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-
proximately 50% over the basic salaries as provided in Chapter 21, Acts 1933.

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

Section 2 of Article 6 of the Indiana Constitution reads:

"There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. The Clerk, Auditor, and Recorder shall continue in office four years; and no person shall be eligible to the office of Clerk, Recorder, or Auditor, more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner, and Surveyor shall continue in office two years; and no person shall be eligible to the office of Treasurer or Sheriff more than four years in any period of six years."

Section 2, of Article 15, the Indiana Constitution, 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 Section 2 of Article 6, supra, the county surveyor is a constitutional public officer and as such is clearly included within the purview of Section 2 of Article 15, above quoted.

Therefore, it is my opinion that Chapter 305, Acts 1943, which purports to increase the salary and compensation of all county surveyors in the state of Indiana is invalid and unconstitutional as applied to present incumbent county surveyors, except as to such county surveyors in the state, if any, whose salary is paid or fixed upon a per diem basis. In all cases where the salary or compensation of a public officer is
fixed upon a per diem basis it is my opinion that the constitutional inhibitions above quoted do not apply and that the legislature has the right to increase the per diem amount which may be paid to any such public officer.

Cowdin v. Huff, 10 Ind. 83;
Seiler v. State ex rel., 160 Ind. 605-618;
Benedict v. U. S., 176 U. S. 357;
Lobrano v. Police, etc., 150 La. 14, 90 So. 423.

In conclusion, it is my opinion that the increase in salary provided for in Chapter 305 of the Acts of 1943 is only valid and constitutional as applied to county surveyors who will assume office January 1, 1945, except as above stated.

STATE BOARD OF TAX COMMISSIONERS: Intangibles tax, whether tax board has authority to order refunds of intangibles taxes.

August 23, 1943.

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated August 12, 1943, which reads as follows:

"We would appreciate an official opinion from you determining the following questions:

"1. Does the State Board of Tax Commissioners have the power or right to approve claims for the refund of intangibles tax that has been paid under the provisions of Chapter 81, of the Acts of 1933, usually designated as "The Intangibles Tax Act"?

"2. If it does have such power and right, what are the limitations, if any, upon the exercise of such power, or in other words, during what period of time after the payment of such tax does the power exist to approve a claim for refund?"