\$8.00) for his services in calling for and returning the precinct election supplies after the election regardless of whether or not the same is rendered before, on the day of or after such election.

4. In answer to your fourth question it is submitted that neither Chapter 144 of the Acts of 1917, nor Chapter 208 of the Acts of 1945, *supra*, contains any reference to appropriation for the payment of such expenses incurred and they would therefore be governed by the general laws regarding the payment of money from the county treasury for such purposes. Under the provisions of Section 26-521 and Section 26-522 Burns' 1943 Supplement, same being Sections 21 and 22 of Chapter 154 of the Acts of 1899, as amended, together with a consideration of Section 1, Chapter 150 of the Acts of 1935, same being Section 64-1331 Burns' 1943 Replacement, an emergency appropriation would be necessary before conducting such an election for the establishment of such a hospital and the procedure and requirements of the last three referred to appropriation statutes followed prior to the holding of such an election.

OFFICIAL OPINION NO. 127

December 10, 1945.

Hon. Clarence E. Ruston, State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of November 9, 1945, received requesting an opinion upon the question as to whether or not Section 1 of Chapter 294 of the Acts of 1943, which imposes a mandatory obligation upon the county council to appropriate a sufficient