

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

amount of money to pay the salary of attendance officers fixed by the appointing power under the provisions of said Act, is constitutional.

Section 1 of Chapter 294, Acts 1943, same being Section 28-502, Burns' 1943 Supplement, provides in part as follows:

“\* \* \* Appointive attendance officers, unless otherwise provided in this act, shall have their salaries fixed by the appointing board and shall further receive actual expenses necessary to the proper performance of their duties, said salaries and expenses to be paid by the county treasurer upon a warrant signed by the county auditor, and the county council shall appropriate, and the board of county commissioners shall allow, the funds necessary to make such payments.  
\* \* \*”

In a previous official opinion of this office, being 1945 Indiana O. A. G., No. 20, where the powers and duties of a county council were under consideration it was stated:

“The county council is not created by the constitution but it is purely a creature of the statute, and as such, has no power or authority unless granted by the statute.

“‘Counties are but subdivisions of the state, and county officers, including county councils, are but agents of the state. Their authority is limited to that expressly conferred on them by the Legislature.  
\* \* \* Doubtful language in a statute delegating authority will be construed in favor of the retention of the authority by the Legislature. Central Union Telephone Co. *et al.* v. Indianapolis Telephone Co. (1919), 189 Ind. 210, 126 N. E. 628.’ ‘Applegate, County Auditor v. State *ex rel.* Pettijohn (1933), 205 Ind. 122, 125.’”

In the case of *Rogers v. Calumet National Bank* (1937), 213 Ind. 576, the court in construing a statute authorizing the mayor to appoint the first board of trustees of the water works, without the approval of the common council of the city, under the provisions of Section 3, Chapter 235, Acts of 1933, was also required to determine if such delegation of the power

of appointment without the approval of such common council was constitutional. On page 585 of the opinion the court said:

“There is no constitutional question involved here. It is true that the members of the old board were public officers. *Long v. Stemm et al.* (1937), 212 Ind. 204, 7 N. E. (2d) 188. But ‘offices are neither grants nor contracts, nor obligations which cannot be changed or impaired. They are subject to the legislative will at all times, except so far as the Constitution may protect them from interference. Offices created by the Legislature may be abolished by the Legislature. The power that creates can destroy. The creator is greater than the creature. The term of an office may be shortened, the duties of the office increased, and the compensation lessened, by the legislative will.’ *The State ex rel. Yancey v. Hyde* (1891), 129 Ind. 296, 302, 28 N. E. 186.”

The above rule would also be applicable to a common council.

I am therefore of the opinion that where the salary of an attendance officer is fixed by the appointing power under the provisions of Section 1, Chapter 294, Acts 1943, it is mandatory on the county council to appropriate funds for the payment of such salary and that such mandatory provision of such statute is constitutional.

---

OFFICIAL OPINION NO. 128

December 11, 1945.

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

Dear Sir:

Your letter of November 30, 1945, requests a construction of Chapter 128, Acts of 1945. The Act concerns municipal corporations, and your questions are as follows: