STATE BOARD OF ACCOUNTS: Police Pension—Whether a policeman who has retired from active service on account of disability prior to the effective date of Chapter 188 of the Acts of 1941 may be allowed an increase in his pension; whether Board may make such increase retroactive.

February 9, 1942.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have your request for an opinion upon the following questions:

“1. May a policeman, who was retired from active service on account of disability prior to the effective date of Chapter 188 of the Acts of 1941, be allowed an increase in the amount of pension allowance after the enactment of said Chapter 188 of the Acts of 1941?

2. If your answer to the first question is in the affirmative, may the board of trustees make the increase date from the effective date of said Act of 1941?”

The increase referred to in the first question is provided for in Chapter 188, Acts of 1941 (Sec. 48-6403, Burns’ Indiana Statutes Annotated, Supp. 1941), clause 2 of which amends the former law by authorizing the payment of “Not in excess of 50% of the salary received by a first-class patrolman, as may be decided by the board of trustees,” under the circumstances therein set out. Prior to the amendment of 1941, the amount which could be paid under such circumstances was limited to not to exceed $50.00 per month.

The effect of the amendment is to supersede the former provision containing the authorization to pay not to exceed $50.00 per month and to substitute in lieu thereof the provision authorizing payment of not to exceed 50% of a first-class patrolman’s salary. The amendment contains no terminology which gives any indication that its operation is to apply only to cases thereafter arising. In fact, to give the amendment
such an interpretation would remove the statutory authorization to make any payments under the section as it existed prior to amendment because (1) the amendment of the section completely displaces the section as it existed prior to amendment and (2) payments could not be made pursuant to a section no longer in force, in view of the well settled principle that "a pension granted by the public authorities is not a contractual obligation but a gratuitous allowance in the continuance of which the pensioner has no vested right; and that the pension is accordingly terminable at the will of the grantor." People ex rel. Donovan v. Retirement Board, 326 Ill. 579, 158 N. E. 220; Opinions Attorney General of Indiana 1938, pp. 111, 112.

It would be wholly illogical to say that the 1941 General Assembly intended to permit payment of a sum not to exceed 50% of a patrolman's salary in specified cases of disability thereafter arising but also intended to stop all payments then being made for prior disability.

Your first question is answered in the affirmative.

Your second question must be answered in the negative.

Under the act, the authority of the board of trustees is limited to fixing the amount of pension to be paid and no authority is contained in the act to give retroactive effect to a determination of the board of trustees as to the amount of pension which shall be paid. The statute does not create a vested right in an increased pension up to the 50% authorized but leaves the matter of increase to the discretion of the board. Until the board has acted in granting such an increase, the payments theretofore authorized shall continue and an increase will only become effective upon the new determination by the board, whose authority does not extend to giving to its order an effective date which is earlier than the date on which the order is made or to paying a pension in excess of the amount fixed by statute.