
December 9, 1943.

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

Dear Mr. Jensen:

This will acknowledge receipt of your recent letter which reads as follows:

"Chapter 304, page 1017, Acts of 1943, makes provision for the salaries of officers in cities of 20,000 to 35,000 population. This Act amends Section 15 of Chapter 233, Acts 1933. The difference lies in the proviso contained in Chapter 304, Acts 1943, which grants additional compensation to officers of such cities in the population classification, as own and operate two or more municipal utilities or plants.

"Chapter 304 contained an emergency clause and was filed in the office of secretary of state March 12, 1943.

"Are present incumbents entitled to the increase in compensation provided in this Act, or is the payment of the extra compensation to incumbents in contravention of Article 15, Section 2 of the Constitution of Indiana?

"What limitation or construction should be placed on the phrase 'two or more municipal utilities or plants' with particular reference to the word plant?

"Is the extra compensation provided in Chapter 304, Acts 1943 to be considered in addition to that provided in Section 21, Chapter 233, Acts of 1933, as amended (48-1233 Burns' R. S.) and to be paid from funds of the utility?"

The amendment made by the 1943 session of the Legislature to Section 15 of Chapter 233, Acts 1933, by Chapter 304, Acts
1943, Burns' 1943 Pocket Supplement, Section 48-1227, reads as follows:

"* * * Provided, however, That in any of such cities which owns and operates two (2) or more municipal utilities or plants, notwithstanding any of the provisions of the act of which this act is amendatory, the mayor of any such city for additional services rendered by reason thereof, shall be paid an aggregate annual salary of twelve hundred dollars ($1,200) by such plants or utilities in addition to the annual salary herein otherwise authorized; the city attorney, city clerk and city civil engineer, for additional services rendered by reason thereof, shall each be paid an aggregate annual salary of one thousand dollars ($1,000) by such plants or utilities in addition to the annual salaries herein otherwise authorized; And provided further, That the proportionate amount of the aggregate salaries to be paid by each of such plants or utilities, shall, in each instance be determined by the governing board of each such plants or utilities."

Prior to the enactment of this amendment the officers of any city owning and operating a public utility or utilities were entitled to be paid an additional salary of $600.00 per year for services rendered in connection with the operation and management of such utility or utilities under the provisions of Burns' R. S. 1933, Section 48-1233. This section provided that before any officers would be entitled to receive such additional salary of $600.00 it was necessary that the common council should enact an ordinance on or before the first day of April of the year in which elections of city officers are held, authorizing the payment of said additional salary.

Section 2 of Article 15 of 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."

In a previous opinion to you, dated April 23, 1943, I held that Chapter 255 of the Acts of 1943, which granted an allowance to prosecuting attorneys for expenses incurred by reason of additional duties imposed on such officials by statutes enacted subsequent to the enactment of Chapter 140 of the Acts of 1943, did not violate the provisions of Section 2 of Article 15 of the Indiana Constitution. In this opinion I cited and quoted from numerous authorities which upheld the granting of allowances for expenses because of additional duties imposed by statute and which authorities clearly defined the difference between an allowance for expenses and the granting of additional salary or compensation. Referring to the amendment quoted supra, it will be observed that the Legislature expressly states that the mayor and other officials therein mentioned shall be paid an aggregate annual salary of a specified amount in each instance for additional services rendered. There is a clear distinction between the language used by the Legislature in the amendment made to Section 48-1227, supra, and the language used in Chapter 255 of the Acts of 1943 with reference to the allowance of expenses incurred because of additional duties imposed upon prosecuting attorneys, and for this reason the views expressed in my opinion of April 23rd, 1943, and the authorities therein cited, are not applicable to the present question.

It is well settled that the mere fact that additional duties may be imposed upon an officer during the term for which he is elected will not justify an increase in the salary of such officer and remove the inhibition against increase of salaries during the term imposed by Section 2 of Article 15 of the Constitution. The law upon this question is well stated by the Supreme Court of Indiana in the case of State, ex rel., v. Duncan, 175 Ind. 661. On page 663 Judge Monks states the rule as follows:

"It is settled that in the absence of constitutional restriction, the legislature may at its pleasure increase or diminish the duties of public officers. * * *"
"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.'"

In view of the language used in the amendment to Section 48-1227, *supra*, it is my opinion that such language comes clearly within the inhibition imposed and contained in Section 2 of Article 15 of the Indiana Constitution, and that the present incumbent officers of the cities included within the purview of Section 304, Acts 1943, who have been elected for a definite term of office, are not entitled to the increase in compensation provided for in this Act and that any such payment to them would be in contravention of said Section 2 of Article 15, aforesaid. This would not apply to appointed officials, who serve only at the pleasure of the appointive power.

With reference to your second question, as to what limitation or construction should be placed on the phrase "two or more municipal utilities or plants," with particular reference to the word "plant," I beg to advise that it is my opinion that the Legislature intended that only utility plants such as water, gas, electric light, or other plants which receive and handle funds and revenues derived from their operation, should be included or considered to come within the meaning of the words "municipal utilities or plants."

This is evidenced by the language contained in the Act to the effect that "the proportionate amount of the aggregate salaries to be paid by each of such plants or utilities, shall, in each instance be determined by the governing board of each such plants or utilities."

With reference to your third question, it is my opinion that the extra compensation provided for in Chapter 304, Acts 1943, is to be considered as being substituted for the $600.00 additional compensation provided for in Section 48-1233, which was Section 21 of Chapter 233, Acts 1933, as amended,
in so far as the same applies to cities having a population of 20,000 or over and less than 35,000 inhabitants, as shown by the last preceding United States census. Section 48-1233 is a general statute and applicable to all cities of the state, whereas Section 48-1227 is limited to only certain cities. Further, it is my opinion that the extra compensation provided for by Section 48-1227 must be paid from the funds of the utilities involved and that the governing board of each utility must determine the proportionate amount of the aggregate additional salary allowed by said section, which will be paid by such utility.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION:
Rights of tenure teachers whose schools are taken within the city limits by legal process.

December 13, 1943.

Hon. Clement T. Malan,
State Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Dr. Malan:

This will acknowledge receipt of your letter dated November 24, 1943, which reads as follows:

"Will you kindly give me an official opinion relative to the following question:
"A city corporation takes in adjoining territory by legal process. In the territory taken within the city limits are a number of schools. The teachers in those schools are tenure teachers. Those teachers passed from under the jurisdiction of the township trustee and county superintendent to the jurisdiction of the school board and city superintendent.
"Are those tenure teachers still tenure teachers under the new setup?"

Answering your letter, I find that it is firmly established by the decisions of the Supreme Court of Indiana that there is no liability imposed upon the school city of the civil city