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GENERAL ASSEMBLY: Procedure and powers of county commissioners, county council, tax adjustment board, and state board of tax commissioners with reference to budget-making power. See opinion to State Board of Tax Commissioners under date of September 4, 1943.

August 19, 1943.

Hon. William Hostettler, Representative,
Greene County,
Bloomfield, Indiana.

Dear Mr. Hostettler:

This will acknowledge receipt of your letter dated August 9th, 1943, which reads as follows:

"In making up the budget for the office of the County Clerk some of the departments show an increase over the figures of last year.

"In case the County Commissioners do not O. K. the budget as made up, but cut it back to last year's figures, does the County Council, the Tax Adjustment Board or the State Tax Board have the power to pass the budget as originally made up, over the veto of the County Commissioners?"

An answer to your question involves an interpretation of the following sections of the statute, to-wit:

Burns' R. S. 1933, Sections 26-515, 26-516, 26-517, 26-518, 26-519, 26-520; Pocket Supplement 1943, Sections 64-310, 64-311, 64-314 and 64-1313.

Section 26-515 reads as follows:

"The power of fixing the rate of taxation for county purposes, and for all purposes where the rate not fixed by law is required to be uniform throughout the county, shall be vested exclusively in the county council; and neither the board of county commissioners, nor any county officer or officers, shall have power to fix the rate for any purpose whatever. The power of making appropriations of money to be paid out of the county treasury shall be vested exclusively in such council, and, except as in this act otherwise expressly
provided, no money shall be drawn from such treasury but in pursuance of appropriations so made."

Section 26-516 reads, in part, as follows:

"Before the Thursday following the first Monday in August of each year, every county officer shall prepare an estimate, itemized with as great particularity as possible, of the amount of money required for his office for the ensuing calendar year; every clerk of a court or courts of a county shall prepare a separate similarly itemized estimate of the amount required for such year for each court of which he is clerk, * * *; and every board of county commissioners shall prepare a separate and similarly itemized estimate of all money to be drawn by the members of said board, and of all expenditures to be made by the board, or pursuant to its order, during such year for any and all purposes whatever * * *.”

Section 26-517 specifically provides what each estimate, required by the preceding section to be prepared by any county officer of money required for his office, shall embrace.

Section 26-518 provides what items shall be included in the estimate for the various courts of the county.

Section 26-519 specifies the items which shall be included in the estimate prepared by the board of commissioners. The final paragraph of this section contains the following sentence:

"* * * The power of fixing the rate of taxation in each township for the purpose of raising funds for the payment of the expense of making the tax assessment for such township shall be vested exclusively in the county council, and neither the board of county commissioners nor any other officer shall have power to fix the rate for any such purpose whatever. Before the Thursday following the first Monday in August in each year, each township assessor shall prepare an estimate, itemized with as great particularity as possible, of the amount of money required for his office for the ensuing calendar year. * * *.”
Section 26-520 provides that all of the estimates required by the preceding sections shall be filed with the county auditor on or before Wednesday following the first Monday in August, and further provides for the publication of notice of such estimate. This section further provides that the estimates shall be submitted to the county council at the regular annual meeting of the council on the first Tuesday after the first Monday in September. This section then reads as follows:

"* * * The council at said meeting shall act upon such ordinances, and, by adopting the same or amended or substituted ordinance, fix the tax rate within the limit prescribed by law, and make the appropriations. * * * The council shall have full power to require any estimate not sufficiently itemized to be so itemized by the person who prepared the same, and to appropriate for any purpose a sum not greater than that estimated in the item therefor. By a three-fourths vote of the council, and not otherwise, an appropriation may be made for an item not contained in any estimate, or for a greater amount than that named in any item of an estimate."

It readily appears from the language of the foregoing sections that the various county officers are the ones who prepare and submit the estimates for their respective offices and the board of commissioners prepare and submit the estimate of all money which will be expended by and through the board of commissioners. Based upon these respective estimates the county council appropriates, fixes and adopts a tax rate sufficient to raise the required amount of money provided for in the various estimates. The language above quoted from Section 26-520 expressly provides that the county council shall appropriate a sum of money not greater than that estimated by the respective officers provided, however, that by a three-fourths vote of the council, and not otherwise, the county council may make an appropriation for a greater amount than that named in any item of the estimate submitted by the respective officers who are required to submit such estimates. Under the above sections of the statute it is clear that the board of county commissioners have no right to veto, in-
crease, reduce or change any item contained in any estimate submitted by any county officer and, that the only right of veto over any estimate which may be exercised by the board of county commissioners is in respect to the estimate which the statute requires that the board of commissioners shall prepare and submit.

Section 64-310 provides for the appointment of a county board of tax adjustment composed of seven members.

Section 64-311, in part, reads as follows:

"* * * It shall be the duty of such tax adjustment board to examine, revise, change or reduce, but not increase, any budget, tax levy or rate, and to hold such budget within the total of the amount of revenue to be raised therefor from any source whatsoever, to reduce such budget in accordance therewith. * * * Provided, however, That is said board shall, as a result of its analysis and review of the budget or budgets of any municipal corporation or corporations, come to the conclusion that the rate of taxation as limited by the provisions of this act is inadequate or that there be reasonable necessity for an increase of the aggregate rate, then, in that event, the tax adjustment board shall submit in writing such recommendations, including an analysis of the total aggregate rate and such other data as in its discretion will transmit to the state board of tax commissioners all the necessary facts and circumstances under which, in its opinion, the final aggregate rate should be broken down and distributed to the separate and several corporations, * * * The state board of tax commissioners shall then proceed to review such budgets and proceed according to the provisions outlined in this act governing appeals.

"* * *

"If the county tax adjustment board shall revise, change or reduce any such budget, levy and rate as fixed by the proper officers of any such municipal corporation, the budget, levy and rate as so revised, changed or reduced by said board shall be the only budget, levy and rate upon which taxes shall be levied,
collected and applied during the ensuing year, except as herein otherwise provided."

It will be observed from the language above quoted that the county board of tax adjustment has a right to revise, change or reduce, but not to increase, any budget. The above quoted language further provides that if such county board of tax adjustment finds that the rate of taxation as limited by the provisions of the act or included in the budget, is insufficient to meet local requirements and there is a reasonable necessity for an increase in the aggregate rate to provide the necessary amount of money, such board has a right to make recommendations to the State Board of Tax Commissioners, which latter board shall proceed to review the budget and fix a rate in accordance with the provisions of the statute.

Section 64-314 provides for an appeal from the County Board of Tax Adjustment to the State Board of Tax Commissioners by any municipal corporation as defined by Section 64-309, or by ten, or more, taxpayers other than those who pay poll tax only, and who are affected by any tax levy or rate as fixed in said taxing unit.

The State Board of Tax Commissioners is therefore given the final approval over the annual budget and tax levy.

To summarize, it is my opinion that the right and duty to make the necessary estimates of expenditures to be contained in the budget for the various county and township offices, is vested in the duly elected and acting officials holding such respective offices, subject to any limitations imposed by statute as to tax levy and rates; that the board of county commissioners has no right or authority to alter, revise or reduce the estimates made by any other county or township officer; that the county council is vested with the power and authority to amend, alter, revise or reduce any and all estimates submitted to it, and is vested with the exclusive right, power, duty and authority to fix, adopt and enact the necessary appropriation ordinances and tax rate levies adequate to produce and raise sufficient revenues to meet all expenditures provided for in the various budgets; that by a three-fourths (3/4) vote, and not otherwise, the county council may increase or include omitted items in the estimates contained in the budget, as submitted by the various officers; that the county board of tax
adjustment may revise, change or reduce, but not increase, any budget, tax levy or rate: Provided, however, that if the county board of the tax adjustment finds that the budget and the tax rate as adopted are inadequate to meet current needs, said board is required to prepare and submit to the State Board of Tax Commissioners a written, detailed analysis and recommendation, and the State Board of Tax Commissioners is charged with the duty to review the budgets and tax rates as adopted and fixed in conjunction with such written analysis and recommendations, and make a final order in said matter.

STATE BOARD OF ACCOUNTS: County Surveyors, whether additional salary provided by Chapter 305 of the Acts of 1943 is valid as applied to County Surveyors whose terms of office do not expire until January 1, 1945.

August 20, 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 August 3, 1943, which reads as follows:

"Chapter 305, Acts of 1943, fixes the compensation of county surveyors and provides that same shall be in full force and effect on and after January 1, 1944. Counties are now preparing their budgets for the year 1944. County surveyors are elected for a term of two years and the term of the present incumbents expires on December 31, 1944.

"The question is presented as to whether the incumbent county surveyors are entitled to receive the compensation, as provided by said Chapter 305, Acts 1943, during the year 1944. The basic salaries, as set out in Chapter 305, Acts 1943, represents an increase of ap-