

**WELFARE, DEPARTMENT OF PUBLIC: Construction of Welfare Act with reference to conflicting authority of county council under County Council Act and of county department of public welfare under Welfare Act.**

July 29, 1937.

Hon. T. A. Gottschalk,  
Administrator,  
State Department of Public Welfare,  
141 South Meridian Street,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to the Welfare Act of 1936 as amended in 1937, and requesting an official opinion in consideration of the provisions thereof in answer to the following questions:

"1. If the County Council in making an appropriation for personal services, salary of investigators, by specific motion of the County Council changes the word 'investigators' to 'investigator', can the County Board of Public Welfare disregard the action of the county in this respect and employ more than one investigator so long as the actual warrants issued do not exceed the total amount appropriated?

"2. If an appropriation is made by the County Council for personal services for a definite period of time, can the County Board of Public Welfare proceed to hire sufficiently large numbers of personnel, if they find it necessary to carry out the services required by the Act, even though the appropriation will be exhausted before the expiration of the time and then come in with a request for an additional appropriation for personal services?

"3. If the County Board of Public Welfare submits an annual budget to the County Council for two investigators at \$90.00 per month each and the County Council changes the estimate to two investigators at \$75.00 each per month, and make a total appropriation of \$1800.00, can the County Board of Public Welfare in the year 1937 proceed to hire two or more investigators at \$90.00 each per month, and demand that the

County Council make an additional appropriation whenever the other appropriation is exhausted?

"4. If the County Board of Public Welfare hires personnel and fixes salaries, do the County Council and County Commissioners have any choice other than to make necessary appropriations and provide necessary funds to pay such salaries as contracted?

"5. Is any action possible on the part of the County Council which may limit the County Board of Public Welfare in the employment of personnel which it deems necessary in the conducting of the welfare functions?

"6. Do appropriations control rates of salaries and number of persons to be hired, or do they control as to gross amounts to be expended and types of expenditures such as personal services including investigators?

"7. If an appropriation is made \$12,000.00, specifying in the ordinance that it is for ten investigators at \$100.00 per month, and the county department finds a necessity before the expiration of the year to employ twelve investigators at \$100.00 per month, has the auditor the right to refuse to issue warrants for the twelve investigators as long as the original appropriation remains unexhausted?"

In answering these questions it is necessary that we refer to the County Council law as well as the Welfare Act. These laws are to be construed together so that the provisions of both Acts shall stand if possible, unless they are in direct conflict, and where there is such conflict, the last Act in point of time, which is the Welfare Act, shall govern.

It is provided by the County Council law that, except as provided by other statutes, no money shall be drawn from the county treasury but in pursuance of appropriations made by the council.

Sec. 26-515 Burns Ind Stat. 1933.

Sec. 26-522 Burns Ind Stat. 1933.

The Welfare Act provides for a budget to be adopted by the County Department with the approval of the State Department of Public Welfare which, with certain exceptions not material in the consideration of your questions, shall be prepared "in the same form and manner and at the same

time as the budgets and estimates of other county officers are prepared and filed as provided by law."

Sec. 99 of the Welfare Act;  
Acts of 1936, p. 64.

"The County Welfare fund is hereby made available for the purposes of paying such expenses and obligations as shall be set forth in the annual budget, as submitted and approved."

Sec. 98 of the Welfare Act;  
Acts of 1936, p. 63.

The legislature, in addition to making this law mandatory in many respects, went further and stated its purpose and manner of its construction as follows:

"Construction of Act. The purpose of this Act is to provide necessary and prompt assistance to the citizens and residents of this State who are entitled to avail themselves of its provisions. This Act shall be liberally construed in order that its purposes may be accomplished as equitably, economically and expeditiously as possible. If any public official or any board or commission shall fail or refuse to perform his or its duty, as prescribed in this Act, he or it may be ordered to do so by the state department, or any agency appointed by law to co-ordinate and supervise assistance as provided by this Act. If he or it shall refuse to obey any such order, mandamus proceedings may be brought by such state department or agency in any court having jurisdiction to compel such public official or board or commission to perform such duty, and the Attorney General shall assist in the prosecution of such proceedings."

Sec. 115 of the Welfare Act;  
Acts of 1936, p. 73.

In order that this provision of the law with regard to "necessary and prompt assistance" might be expeditiously provided, the local board was given ample authority to do so as follows:

"The county director, with the approval of the county board, shall appoint from eligible lists established by

the state department such assistance (assistants) as may be necessary to administer the welfare activities within the county and to perform all other duties required of the department, and shall fix the compensation of such assistants within the salary ranges established by the state department. Each such assistant so appointed shall have been a resident of such county for a period of at least two years prior to the date of his appointment, unless a qualified person cannot be found in the county."

Sec. 24 of the Welfare Act;

as amended in 1937, Acts of 1937, p. 241.

Moreover, section 100 of the Act provides as follows:

"County appropriations. (a) In the month of September, 1936, and annually thereafter, at the time provided by law, the County Council *shall make* such appropriations out of the county welfare fund, based *on the budget as submitted, as may be necessary to maintain the welfare services of the county and to defray the cost of the administration of such services,* as hereinbefore provided for the ensuing fiscal year, and *shall, at the same time levy a tax* in an amount necessary to produce the funds so *appropriated.*" (Our italics.)

Sec. 100 of the Welfare Act;

Acts of 1936, p. 65.

In both of sections 24 and 100 the legislature uses the word "shall." It has been repeatedly held that:

"In a statute 'shall' is mandatory and excludes the idea of discretion when addressed to a public official."

7 Words and Phrases, First Series, 6467;

State v. Dousman, 28 Wisc. 541-542;

French v. Edwards, 80 U. S. 506-515.

"As a general rule of statutory interpretation the presumption is that the word 'shall,' as used in any given law, is to be construed in an imperative sense, rather than directory, and this presumption will con-

trol unless it clearly appears from the context or from the manifest purpose of the Act as a whole that the legislature intended in the particular instance that a different construction should be given it."

State, ex rel., v. Meeker, 182 Ind. 240-243.

In the Meeker case, *supra*, the court further said:

"It must be borne in mind that the county is not an independent municipality with vested rights of local self-government but exists only as a unit and agent of the State. Its officers perform local duties for the sovereign body, and the legislature may control such officers in the levy and collection of the county tax so long as such control is exercised in the same manner wherever the conditions are the same.

"We are convinced also that the word 'shall' was used by the legislature in section 12 in its imperative sense and we see no reason why it should not be so construed. Although it is true that the County Council alone is authorized to make appropriations of money to be paid out of the county treasury (Sec. 5932 Burns 1914, Acts 1899, p. 343), that fact does not prohibit the legislature from requiring the council, under stated conditions, to make such an appropriation and without reference to the usual procedure under the County Council Act. The members of such council are officers of a political subdivision of the State and are subject to the mandate of the sovereign power."

State, ex rel., v. Meeker, 182 Ind. 240, 247, 248, 249.

This case was followed in *Comer v. State, ex rel.*, 184 Ind. 217.

Another case of similar character is that of *State, ex rel., v. Steinwedel*, 203 Ind. 457, wherein the court says:

"The statute authorizes the school board to fix within certain limits the amount of salary for the attendance officer and provides that the County Council shall appropriate and the Board of County Commissioners shall allow the funds necessary to make such

payments. The school board fixed the amount of the salary for the year 1930-1931 and notified the County Council and it was then the council's imperative duty to make the appropriation. The General Assembly may decide that certain activities of the business of government are so important that the supplying of funds to carry on these activities must not be left to the discretion of local authorities."

A more recent case very much in point was decided April 10, 1936, in which the court uses the following language:

"The salaries of most public officers are fixed by the legislature. It has seen fit to delegate the discretion of fixing the compensation of election commissioners to the board of county commissioners. *The statute does not provide that the compensation fixed by the board shall be subject to the approval of the County Council, and the County Council has no discretion in the matter, and is required to appropriate a sufficient amount to pay the compensation fixed by the board of commissioners.*" (Our italics.)

Blue v. State, ex rel., 1 (2nd) N. E. pp. 122-123.

See also:

Opinions of Attorney General (1934) pp. 464, 514 and 515;

Opinions of Attorney General (1935) pp. 358-363.

By the terms of this section (section 24), as amended, the General Assembly has delegated to the "County Director with the approval of the County Board" the right to "appoint and fix the compensation of such assistants as may be necessary," thereby taking away from the County Council the discretion which is given them in other matters. It is not within the power of the County Council to deprive the County Board of Public Welfare of such assistants as may be necessary to properly carry out the purposes of the Act. As was said in the case of Blue v. State, *supra*: "Neither the County Council nor the courts can assume the authority and discretion expressly delegated to the Board of County Commissioners." Applying this statement to the questions asked, the County Council cannot assume the authority and discretion delegated

to the "county director with the approval of the county board."

It is also stated in the Blue case that the "budget statute contemplates only an estimate or approximation of the amount of money required for any branch of the government."

Blue v. State, *supra*, 1 N. E. (2d) 123.

In a matter involving the right of a court to fix the salary of a page at \$750.00 and the County Council appropriated but \$500.00, an action was brought to mandate the auditor to pay the salary for the remainder of the year, after he had paid out the amount appropriated. While the court held the court had inherent power to appoint the page and fix the salary, yet the amount appropriated being exhausted, another appropriation would have to be made before the auditor could pay. The court said:

"Where the amount of the appropriation was exhausted the auditor could not be mandated to issue an order for payment of page's services. The County Council must be first mandated."

Dunn v. State, *ex rel.*, 204 Ind. 390.

It seems clear than when a County Council makes an appropriation for assistants, investigators, etc., whose number and salary are in the discretion of the County Director of Public Welfare, with the approval of the County Board, any attempt by the council to limit the number of the staff is ineffective and beyond its power. Such an attempt should, in my opinion, be disregarded as forming no part of the appropriation.

Your first question is answered in the affirmative.

The second question, asking if the personnel may be increased when necessary, and the appropriation thereby exhausted sooner than anticipated, is likewise answered in the affirmative, subject to the condition that it can be shown that such an increase is necessary.

The third question is very similar and the answer is also in the affirmative, subject to the same conditions as are stated in answering the previous questions. Clearly, the council has nothing to do with the fixing of the salaries of investigators. Whenever it is seen that the appropriation will be exhausted before the end of the year the County Board may *demand* an additional appropriation, under the provisions of section 100, subsection (b) of the Welfare Act, which declares an

emergency under such circumstances and outlines the procedure to be followed. You will notice that in this subsection the General Assembly again used the mandatory term and provided that the *County Council shall make such additional appropriations*. The imperative nature of these duties placed upon the County Council are made so in order that nothing will be allowed to defeat the purpose of this Act in providing assistance to the aged, blind and dependents who come within its provisions.

The fourth and fifth questions have been practically answered in the answers to the preceding questions. The right to employ such assistants as may be necessary and to set the salaries is specifically vested in the County Director and the County Board of Public Welfare and the County Council is commanded by the General Assembly to make the necessary appropriations. Under the terms of the Welfare Act the making of necessary appropriations is not discretionary but is an imperative duty imposed upon the County Council. The only possible qualification of this statement would be in case the personnel was manifestly overloaded or the compensation above the range fixed by the State Department as provided in amended section 24. Accordingly, the answer to your fourth question is "No."

The answer to your fifth question is likewise "No," except as qualified above; that is, only where the *personnel is greatly overloaded and the compensation in excess of the range fixed by the State Department*.

Your sixth question is largely answered by the answers to the preceding questions. The County Council cannot, by its appropriations, control the salaries fixed by the County Director and approved by the board, except as stated, but the board cannot exceed the total amount appropriated, until there is an additional appropriation. The fact that the form of the ordinance for appropriation prepared by the State Board of Accounts does not prescribe the number, but does have a gross amount for the appropriation should have some consideration in the answer, but the provisions of section 24, as amended, giving full authority to the County Director and the County Board to fix the number and compensation of such assistants "as may be necessary to administer the welfare activities" is so comprehensive and all inclusive as to take away the discretion in the County Council as to such services,



as stated above, and the gross amount appropriated for such services of the same kind will govern. That is, where an appropriation as asked, for example, for three investigators at \$100.00 per month, a total of \$3600.00, and the council appropriated \$2700.00, the County Board may use the amount so appropriated until it is seen that it will be exhausted and then request an additional appropriation under the provisions of section 100 (b). However, an appropriation for investigators could not be used for some other type of assistant, such as a stenographer.

In answering the above questions we have practically answered your seventh question.

Section 26-813 of Burns Indiana Statutes (1933) reads as follows:

“Upon the allowance of any claim against any county in the State of Indiana by the board of commissioners of such county, and for the payment of which claim appropriation has been made by the proper authority, the county auditor of such county shall issue his warrant therefor.”

If the claim for salary of the twelve investigators has been allowed by the Board of County Commissioners, the auditor would have no choice except to make payment of the claims. He is more particularly justified in doing so, due to the fact that the statutes of Indiana give him exemption from personal liability or liability upon his bond in issuing a warrant in payment of any claim which has been allowed by the Board of County Commissioners. This provision of the law is section 49-3006, Burns Indiana Statutes (1933), which reads as follows:

“When, heretofore or hereafter, in good faith, any auditor of any county in the State of Indiana, pursuant to the order or authority of the board of commissioners of any such county, or pursuant to the judgment or order of any court of common-law jurisdiction in any such county, in any case wherein said county was a party and was duly served with process, shall have issued his warrant upon the treasurer of said county, then and in such event, no civil suit shall be maintained against said county auditor or his bondsmen for the issuance of said warrant, although such

warrant shall have been drawn pursuant to some order of the board of commissioners or judgment of the court which is either void or voidable, but the validation of such act of the auditor shall not prevent the recovery of any sums of money from any person receiving the same that might have been recovered if this Act had not been passed."

It seems the intent of this Act that public business shall not be disturbed by reason of fear of personal liability on the part of the County auditor, and he is therefore released from liability.

Your seventh question is answered in the negative.

---

**MOTOR VEHICLES, BUREAU OF: Reciprocity commission.  
Motor vehicle agreement with Illinois.**

July 29, 1937.

Hon. Frank Finney, Commissioner,  
Bureau of Motor Vehicles,  
Indianapolis, Indiana.

Dear Mr. Finney:

This is in answer to your request for an interpretation of certain language in the Agreement of Reciprocity dated December 6, 1936, between the Reciprocity Commission of Indiana and officials of the State of Illinois, with respect to motor vehicles operated between the two States. You attach a copy of such agreement and submit the following facts out of which the problem has arisen:

"An Ohio resident engaged in carrying freight in interstate commerce has been authorized by the Public Service Commission of Indiana to operate in this State. The Ohio resident operates motor vehicles from several states, including motor vehicles owned by Illinois residents which have been duly registered in Illinois.

"The arrangement between the Ohio operator and the Illinois owner is what is generally known as an "Owner-Operator" agreement. That is, the vehicles are leased by the Ohio resident operator and the owners of the vehicles are employed to drive them for an agreed compensation.