TAX COMMISSIONERS, STATE BOARD OF: Salaries of town trustee, clerk-treasurer, or attorney; whether increase may be made during budget year.

July 13, 1939.

Mr. C. R. Benjamin, Commissioner,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Mr. Benjamin:

I have before me your letter in which you submit the question as to whether the salary of a town trustee, a town clerk-treasurer, or a town attorney may be increased during the budget year.

Section 2 of article 15 of the Constitution of Indiana, as amended on November 2, 1926, provides, in part, that:

"* * * the General Assembly shall not create any office, the tenure of which shall be longer than four (4) years, 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."

The office of town trustee and the office of town clerk-treasurer are both elective offices and such offices hold for a fixed term. Burns Indiana Statutes Annotated (1933), Cumulative Pocket Supplement of June, 1939, section 48-115.

It seems to me that the above constitutional provision applies to such officers. Even though the amount to be paid to the above officers is not specifically set out in the statute, the statute authorizes the board of trustees to fix such salaries by ordinance, which I think, is a fixing of such salaries "by law," within the meaning of the constitutional provision.

The position of town attorney is an employment rather than an office and the constitutional provision would not apply, not only because of the fact that it is an employment as distinguished from an office but also because the employee has no fixed term.