

TAX COMMISSIONERS, STATE BOARD OF: Court reporters, legal salary of.

April 12, 1937.

Hon. Philip Zoercher,
Chairman, State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Mr. Zoercher:

I have before me your request for an official opinion with reference to the legal salary of official court reporters based upon the following statement of facts as set out in your letter, viz:

In the year 1926, the judge of the court, in the case referred to, fixed the salary of the official reporter. The salary so fixed was approved by the board of county commissioners. Since that time no action has been taken by the judge, by the board of county commissioners, or by the reporter, to change the salary so fixed and approved, or to fix another or different salary. The question is as to whether the salary so fixed and approved in 1926 is the present salary and, if not, as to what is such salary?

Section 4-3501 of Burns Indiana Statutes, Annotated (1933), makes it the duty of the judge of each circuit—criminal, superior, probate and juvenile court of each and every county of this State to appoint an *official reporter* whose duty it shall be whenever required by the judge to be promptly present in said court, and to take down in shorthand the oral evidence given in all causes, including both questions and answers, and to note all rulings of the judge in respect to the admission and rejection of evidence and the objections and exceptions thereto, and to write out the instructions of the court in jury trials.

Section 4-3504 of Burns Indiana Statutes, Annotated (1933), provides that:

“Such reporter may, at any time, be removed by the judge of the *court for which he was appointed*, and in every case of vacancy in the office of official reporter, it shall be the duty of the judge of such court to fill the vacancy as soon after its occurrence as practicable.” (Our italics.)

From the foregoing statutory provisions, I think it follows that official court reporters have no fixed terms of office, but hold their offices or positions at the pleasure of the judge of the court wherein they serve.

The Constitution of Indiana provides that "when the duration of any office is not provided for by this constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment." (Our italics.)

Indiana Constitution, Article 15, Section 2.

The foregoing constitutional provision seems to be controlling in this case. I am convinced that an *annual* appointment is not required.

With these preliminary observations, I desire, now, to notice the statute providing the method of fixing the salaries of official reporters. The statute provides as follows:

"The salary of the official court reporters shall be fixed by the judges of the respective courts, with the approval of the board of county commissioners, and shall be payable monthly on the last day of each calendar month out of the county treasury, which salary shall be certified, audited and paid in like manner as is provided by law for the payment of county officers attending upon courts."

Burns Indiana Statutes, Annotated (1933), Section 4-3507.

Does the above provision require an annual fixing and approval of such salaries? Obviously, in order to answer the above question in the affirmative requires the reading into the above quoted language by construction something which the naked language does not express. But, in view of the clear, unambiguous, statement therein contained, I do not find in said language any necessity for the application of rules of construction other than the rule that "*words and phrases shall be taken in their plain, or ordinary and usual sense.*"

Burns Indiana Statutes, Annotated (1933), Section 1-201.

If the legislature had intended that the salary of official reporters should be fixed annually, it would have been quite

easy to have so provided. But there is not even a suggestion of that character in the statute. I think it is clear that the statute does not require such salaries to be fixed annually. In fact, there is no provision as to how long a salary once fixed and approved shall continue to be the legal salary, and, in the absence of such a provision, I think a salary once fixed and approved continues until there has been a revocation, either of the fixing or the approval of such salary. It seems to me, moreover, that there is nothing unusual in this conclusion. When the legislature fixes a salary, the salary so fixed remains until changed by the legislature. When the legislature legally delegates to some other authority the right and duty to fix a salary, such authority is simply an agency of the legislature and, so long as it acts within the terms of the authority thus delegated, it is as if the legislature had acted. If the salary so fixed by such authority within the terms of the authority given by the legislature is deemed unreasonable, relief lies with the legislature or with the authority which has fixed the unreasonable salary.

I have investigated the several statutes on the subject and I do not find that the county council, or any other board, has any authority to change the salary for official court reporters which has been legally fixed by the proper judge and approved by the proper board of commissioners. The county council may decline to make a sufficient appropriation and therefore delay payment, but its action has no bearing upon the legal salary, and in a proper proceeding it may be required to make the necessary appropriation.

See the following cases:

State, ex rel., v. Board, 203 Ind. 23;

State, ex rel., v. Steinwedel, 203 Ind. 457;

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

People v. Prendergast (N. Y.), 114 N. E. 860.

