

COUNTY SURVEYORS—Increase of Salary. Appointee's term of office commences date of appointment—entitled to increase of salary under Act effective prior to appointment.

April 19, 1944.

Opinion No. 42

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

Dear Mr. Jensen:

This will acknowledge receipt of your letter dated April 13th, 1944, which reads as follows:

“In St. Joseph County the county surveyor incumbent in office at the time of the passage of Chapter 305, Acts of 1943, has since resigned and a new surveyor has been appointed to fill the unexpired term. The former surveyor was not a licensed engineer. The new surveyor appointed, however, is a duly licensed engineer.”

“I would like to have your opinion upon the following question:

“Is the county surveyor appointed subsequent to the enactment of Chapter 305, Acts of 1943, to fill an unexpired term, entitled to receive the salary as provided in said Chapter 305, during his term in office under such appointment?”

Section 2, Article 15, Indiana Constitution, reads as follows:

“When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the general assembly shall not create any office; the tenure of which shall be longer than four (4) years, nor shall the term of office or salary of any officer fixed

by this constitution or by law be increased during the term for which such officer was elected or appointed."
(Our emphasis.)

According to the statement of facts contained in your letter the present incumbent county surveyor of St. Joseph County was appointed to fill the unexpired term of a county surveyor elected in 1942 and who resigned. Your letter further states that the appointment of the present incumbent occurred subsequent to the effective date of Chapter 305, Acts 1943, which Act increases the salary of the county surveyor of St. Joseph County over the salary in effect at the time of the election in 1942. The question presented is whether or not the term of office of the present incumbent county surveyor of St. Joseph County commenced at the time of his appointment to fill the unexpired term of his predecessor within the meaning of Section 2 of Article 15 of the Indiana Constitution, or did such term of office commence at the same time as the term of his predecessor, who was elected and qualified prior to the effective date of Chapter 305, Acts 1943.

The authorities upon this question are divided but after a careful consideration of the decided cases, it is my opinion that the better reasoned cases are found among the authorities holding that where a statute increasing a salary of an office is enacted prior to the appointment of a person to fill an unexpired term, such appointee is entitled to the increased salary, and that his term of office is properly construed as commencing at the time of his appointment.

The above principle and rule of law is well stated by the Oklahoma Supreme Court in the case of *Carter v. State*, 77 Okla. 31, 186 Pac. 464. On page 34 of 77 Okla. the court says:

"The substance of the provisions of our Constitution, as applied to this case is: 'In no case shall the salary of any public official be changed after his appointment or during his term of office.' The law fixing the salary of the relator was enacted prior to his appointment, *his term of office began with his qualification*, and may be terminated by resignation, death, removal for cause, or the expiration of the unexpired term for which he was appointed. A law attempting to change his salary, subsequent to his appointment and qualification and

before the termination of his present term, would fall within the terms of the section of the Constitution, *but when enacted prior to his appointment, and prior to his term, is not within the constitution inhibition.*" (Our emphasis.)

Carter v. State, 77 Okla. 31 on 34, 186 Pac. 464.

To same effect see:

State ex rel. v. Porter, 57 Mont. 343, 188 Pac. 375.

In conclusion, it is my opinion that the present incumbent county surveyor of St. Joseph County, Indiana, is entitled to the increased salary provided in Chapter 305, Acts 1943.

SECRETARY OF STATE, Corporation Division; not-for-profit corporation; initial meeting for organization may be held without the State of Indiana.

April 24, 1944.

Opinion No. 43

Hon. C. Warren Day,
Chief Corporation Counsel,
Office of Secretary of State,
Indianapolis, Indiana.

Dear Sir:

I have your letter of April 15th in which you request an official opinion on the following question:

"May the initial members of a proposed corporation to be organized pursuant to Chapter 157 of the Acts of 1935 (Section 25-507—25-542, Burns' 1933 Supplement) hold their organization meeting, for the purpose of designating the incorporators and electing the first board of directors, outside the State of Indiana?"

The general rule in regard to corporate meetings is that the corporation being an entity created by the state may exercise its corporate functions only in the state.

Bank of Augusta v. Earle, 13 Pet. 519 at 588;
Miller v. Ewer, 27 Me. 509, 46 Am. Dec. 619;