TAX BOARD: Whether civil cities and towns may increase salaries of employees of the police and fire departments.

(This opinion is substituted for another opinion which was issued under date of October 4th on the same subject, which original opinion was withdrawn.)

December 24, 1941.

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

Dear Mr. Murray:

I have before me your request that an official opinion issue in response to two questions, the first of which is as follows:

"1. Can the officials of civil cities and towns increase salaries of employees of their police, fire and other departments in the operating year, after budgets have been approved and salaries set therefor?"

The principal statutory provision relating to this matter reads as follows:

"Effect on salaries and appointees—Provisos.—The provision of any law now in effect insofar as said provisions fix or purport to fix the salaries of any elective or appointive officer and/or employee of any civil city of this state and the provisions of any laws now in effect insofar only as they fix or purport to fix the salary of any member of any board, commission, department or institution maintained or operated by any civil city, are hereby repealed upon the taking effect of this act, except all laws affecting cities of the second class owning and operating two (2) municipal utilities, which shall remain in full force and effect. All appointive officers, deputies, employees, assistants and departmental and institutional heads not provided for under the provisions of this act, but which are provided for by laws or authority of law now in effect, shall not be considered as abolished by this act but such appointments shall be made by the mayor within his discretion as to number and positions named under laws or authority of law now in effect and such officers, deputies, employees, assis-
tants and departmental and institutional heads shall serve at the pleasure of the mayor, who may terminate their office or employment at any time; Provided, That the Clerk of cities of the third class shall have the power to appoint the deputy clerk, and to terminate his appointment or employment at pleasure; Provided, That nothing contained in this act shall be construed to repeal, alter or amend any law in force or enacted by the seventy-ninth general assembly concerning the employment, suspension and/or dismissal of the members of the fire and police departments of the several cities of this state: Provided, That where an emergency exists for employment of assistants in any office, board, commission, department, institution, and/or utility maintained or operated by any civil city and specific provision for such employment is not made by law or authority of law, the mayor is hereby given power and authority to provide for and appoint such assistants. The salaries of each and all of such appointive officers, employees, deputies, assistants and departmental and institutional heads, other than those fixed by the common council under the provisions of this act, shall be fixed by the mayor subject to the approval of the common council, which may reduce but in no event shall raise the salary so fixed. When the salary of such officers or employees shall have been so fixed as herein provided, it shall be the duty of the common council to appropriate moneys to pay the same: Provided, however, That in cities of the first class the employees of the board of sanitary commissioners shall be appointed as now provided by law and that the number and salaries of such employees shall be fixed by the mayor with the approval of the common council, which may reduce but in no event shall raise the salary so fixed by the mayor and when so fixed it shall be the duty of the common council to appropriate the money necessary to pay said salaries. All salaries fixed by the mayor with the approval of the common council in accordance with the provisions of this act, shall be fixed on or before the first Monday in September of each year for the next calendar year immediately ensuing and when so fixed shall not be increased during such ensuing calendar year except as provided in this act."
It will be noted that the salaries which are not to be increased during the operating year are those “fixed by the mayor with the approval of the common council.”

It is significant that the Act provides:

“* * * The salaries of each and all such appointive officers, employees, deputies, assistants and departmental and institutional heads, other than those fixed by the common council under the provisions of this Act, shall be fixed by the mayor subject to the approval of the common council, which may reduce but in no event shall raise the salary so fixed. * * *”


The only salaries exempt from the rule established in the foregoing language are “those fixed by the common council under the provisions of this Act,” Sections 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the same Act (i.e.: Chap. 233 of Indiana Acts of 1933), are devoted to enumerating specific instances wherein the annual salaries for designated officers shall be fixed by the common council. Employees of the police and fire departments are not enumerated in such sections and under the Act the salaries for such employees are fixed by the mayor with the approval of the common council.

Consequently the salaries of policemen and firemen may not be increased by appropriate action of the common council in the operating year of the budget. Generally speaking, the salaries of members of the other departments of a civil city are fixed by the mayor with the approval of the common council and are not subject to increase during the year for which the budget has been adopted.

The second inquiry is:

“2. Can county units of government or cities and towns increase the wages of employees paid by the hour during the operating year? In this case the
amounts are carried in the budget that have been approved in a lump sum for personal services by the hour.”

I must respond to this question in the affirmative. The inclusion of a lump sum appropriation for personal services to pay for services of a number of employees of a given grade or class in no wise can be construed as fixing the wage, salary or compensation of each member thereof. No wage is fixed in such a case. In addition it should be noted that the restriction contained in the statute heretofore reproduced herein refers only to “salaries,” and not to “wages.” Therefore, county units of government, cities or town may during the operating year, increase the wages of employees paid by the hour in instances where the budget contains lump sum appropriations for personal services.


JUDGES’ SALARIES: Of Vigo Circuit and Superior Court fixed by Chap. 89 of Acts of 1921, not affected by amendment in Chap. 199 of Acts of 1941—therefore not invalid under Section 2 of Article 15 of Indiana Constitution.

December 31, 1941.

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

Dear Mr. Murray:

This will acknowledge your request of recent date for an official opinion upon the precise question, namely, are the Judges of the Circuit and Superior Courts of Vigo County affected by Chapter 199, Acts 1941 and the language of our official opinion of October 22, 1941, interpreting this law?

Chapter 199, Acts 1941, amended Section 1 of Chapter 89 of the Acts of 1921. The only real change made by the amendment was to make the provisions of the 1921 Act applicable