

1939 apply only when re-assessments are made except as to the two added categories of levees and drainage ditches, the first of which came into the act in 1939 and the second of which came in in 1941; that is, when the earlier assessments were made presumably all other categories were taken into account and deducted. I think this answers both your first and second questions.

As to the third question, it seems to me that this form is made for the purpose of enabling the taxpayer to take advantage of these provisions insofar as advantage has not already been taken of them. The form would be applicable in the case of public drainage ditches and in the case of levees except as to such as had already been taken into account in previous assessments. It could not, in my opinion, have any relation or have any application to the categories which had been in the act since its enactment in 1919, except as to such as were obtained from the previous owner at a date subsequent to the last assessment of such property.

PERSONNEL DIRECTOR, STATE: As to whether State Personnel Board may by rule and regulation provide a standard of wages including over-time for state employees within the Act.

February 3, 1942.

Mr. W. Leonard Johnson,
State Personnel Director,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Johnson:

I have before me your request for an official opinion relative to the payment of additional compensation to employees under the State Personnel Act who are required to work beyond their regular shift and also the right to deduct from the salary or compensation of the employee whose duties are performed by the person working overtime in order to compensate such person for his additional services. You state:

“* * * Cases will undoubtedly occur in which the occupant of one of these positions will fail to appear

for work and time will not permit securing an emergency or temporary employee. It will then be necessary for some other employee to work part or all of the shift in addition to his own time. * * * The problem then arises as to how the person who works the extra time should be compensated. * * *

In regard to the above quoted situation, you ask us to answer the following questions:

“1. Is the manner of handling such cases provided by law?

2. If not, what agency is competent to establish a policy?

3. If provided by law:

(a) Should a compensatory sum be added to the warrant of the employee working the extra time and be deducted from the warrant of the employee failing to appear?

(b) Should the warrants for both employees be made out at the regular rate and the institution see that an adjustment is made between employees?

(c) Should the extra work be recorded as overtime and no monetary compensation made?

4. Does it make any difference in the procedure if the employee works a full shift in addition to his own or only part of an additional shift?”

Section 12 of the State Personnel Act (Chapter 139, Acts of 1941) provides:

“After consultation with appointing authorities and the state fiscal officers, the director shall prepare and recommend to the board a pay plan for all employees holding positions for which compensation is not fixed by law. Such pay plan shall include employees in the unclassified, as well as the classified service and shall provide, for each class of positions, a minimum and a maximum rate of pay and such intermediate rates of

pay as the director considers necessary or equitable. In establishing such rates, the director shall give consideration to the experience in recruiting for positions in the state service, the prevailing rates of pay for the service performed, and for comparable services in public and private employment, living costs, maintenance or other benefits received by employees, and the State's financial condition and policies. Such pay plan shall take effect when adopted by the board and approved by the State Budget Committee. Each employee in the classified service shall be paid at a rate fixed by the appointive authority within the salary range of the pay plan for the class of positions in which such employee is employed."

Section 32 (a) of said act provides :

"No public disbursing or auditing officer nor other fiscal officer of the state shall draw, sign, or issue, or authorize the drawing, signing, or issuing of any warrant or check upon the state treasurer or other disbursing officer of the state, for the payment of a salary or other compensation for personal services within the state service as defined by this act, nor shall the state treasurer or other disbursing officer of the state pay any salary or other compensation for such personal services unless a pay roll or account for such salary or other compensation, containing the name of every person to be paid and the accounts to be paid him has been certified by the director or a person designated by him to the effect that the persons named on the pay roll or account are either in the unclassified service or have been appointed or otherwise established in their positions according to the provisions of this act, and that the payment of the amounts shown on the pay roll or account will not violate the provisions of the pay plan *or the rules pertaining thereto.*"
(Our italics.)

Section 30 of said act provides :

"The rules shall provide for the hours of work, holidays, attendance regulation and leaves of absence in

the various classes of positions in the classified service. They shall contain provisions for annual, sick, and special leaves of absence with or without pay or with reduced pay, and may allow special extended leaves for employees disabled through injury or illness arising out of their employment, and the accumulation of annual and sick leaves."

Section 1 of the act sets out the purpose for its enactment. In substance it provides that the purpose of the act is to increase governmental efficiency, insure appointment of qualified persons to the state service, to offer all citizens a fair and equal opportunity to enter the state service, and to provide for an opportunity for individual advancement equal to fair standards of accomplishment. This section concludes by stating "and to which ends there is by this act established a personnel system based on merit principles and scientific methods relating to the appointment, compensation, promotion, transfer, lay-off, removal and discipline of employees and to other incidents of state employment."

I have quoted at some length from the State Personnel Act of 1941 for the purpose of showing the rather broad scope and authority of the Personnel Director and the State Personnel Board in connection with the management and control of state employees who come under this act. It will be noted that part of the function of the Director and the Board is to provide a scale of compensation and to adopt rules and regulations pertaining to the compensation, hours of work, leaves of absence with or without pay, et cetera.

In view of the expressed purpose of the act and the authority given to the Board and Director, I am of the opinion that it is within the province of the Board, upon recommendation of the Director, to provide rules and regulations covering the matters contained in your request for an opinion. Neither this act nor any other act expressly provides for the payment of additional compensation to employees who work overtime in order to relieve or take the place of other employees similarly employed who fail to report for their regular shift or tour of duty, nor is there any provision in the statutes of our State expressly providing for the deduction from the wages or salaries of those employees who fail to report and whose duties are performed by some other employee. However, it

seems to me to be quite apparent that these are matters which may be handled by proper regulations by the State Personnel Board. It is also apparent that that Board has wide latitude in prescribing regulations concerning compensation, working conditions, leaves of absence, et cetera, and that the Board may prescribe any reasonable rules which may be deemed necessary by them to cover these situations.

To answer your questions specifically, I would say:

1. That no express statutory authority is provided for the handling of the problem stated in your request for an official opinion.
2. I am of the opinion that the State Personnel Board, upon recommendation of the State Personnel Director, may adopt rules and regulations governing the compensation of employees who find themselves in the situation described in your communication.
3. In view of the answers to questions Nos. 1 and 2, no answer to question No. 3 is necessary.
4. The answer to your question No. 4 is also contained in the answer to the previous questions, namely, that it is a matter which is entirely within the discretion of the State Personnel Board and they may set up the appropriate rules and regulations to cover this situation.

In answering your questions, I have not taken into consideration any problems of budgetary control which may be involved in enforcing any regulations that your Board may adopt. I suggest, therefore, that before any rules and regulations are finally adopted, that you discuss the matter with the Director of the Budget and the Auditor of State.