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 nowise 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
to counties containing any city having a population of more than 25,000, whereas the original section of the 1921 Act provided that its provisions should be applicable only to counties containing any city having a population of more than 30,000. It is apparent that by reducing the population by 5,000, the 1941 amendment, at least in theory, included cities which formerly had not been within the purview of the 1921 Act regulating judicial salaries. Since your original request for an opinion, dated September 18, 1941, simply asked for a blanket interpretation of the constitutionality of Chapter 199 of the Acts of 1941, we held that the law could not constitutionally be applied to incumbents of judicial offices. It is now necessary to analyze my blanket holding in that opinion in the light of the precise state of facts which you have now presented.

At the time of the enactment of the 1921 law, and at all times since then, the City of Terre Haute, which is the county seat of Vigo County, had a population of 30,000 as shown by the last preceding United States census, so that it is obvious that with respect to Vigo County, the amendment of 1941 is a mere re-enactment of the 1921 Act. It has been shown that on July 16, 1941, the Board of Commissioners of Vigo County, acting under the provisions of the 1921 Act, found and determined that the annual salaries of the Judges of the Circuit and Superior Courts of Vigo County, as otherwise provided by law, were not adequate compensation for the services of such Judges, and fixed and allowed the sum of $1,300.00 in addition to sums previously allowed, as an addition to or an increase of the annual salaries of each of said Judges. It is conceded that all of the actions of the Board of County Commissioners of Vigo County were taken pursuant to the provisions of the 1921 law which provided for the allowance of additional sums up to a certain statutory amount as salaries of certain Judges.

Referring to our former opinion, I call your attention to that part of Section 2 of Article 15 of the State Constitution, which provides as follows:

“No 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.” (Our italics.)

Since the Constitution does not provide for the salaries of Judges, it is necessary to construe what is meant by the
phrase “a salary fixed by law.” It has been held, generally, that a salary must be fixed by law or regulation in order to bring it within the provisions of Section 2, Article 15 of our Constitution or of similar provisions in other state constitutions.

Hedrich v. United States, 16 Court of Claims, 88, 101;
McCarthy v. Malden (Mass), 22 N. E. (2d) 104, 107;
Board v. Stevens (Ariz.), 177 Pac. 261.

Other cases could be cited but enough has been shown to indicate that the phrase “fixed by law,” in its usual connotation, refers to a fixing by statutory enactment or by regulation. In the case before me, it is evident that the board of County Commissioners believed that the 1921 Act fixed judicial salaries at a minimum of $4,200.00 and a maximum of $7,000.00, the exact amounts, if any, in excess of $4,200.00, to be determined in each instance by the Board of County Commissioners pursuant to the procedure set up by the 1921 law. It logically follows that if the action of the Board of County Commissioners in determining that there should be an increase in the salaries of certain Judges under the provisions of the 1921 law, amounted to a legal determination which they were already authorized to make and for which they had already received legislative delegation of authority, the increase in the present instance cannot be considered “a fixing by law” of the salaries of the Judges of the Vigo County Courts.

In the case of Crowe v. Board of Commissioners, 210 Ind. 404, and Board of Commissioners v. Crowe, 214 Ind. 437, our Supreme Court held that the county auditor of a county was entitled to receive a salary of $15,000.00 per year for that portion of his term during which the population of the county was not less than 125,000 and not more than 200,000 inhabitants as shown by the last preceding United States census, and its total assessed valuation was not less than $110,000,000 nor more than $600,000,000. In this case, when the plaintiff auditor took office, his county was in a population bracket which fixed his salary at $10,000.00 a year. It was contended in this case that Section 2 of Article 15 of the Indiana Constitution, forbidding an increase in the salary of any officer during the term for which such officer was elected, was applicable. But the
Supreme Court, in refuting this contention, held that the salary was fixed before he was elected, in that the amount he was to receive from time to time was made to depend upon the population of the county. By analogy, it is clear that there is little difference between the situation where the amount of salary was made to depend upon the population of a county and in the question before me where the amount of salary the Judges were to receive from time to time was made to depend upon the services of such Judges as determined by the Board of County Commissioners from time to time. In both instances, it can be argued that the increase in salary is conditioned upon a fact or an act already fixed by law and authorized by Legislature, and in both cases the salary is fixed by a law which permits of ascertainment of the amount of salary at subsequent periods.

For pertinent decisions, see:

Board of Commissioners v. Williams (Okla. 1913), 135 Pac. 420;
Puterbaugh v. Wadham (Cal. 1912), 123 Pac. 804;
State ex rel. Harvey v. Linville (Mo. 1927), 300 S. W. 1066.

In view of the above authorities and the discussion thereunder, I am of the opinion that if the action of the Board of Commissioners of Vigo County was regular and made pursuant to the statutory provisions of the 1921 Act, as amended in 1941, and if said action of the Board of County Commissioners was seasonably made with respect to the budget requirements of the county, then the action of the Board of County Commissioners in fixing additional compensation for the Judges of the Circuit and Superior Courts of Vigo County, is proper and does not constitute an increase in salary within the prohibition of Section 2, Article 15 of the State Constitution.

By this opinion I do not mean to disturb in any way my former opinion holding that Chapter 199 of the Acts of 1941, considered in a blanket way, cannot be constitutionally administered in respect to incumbents of judicial offices, but it is possible that there are other counties similarly situated as Vigo County, to which our former opinion relative to the
effect of Chapter 199 of the Acts of 1941 is not applicable. If such is the case, such special and particular cases must be referred to us for interpretation.

INSURANCE DEPARTMENT: In re Chapter 167 of the Indiana Acts of 1941—whether a rate less than the maximum fixed by the department may be used uniformly by the company—Must the company’s expense ratio as filed with the commission be used on every risk by the company? Is the department required to approve all deviations from the experience rates as provided by the company? Do the minimum premiums as established by the bureau apply so as to permit the department to give minimum rates for all classifications as well as maximum rates?

December 31, 1941.

Mr. Frank J. Viehmann,
Insurance Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Mr. Viehmann:

I have before me your request that an official opinion issue in response to your inquiry relating to the interpretation of Chapter 167 of the Indiana Acts of 1941 (p. 515). Since your inquiry presents five distinct questions these each will be stated and the response given in the order in which they appear in your letter.

1.

“Does the last sentence of Section 1 of Chapter 167, Acts of 1941, mean that when a rate less than the maximum is used, such rate must be used for all risks in the same class by that company—or may they be used for any individual risk?”

Section 1 of Chapter 167 of the Indiana Acts of 1941 (pp. 515-516) reads:

“The department shall approve a maximum adequate premium rate for each classification under which work-