

Health in conjunction with the Pathology Department of the Indiana University School of Medicine.

5. *Technical Proficiency*

Whenever requested, the laboratory shall run comparative tests using the approved methods, on specimens submitted by the Indiana State Board of Health in conjunction with the Pathology Department of the Indiana University School of Medicine. The results must be reported promptly to the Indiana State Board of Health. The report of such tests shall state in each instance where and by whom the examination was made. The results of these comparative tests shall be in agreement at least ninety-five per cent of the time with comparative tests of the other approved laboratories.

The foregoing rules, regulations and standards were adopted by the Indiana State Board of Health in regular meeting November 13, 1939.

Therefore, would the regulations as herein set out and passed by the Indiana State Board of Health be in accord with the authority vested in said board by the legislature?"

It is my opinion that the rules and regulations, and standards, as set out in your letter and quoted above, that were adopted by the Indiana State Board of Health in conjunction with the Pathology Department of the Indiana University School of Medicine, are within the authority vested by the legislature under said Act.

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**CITIES: Liability of Municipalities for hospital expenses of injured employees.**

August 13, 1940.

Honorable E. P. Brennan,  
State Examiner, State Board of Accounts,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have before me your request of August 8, 1940, for an official opinion upon the following facts and questions as presented:

“We have a situation where one city appropriated \$500.00 for the payment by the city of hospital and doctor bills for its policemen and firemen for injuries suffered by them while on duty. Certain interested parties take the position that if the city sets up such an appropriation in its budget, and if the budget is legally adopted and no appeal taken, that there would be no good reason why payments could not be made and charged to this appropriation.

“We would like to request your official opinion on the following questions:

“1. Can a city council legally make an appropriation to cover hospital and doctor bills for its policemen and firemen for injuries suffered by them while on duty?

“2. If a city council makes an appropriation for such a purpose, can city officials legally make payments from that appropriation, for hospital and doctor services rendered to policemen and firemen, injured while on duty?”

The answer to these two questions requires an examination of the authorities and the statute concerning the liability of municipal corporations for hospital expenses of its injured employees and likewise the status of firemen and policemen as employees or officers. In the latter instance, statutes concerning firemen and policemen are not sufficiently definite as to the nature of their employment to enable the writer to dogmatically state that such persons are either employees or officers. It is, however, safe to say that these positions are not surrounded with the usual incidents of an office, as no specific salary or tenure of office has been established for either, nor are such municipal servants vested with the usual broad discretionary powers usually granted to public officials or officers.

This question has not been directly passed upon by our Supreme Court, but the language of that Court's decisions leads me to believe that both firemen and policemen are employees in the legal sense of the word. This is true notwithstanding certain other decisions which are authority for the

contrary position that policemen and firemen are officers. I refer to the cases of *Ft. Wayne v. Hazlett*, 23 N. E. (2d) 610, and *Sheldon v. City of Elkhart*, 75 Ind. App. 493. However, past decisions of the Supreme Court of Indiana, and a very recent opinion which adopts the authority of the earlier Supreme Court opinions, definitely hold that policemen and firemen are employees.

In speaking of a city fireman the Supreme Court of Indiana, in the case of *City of Peru v. State ex rel. McGuire*, 210 Ind. 668, 673, declared the status of such municipal servant as follows:

“Since the relator is *declared by judicial determination in this state to be an employee merely*, it is clear that he cannot maintain an action to mandate the municipality to pay to him the salary of the *position* during the time he was ousted, \* \* \*.”

In speaking of the position of policewoman, the Supreme Court in February, 1940, declared the status of such position in the case of *City of Evansville v. Maddox*, — Ind. —, 25 N. E. (2d) 321, 323. The Court there said:

“It is well settled by the decisions in this state that a member of the police force is merely an employee of the city and is not an officer, \* \* \*.”

In view of the foregoing, it is my opinion that policemen and firemen are employees and that the provisions of the Workman's Compensation Act of 1929, as amended, would determine the liability of a city for injuries to such employees incurred in the course of their employment.

I call your attention to Section 73 of the Workman's Compensation Act of 1929, as amended by Section 1, Chapter 243, Acts of 1933, where it is provided:

“In this act unless context otherwise requires: (a) ‘Employer’ shall include the state and any political division, any municipal corporation within the state \* \* \* using the services of another for pay.”

This statute places a liability upon a municipal corporation for injury to its employees which includes policemen and fire-

men. Coupled with this liability is likewise a statutory liability for medical, surgical, hospital and nurse expenses, as defined by Section 1, ch. 214, Acts 1937.

In view of the foregoing, it is my opinion that a city would be liable for medical and hospital expenses of such employees as policemen and firemen, and that in view of such contingent liability, the city can properly appropriate and expend money for such expenses. The answers to your two questions are accordingly in the affirmative.

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**PENSION FUNDS: Policemen and Firemen's, subject to public depository laws.**

**Library Funds: Subject to public depository laws.**

**Public Deposits: Insurance Fund Act applicable to policemen and firemen pension funds and library funds.**

August 19, 1940.

Mr. Lytle J. Freehafer, Secretary,  
State Board for Depositories,  
238 State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein you ask for an opinion as to whether or not policemen and firemen pension funds and library funds come under the Public Deposits Insurance Fund Act of 1937. (Section 61-622 *seq.*, Burns' Indiana Statutes Annotated—Supplement 1940). Section 1 of the above act defines "public funds" to mean "all funds coming into the possession of any local officer by virtue of such office, but shall not mean nor include funds coming into the possession of any public officer which are not impressed with a public interest nor designed for a public use." (Section 61-622 (e) Burns, etc.) Section 36 of Public Deposits Insurance Fund Act is as follows:

"Notwithstanding any other law of this state providing for the supervision, management and control of any public funds of the state or any municipal corporation, here after all public funds shall be under the jurisdiction and supervision of the appropriate board