INDIANA ECONOMIC COUNCIL—Appropriation for Administration of Act Creating Council May Be Used to Pay Traveling Expenses of Members of Council: Distinction between salary, compensation and allowances for expenses.

March 7, 1944.

Opinion No. 23

Hon. John W. Van Ness,
State Senator,
Valparaiso, Indiana.

Dear Senator Van Ness:

This will acknowledge receipt of your letter dated February 28th, 1944, which reads as follows:

"In Section 1 of Chapter 260, Acts of 1943, the last sentence reads: 'Members of the Council shall receive no compensation'. Also a part of Section 5 reads: 'Moneys in said fund shall be used solely for administration of this Act, etc.

"Can any of the funds appropriated under this Act be used for traveling or hotel expenses of the members of the Council?"

Examination of the provisions of Chapter 260, Acts 1943, Burns' Replacement, Sections 60-1401 to 60-1405, discloses that Section 1 of said Act, being Section 60-1401, creates the Indiana Economic Council consisting of twenty-two members, the manner of their appointment, the qualifications of the persons to be appointed, and the term of office of each member. The closing sentence of this section reads as follows:

"Members of the council shall receive no compensation."

Sections 2, 3 and 4 of the Act, being Sections 60-1402, 60-1403 and 60-1404, define the powers and duties of the council.

Section 5 of the Act, being Section 60-1405, appropriates the sum of $50,000.00 for the use of the council and reads in part as follows:

"* * * Moneys in said fund shall be used solely for administration of this Act and disbursements from
the fund shall be made on order of the Council or of the Executive Committee of the Council, the creation of which by resolution of the Council is hereby authorized. Said Committee shall consist of not less than five members.”

In considering the answer to your question, it is proper to take into consideration the language found in Chapter 296, Acts 1943, commonly known as the Biennial Appropriation Act. In Section 3 of Chapter 296, Acts 1943, we find the following language:

“All appropriations herein provided, and all appropriations otherwise provided by statute, designated or intended as and for traveling and hotel expenses for any department, officer, agent, employee, person, trustee or commissioner, shall be construed to mean and are hereby intended to be confined to such traveling and hotel expenses within the State of Indiana and not elsewhere; * * *.” (Our emphasis.)

I also call your attention to the language contained in Section 61-206, which reads as follows:

“In all accounts rendered for traveling expenses, receipted bills for each item, except railroad fare, shall be submitted: Provided, however, That the budget committee is hereby authorized to fix and prescribe per diem or per diems in lieu of traveling expenses, other than transportation, in such amounts as they deem proper and equitable but in no case shall such per diem exceed six dollars ($6.00) per day. When such per diem is fixed receipted bills for each item will not be necessary. Per diem when fixed shall include meals, lodging, and all other traveling expenses except transportation. It will be sufficient in items covering railroad fare to verify same, if advisable, by referring to published tariff rates, and auto transportation shall be at the rate provided in the appropriation act. Constructive charges shall be eliminated from all vouchers, and under no circumstances shall the appropriation of the succeeding fiscal year be anticipated by predecessor.”
Pursuant to the authority contained in the two preceding sections of the statute all persons, officers, members of boards and commissions traveling upon state business, are allowed and reimbursed for actual traveling expenses. Such allowances are made, regardless of any statutory salary, or compensation, connected with such office.

I call your attention to an official opinion issued to Honorable Hobart Creighton, Speaker of the House of Representatives, under date of January 13th, 1943 (Opinions of the Attorney General 1943, page 10, in answer to an inquiry as to whether or not the members of the General Assembly of the 1943 Session could legally and constitutionally increase the amount of the per diem allowance for maintenance of the members while on duty during the 1943 Session. In this opinion I pointed out the difference between salaries, compensation and allowance or reimbursement for actual expenses incurred in performing official duties and cited authorities to sustain the distinction. It is my opinion that the same rule is applicable in considering an answer to your question and that an allowance or reimbursement for actual expenses incurred in the performance of duties as members of the Indiana Economic Council can not be considered or construed as constituting compensation or salary for services rendered in the performance of their duties as members of the council.

Therefore, it is my opinion that the members of the Indiana Economic Council are entitled to be reimbursed for actual traveling and hotel expenses incurred in the performance of their official duties as members of the council and such payments come within the purview of the words “used solely for administration of this Act,” and that the proper answer to your question is in the affirmative.