

**STATE BOARD OF ACCOUNTS: Salary of municipal officer appointed to fill vacancy, whether such salary may be reduced from that formerly paid.**

August 3, 1943.

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 July 20th, 1943, which reads as follows:

“Section 48-1222 Burns’ R. S. 1933, Pocket Supplement of December, 1942, contains the provisions that:

“The salaries of each and all such appointive officers, employees, deputies, assistants and departmental and institutional heads, other than those fixed by the common council under the provisions of this act, shall be fixed by the mayor subject to the approval of the common council, which may reduce but in no event shall raise the salary so fixed. \* \* \* All salaries fixed by the mayor with approval of the common council in accordance with the provisions of this act, shall be fixed on or before the first Monday in September of each year for the next calendar year immediately ensuing and, when so fixed, shall not be *increased* during such ensuing calendar year except as provided in this act.” (Our emphasis.)

“The question is presented as to whether, in case of a vacancy in any position during the calendar year, the salary of which has been fixed in accordance with the provisions of the statute, and appropriation made therefor, can such salary for the position be reduced and the new appointee paid an amount less than that fixed for the position on or before the first Monday of the preceding September?

“I would like to have your opinion on the question thus presented.”

Furthermore, I understand that the question refers particularly to the position of employees of a municipal corporation, and the right to lessen the compensation of an appointive employee, and does not involve a statutory office, and this opinion will be so directed.

The above quoted language provides that the salaries of all appointive officers, employees, deputies, assistants, departmental and institutional heads, other than those fixed by the common council in accordance with the provisions of the act of which Section 48-1222, *supra*, is a part, shall be fixed by the mayor subject to the approval of the common council. It is clearly and expressly stated that the common council may reduce the salaries of employees as fixed by the mayor but in no event shall such common council raise such salaries as so fixed by the mayor. This section further states that all such salaries shall be fixed on, or before, the first Monday in September of each calendar year and, when so fixed, *shall not be increased during the ensuing calendar year*, except as provided in the act.

This language so contained in Section 48-1222 establishes a ceiling for the salaries of employees for the ensuing calendar year but there is nothing in the quoted language, *supra*, contained in said Section 48-1222 which prohibits a reduction in the salaries of employees during the ensuing calendar year. Furthermore, there is nothing in the quoted language, *supra*, which expressly states that the salaries so fixed must remain stationary during the ensuing calendar year.

The employees referred to in this statute were created by the Legislature, and it is well settled that with reference to such employees the compensation may be lessened, unless prohibited by a specific statute.

Rogers v. Calumet, etc., 213 Ind., 576 on 585;  
State ex rel. Yancey v. Hyde, 129 Ind., 296 on 302.

Therefore, in answer to your specific question, it is my opinion that in case of a vacancy in any position of an employee during the calendar year, and a new appointment is contemplated, there is nothing contained in Section 48-1222, *supra*, which prevents, or prohibits, the mayor, with the approval of the common council, from fixing a new salary

schedule for such position, at a reduced amount from that paid to the former appointee to such position.

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**STATE BOARD OF ACCOUNTS: Budgets; notice required in the establishment of budgets. See Sec. 64-1331 of Burns Pocket Supplement of 1942.**

August 5, 1943.

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 July 31, 1943, which reads as follows:

“Can a civil town legally establish a budget, without complying with that part of Sec. 64-1331 Burns’ Indiana Statute, June, 1943, Pocket Supplement, that requires that notice of the same be published in two (2) newspapers?”

Section 64-1331, Burns’ Pocket Supplement, 1942, reads in part as follows:

“The several tax levies and rates shall be established by the proper legal officers of *any municipal corporation* after the formulation and publication by them of a budget of forms prescribed by the state board of accounts showing in detail the money proposed to be expended during the succeeding year, the valuation of all taxable property within the jurisdiction and the rate of taxation which it is proposed to establish, and after a public hearing within the jurisdiction at which any taxpayer shall have a right to be heard thereon. Ten (10) days’ notice by publication of such budget, levies and rates and of such public hearing *in two (2) newspapers of opposite political parties published in such taxing district or in one (1) such paper* if only