In the first case above cited the board of county commissioners of Carroll County, pursuant to petition as provided in chapter 78 of the Acts of 1919 had allowed an addition to the salary of the county superintendent, Thomas W. Armstrong, making in all, \$2,400.00 per year, which was paid to him during the remainder of his term of office. After the relator took office the county council refused to make the necessary appropriation, appropriating for the first year

\$1,500.00 and for subsequent years \$1,700.00. The action was in mandate, the relator contending that the legal salary was \$2,400.00 per year as fixed by the board of county commissioners pursuant to the above referred to petition as provided by chapter 78 of the Acts of 1919. Among other things, the defendants contended that the fixing of such salary was personal to the then incumbent, but the court decided that the salary pertained to the official and not to the individual in a contractual relationship and that the duty rested upon the county council to make the appropriation.

State, ex rel., v. Board, 203 Ind. 23 at pp. 37-40.

In the case of State ex rel., v. Steinwedel, 203 Ind. 457, the further point was raised that the "County Council Act" limits appropriations at special meetings to emergency appropriations, but the court said on that subject on page 473:

"It is true that the 'County Council Act' limits appropriations at special meetings to emergency appropriations; and we assume that such act must be followed in all cases where the county council may, in its discretion, refuse to make an appropriation for payment of a claim. But the General Assembly has the power to require a county council to make specific appropriations without regard to usual procedure and, in such cases, the General Assembly, in effect, makes the appropriation, and the act of the council amounts merely to registering in proper form the will of the General Assembly. In *State, ex rel., v. Meeker* (1914), 182 Ind. 240, 105 N. E. 906, this court made the following statement: '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.'

"In the case at bar, the action of the school board fixed the amount to be appropriated and the statute placed an absolute duty upon the county council to

appropriate that sum at its regular 1930 September meeting. Having adjourned without making the appropriation, the council was still under the legal duty to make such appropriation and this action for mandate was the proper and necessary procedure to compel performance of the duty."

The last case cited contains an interesting discussion of the question. Note the language of the court on page 861:

"The point is made that the amount of the required appropriation is excessive. We are told that the board of estimate may not be compelled to appropriate salaries at the maximum rate, but may fix a lower rate. We do not share that view. The statute says that the register may appoint and at pleasure remove an examiner, a notarial clerk, and two assistant notarial clerks at salaries not to exceed prescribed amounts. The plain implication is that the register who is to appoint them is also to fix their pay. It is true that under section 56 of the charter (Greater New York charter, L. 1901, Ch. 466, § 56, as amended by L. 1902, Ch. 435) the board of aldermen on the recommendation of the board of estimate and apportionment is to fix the salaries of all persons (with enumerated exceptions) whose compensation is paid out of the city treasury. That provision does not apply, however, where the power to prescribe salaries is otherwise prescribed by law. The special statute then becomes an exception to the general one. Wormser v. Brown, 149 N. Y. 163, 170, 43 N. E. 524. We find such a special statute in the Act of 1913. L. 1913, Ch. 776. The board of estimate and apportionment has therefore no discretion. Its duty is to appropriate the necessary moneys. Greater New York charter, Sec. 230, Subd. 6." (Our italics.)

People, ex rel., v. Prendergast (N. Y.), 114 N. E. 860, at p. 861.

Other authorities could be cited, but in view of the foregoing, including at least one very important citation from our own Supreme Court, I do not deem it necessary to further extend this opinion. Upon the assumption stated in the be-

ginning that the salary was legally fixed in 1926 and that no action has been taken to change it except the refusal to make the necessary appropriations, I think the present salary is as it was fixed in 1926, subject, of course, to the uniform decrease as provided in chapter 70 of the Acts of 1932 and subsequent Acts extending its provisions.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Installment sale contracts, stockholder in corporation must be licensed if he buys corporation contracts.

April 14, 1937.

Hon. F. M. Call, Supervisor,
 Division of Installment Finance,
 Department of Financial Institutions,
 Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of April 13 in which you inquire as to whether or not a man owning stock in a corporation engaged in the sale of automobiles may, in his individual capacity, purchase installment sale contracts from the corporation in which he owns stock.

Your attention is directed to section 11, chapter 231, Acts of the Indiana General Assembly, 1935, which reads as follows:

“No person shall purchase retail installment contracts from a retail seller doing business in this State or engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or trust company, make loans to a retail seller doing business in this state on the security of retail installment contracts or engage in the business of making loans to retail sellers in this state on the security of retail installment contracts unless the department has licensed such person to do such business and has issued to the person a written instrument evidencing the license as in this Act provided. Any person who desires to purchase retail installment contracts from retail sellers doing business in this state or to engage in the business of purchasing retail installment contracts from retail sellers do-