“2. If your answer to the above question is in the affirmative, would the rights and duties of the county treasurer acting as city treasurer, terminate with the adoption of such ordinance?”

After a careful consideration of the language contained in the above quotation from chapter 273 of the Acts of 1943, it is my opinion that the city council is restricted to the year in which an election of city officials will be held in the matter of adopting an ordinance creating the office of clerk-treasurer and providing for the election of such city official, and that such statute does not authorize the common council of any city of the third class which owns and operates two or more municipal utilities, or a water and sewage disposal utilities, to create the office of clerk-treasurer at any time after the effective date of chapter 273 of the Acts of 1943.

In view of my answer to your first inquiry, it is not necessary to answer your second question.


Mr. Otto K. Jensen,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of March 19, 1943, in which you refer to Chapter 291 of the Acts of 1943 and submit for an official opinion two questions based upon the provisions of said chapter. The questions submitted are as follows:

“1. Do the provisions of Chapter 291 of the Acts of 1943 (House Bill No. 156), authorize the payment to incumbent deputy assessors of an increased compensation over that provided by law prior to the enactment of said Chapter 291?

“2. From what date will the compensation as fixed by the county council under the provisions of said Chapter 291, be effective?”

The Chapter referred to contains five sections.
The first literary paragraph of Section 1 provides that in any township of the state having a population of less than 40,000, as shown by the last preceding United States Census, the township assessor is authorized to employ such assistants as may be necessary to do the assessing in such township and provides that such assistants shall receive compensation at not to exceed $5 per day for the days actually employed.

Similar provisions are made with respect to townships having a population of 40,000 or more and less than 100,000, as shown by the last preceding United States Census, providing that the township assessors in such townships are authorized to employ a chief deputy to receive a compensation at not to exceed the rate of $8 per day, one special deputy at not to exceed the rate of $7 per day, and such number of record and transcript clerks as may be necessary to carry on the work of the assessor's office, who shall receive compensation at not to exceed the rate of $6 per day.

Similarly, in townships having a population of 100,000 or more, as shown by the last preceding United States Census, the township assessors are authorized to employ a first deputy who shall receive as compensation a salary of not to exceed $2500 per annum and such number of special and real estate deputies as may be necessary to receive compensation at not to exceed the rate of $7 per day, also such number of transcript and record clerks as may be necessary, who shall receive compensation at not to exceed $6 per day.

Thereafter follows a provision applicable to townships having a population of 40,000 or more as shown by the last preceding United States census, authorizing such township assessors, in such townships, to employ such field deputies as may be necessary during the regular assessing period and such deputies who are employed in assessing personal property to receive compensation at not to exceed the rate of $5 per day for the time actually employed, it being provided also that such deputies employed in assessing business and manufacturing property shall receive compensation at not to exceed the rate of $7 per day for the time actually employed. In the years of the general assessment of real estate it is provided that the deputies employed in assessing real estate are to receive compensation at the rate of not to exceed $7 per day in such townships as last described.
Thereafter follows the provision that:

“The salaries and per diems provided for herein shall be fixed by the county council and shall be paid subject to an appropriation being made therefor by the county council.”

Section 2 of the Act provides that if any one or more sections, sentences, clauses, or phrases of the Act shall be declared unconstitutional, such a decision shall not invalidate any other part of the Act.

Section 3 of the Act repeals all laws and parts of laws in conflict with the provisions of said Act.

Section 4 of the Act provides that it shall expire by limitation at midnight on the 31st day of March, 1945.

Section 5 of the Act declares an emergency for the immediate taking effect of it and provides that the same shall be in full force and effect from and after its passage.

It is apparent, from what has already been said, that Chapter 291, supra, does not itself fix either salaries or per diems to be paid to deputy assessors of townships. What it does is to provide that the county council shall fix such salaries and per diems, and provides a maximum beyond which the county council shall not go in fixing same. It is evident from the foregoing that before the Act can be fully effective, the county council will need to be called in session and fix the salaries and per diems of the officers to which the same apply. This, of course, will require some time, but owing to the fact that it is so evident that the intention is to put the Act fully into effect at once after passage, I think the action of the council fixing such salaries and per diems should be treated as retro-active to the time of the effective date of the Chapter. Your second question is so answered.

In answer to your first question, I think it is apparent, from what has already been said, that this question must be answered in the negative. In other words, the Act itself does not fix a salary or per diem for any deputy. It provides simply the maximum which may be fixed by the county council. I think, however, that you desire a consideration of the constitutional question which might arise, when the county council fixes the salary or per diem of such officers at an amount in excess of what they are now being paid. In my opinion
such increase would not violate the constitutional provision. The constitutional provision is to the effect that the salary of any officer fixed by the constitution or by law shall not be increased during the term for which such officer was elected or appointed. These particular officers, however, have no "term", and for that reason, if for no other, there would be no constitutional question involved.

DIVISION OF LABOR: Whether Senate Bill 130 of 1943 session is valid.

STATUTORY CONSTRUCTION: Effect of legislation purporting to amend a section previously amended.

March 24, 1943.

Mrs. Mary L. Garner, Director,
Bureau of Women and Children,
Division of Labor,
Room 225, State Capitol,
Indianapolis, Indiana.

Dear Mrs. Garner:

I have the following letter from you concerning the legality and effect of an amendment to an act when such amendment purports to amend an act which was previously amended during the same session of the legislature:

"The question has arisen as to whether Senate Bill No. 130 concerning pin boys in bowling alleys is legal as it amends the same section of the School Attendance Child Labor Law, Chapter 132, Acts of 1921, but does not make reference to House Bill No. 180. In other words, it does not amend the Law as it was already amended by House Bill No. 180.

"We feel that this matter is of importance and should be definitely settled as to the legality of Senate Bill No. 130 as it followed the enactment of House Bill No. 180 approved February 25, 1943—Kendall.

"Senate Bill No. 130 was approved March 6, 1943—Eichhorn, Miller."