STATE BOARD OF ACCOUNTS: Constitutionality of Chapter 121 of the Acts of 1943 as respects the increase of salaries during the term of an officer and after such term has begun.

July 20, 1943.

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

Dear Mr. Jensen:

I am in receipt of your letter dated July 13, 1943, which reads as follows:

"Chapter 121, Acts of 1943, amended Section 1 of Chapter 215, Acts of 1921, which was an act concerning courts of limited jurisdiction. The amendment omitted the words 'or superior court', and as amended, the City of East Chicago was brought within the provisions of the Act.

"The question is presented as to whether the incumbent city judge is entitled to receive the additional compensation as provided by said Chapter 121, Acts 1943, during his present term in office.

"I would like to have your opinion on the question presented."

Chapter 121, Acts of 1943, amends Section 1 of Ch. 215, Acts 1921, being Burns' R. S. 1933, Section 4-2701. A careful examination of Burns' R. S. 1933, Section 4-2701 with the provisions of Chapter 121, Acts of 1943, discloses that the only material difference in the two statutes is that the words "or superior court" found in the fourth line of Section 4-2701 has been omitted from Ch. 121 of the Acts of 1943 and the following language added to Ch. 121, to-wit:

"* * * Provided, further, That for the additional services that this act will require to be performed by the city judge of said city court, said city judge shall receive two thousand dollars ($2,000) per annum in addition to the salary now otherwise provided by law
for said city judge, and it shall be the duty of the common council to appropriate the money necessary to pay said additional salary.”

I fail to find any language in Ch. 121, Acts of 1943, which imposes any new or additional duties upon said city court or any language which enlarges the jurisdiction of said city court from that which existed under the provisions of Burns’ R. S. 1933, Section 4-2701.

Assuming, however, that new or additional duties have been, or will be, imposed upon said city court by the provisions of Ch. 121, Acts of 1943, such fact, in itself, does not justify or authorize an increase in the salary of the present incumbent judge of such court, if such increase in salary violates or conflicts with any of the provisions of the Indiana Constitution.

In the case of State ex rel. v. Duncan, 175 Ind. 661, on page 663, the Supreme Court of Indiana says:

“It is settled that in the absence of constitutional restriction, the legislature may at its pleasure increase or diminish the duties of public officers. Gilbert v. Board, etc. (1846), 8 Blackf. 81; Turpen v. Board, etc. (1855), 7 Ind. 172, 173; Walker v. Dunham (1861), 17 Ind. 483, 485; Yeager v. Board, etc. (1884), 95 Ind. 427, 430, and cases cited; Bynum v. Board, etc. (1885), 100 Ind. 90, 91; Sudbury v. Board, etc. (1901), 157 Ind. 446, 456.

“As was said in Yeager v. Board, etc., supra, at page 430: ‘The person who accepts and assumes to act in the office takes it cum onere, not only of existing duties, but subject to such as may thereafter be legally imposed, and subject to such rights and liabilities as to compensation as the legislature has (declared) or may declare. If the legislature imposes burdensome or unremunerative duties, he must perform (them) as required or resign the office.’”

Also in 46 Corpus Juris 1025, the rule is stated in the following language:

“Although new duties germane to an office are imposed on an officer, the compensation cannot be in-
creased without violating the prohibition against an increase in compensation after election or appointment, or during the term of office. * * *"

Again in 43 American Jurisprudence 146, we find the following:

"* * * If new duties germane to the office are imposed upon the incumbent, he must perform them without extra compensation, and where additional compensation is provided by statute or ordinance for such new duties, there is a violation of the constitutional prohibition against increase of compensation. * * *"

Section 2, Article 15 of the Constitution of Indiana 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."

Under the express prohibition against an increase in salary during the term for which an officer is elected or appointed contained in Section 2, Article 15, supra, and the well settled law as declared in the authorities cited, supra, it is my opinion that Ch. 121, Acts of 1943, is invalid, null and void in so far as it purports to increase the salary of the present incumbent judge of the city court of East Chicago, and that said Chapter can only be construed as valid and constitutional as it may affect and apply to any future incumbent of such office.