INDIANA TAX BOARD: Whether Chap. 199 of the Acts of 1941 increasing the salaries of certain judges may apply to present incumbents having regard to the provision of Article 15, Sec. 2, of the constitution.

October 22, 1941.

Honorable Henry S. Murray,
Chairman,
Indiana Tax Board,
State House,
Indianapolis, Indiana.

Dear Mr. Murray:

This will acknowledge the letter of September 18th, addressed to us by the Secretary of your Board, requesting an interpretation of Chapter 199, Acts of 1941, especially with respect to the constitutionality of that Act.

Chapter 199 had to do with salaries of judges of certain counties and provided for certain increases in the annual salaries of judges in designated counties. The general rule governing the compensation of public officials has been stated by our Appellate Court in Board v. Chapman, 22 Ind. App. 60, at page 63, where the Court said:

"A public officer is entitled to the salary provided by law, because the law attaches the salary to the office as an incident thereof, and not by force of a contract, and the compensation of the officer, as such, may be regulated, altered, increased, or diminished by the lawmaking power at any time, unless the Constitution provides otherwise." (Our italics.)

We must therefore look to the Constitution to test the validity of the salary increase provided by this law. The last part of Sec. 2 of Article XV, of the Constitution of the State, provides as follows:

"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."

By reason of the decision of the Supreme Court of Indiana in January, 1935, in the case of In re: Todd, 208 Ind. 168, this
proposed amendment must now be regarded as having been legally adopted and it became effective in November of 1926, the date of its passage. In the same connection, I call your attention to Section 49-1103, Burns’ Indiana Statutes, which reads as follows:

"The salary of any officer elected to any elective township, city, county or state office in the state of Indiana, shall not be increased during the term for which such officer was elected, and this act shall be construed to be a part of any law enacted for the change or increase of any such salaries."

This law, though passed in 1925, must be regarded as implementing the constitutional amendment of 1926 now in effect.

A question similar to yours has been passed on before by this office. See Opinion of the Attorney General, 1936, page 265.

I am therefore of the opinion that Chapter 199, Acts of 1941, as applied to the present incumbents of judicial offices, is violative of Section 2 of Article XV of the State Constitution, and it follows that the salaries of judges falling under this act can not be constitutionally increased.

Whether or not Chapter 199 can be constitutionally administered with regard to future incumbents of the judicial offices referred to in the Act, I am not called upon to answer.

SECRETARY OF STATE: Whether a group of corporations may become the organizers of another corporation whose duty is to perform common duties of the incorporating corporations.

October 22, 1941.

Hon. Fred E. Shick,
Chief Corporation Counsel,
Department of State,
Indianapolis, Indiana.

Dear Mr. Shick:

I have before me your letter of October 21st, requesting my official opinion upon the following question: