

The right-of-way grant provided that the grantors should move all buildings, et cetera, from and off said right-of-way within thirty days after receipt of said warrant or at such time as might be determined by the Highway Commission. In this case the grantor failed to move the building even after notice, whereupon the Highway Commission directed the contractor to clear the right-of-way. Moreover, the contractor's contract required him to clear the right-of-way. The contractor did in fact move the buildings off and has now been sued by the tenant grantor for damages.

It is our opinion that the State, as requested by the contractor, should defend this action as the subject matter forms a part of the State's obligation to provide an unimpaired right-of-way to the contractor. This is especially true since the Commission by letter has directed the contractor, as its agent, to proceed to clear the right-of-way and remove these buildings.

In the light of this opinion, we have instructed Judge Lindsey to act for the Commission and to defend the damage suit against McAfee.

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**ACCOUNTS, STATE BOARD OF: Salary of advisory board members.**

March 5, 1937.

Hon. William P. Cosgrove,  
State Examiner,  
State Board of Accounts,  
State House,  
Indianapolis, Indiana.

Dear Sir:

This is in response to your recent request for an opinion as to the proper salary of members of the advisory board of certain townships. You submit the following question:

“Are members of advisory boards of townships, having in whole or in part a city of the first or second class located therein, and not having a public park under the jurisdiction of such township, entitled to receive the compensation provided in section 4, chapter 74, Acts of 1931?”

Your inquiry also involves a construction of chapter 116 of the Acts of 1935.

Sections 1 and 2 of chapter 74 of the 1931 Act read as follows:

“Section 1. *Be it enacted by the general assembly of the State of Indiana,* That it shall be the duty of the township advisory board in any township of this State having one or more second class cities, and which are not county seats, wholly or partially contained therein, and the township advisory board of any township having any first class city located wholly or partially therein to meet at least once in each month to consider the needs of such township for the relief of the poor therein, and to determine the amount to be expended for such relief during the calendar month immediately following such meeting, and it shall be unlawful for the trustee of such township to incur or expend any sum, or for the board of county commissioners or any other public authority to advance, appropriate, or approve any expenditure whatever on account of the relief of the poor therein, in excess of the amount so fixed by the township advisory board: *Provided,* That the advisory board may be called together by the trustee to make provision for additional expenditures to meet an emergency, but in no case to be available beyond the end of the next calendar month.

“Sec. 2. It shall be the duty of such township advisory board to designate and determine what, if any, persons shall be employed by the trustee of such township as investigators or assistants in discharging his duties concerning the relief of the poor in such township, and to fix the salaries to be paid to such investigators and assistants, and it shall be unlawful for the trustee to pay, or cause to be paid, out of public funds any assistant or investigator not so designated.”

Section 3 has to do with advisory boards of certain townships having public parks and playgrounds.

Section 4 is as follows:

“Sec. 4. The salaries of the members of the advisory board, upon whom duties are laid by this Act, shall be one hundred dollars each per annum.”

Inasmuch as sections 3 and 4 have not been amended or repealed, it is clear that members of advisory boards with any duty under section 3 are entitled to the salary provided under section 4.

A more difficult problem arises with respect to sections 1 and 2.

Chapter 116 of the Acts of 1935 (p. 432) is a statute concerning poor relief. It repeals certain laws relating to poor relief. No section of chapter 74 of the 1931 Acts is directly repealed. However, section 38 of such chapter 116 of the 1935 Acts provides for the repeal of sections 1 and 2 of said chapter 74 "so far as they relate to poor relief and poor relief matters."

It is very evident that the legislature in using that qualified language in the 1935 laws had a purpose in not entirely repealing sections 1 and 2.

The language of the 1935 Act is in the nature of an amendment rather than a repeal. In section 1 there is a provision for emergency expenditures. This involves a duty on the part of the advisory board.

Section 4 was not changed to make the salary applicable only to the duties covered by section 3.

It is suggested that the duties of advisory boards, if any, under sections 1 and 2 after the partial repeal of such sections, are such as ought to be performed aside from those sections, and, that the amount of compensation is unreasonably large compared to the compensation of members of advisory boards in certain other townships. This may be, but the legislature evidently viewed the matter differently, and in ascertaining the intention of the legislature we must give consideration to changes it did not make in the 1931 Act, as well as those changes it made. The 1931 Act put certain townships in a class by themselves and the advisory boards of these townships were given a certain compensation. The compensation was not taken away although the duties may have been reduced or taken away.

As I construe the two Acts, it is my opinion that the legislature did not intend that the compensation fixed in section 4 should be limited to the township described in section 3 and your question is answered in the affirmative.