

these words, "Affiant makes this statement from personal knowledge \* \* \*." While the word "knowledge" is incorrectly spelled, I think such is *an immaterial error*.

Paragraph 18. In Paragraph 18, it is not said that the defendants being each three times audibly called—*in court*—come not but make default. It will be noticed that the word "times" is misspelled. The fact that the words "in court" do not appear and that the word times is misspelled can be waived.

In conclusion then the chain of title subject to the above criticism is continuous and without break running from the Government of the United States to various people until now, 4:00 P.M., April 20, 1937, when the fee simple title is vested in Calvin J. Gerber and Sarah A. Gerber, his wife.

There are no encumbrances as of 4:00 P.M., April 20, 1937, except the November installment of 1936 taxes due and payable in November, 1937, and the 1937 taxes, due and payable in 1938, the amount of which has not as yet been determined.

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**ACCOUNTS, STATE BOARD OF: Flood Control Commission.  
Constitutionality of provision as to payment of salary to  
city civil engineer.**

May 5, 1937.

Hon. Wm. P. Cosgrove,  
State Board of Accounts,  
Indianapolis, Indiana.

Dear Sir:

Your letter of April 29 submits the following question:

"Does chapter 43 of the Acts of the Indiana General Assembly of 1937 which requires the appointment of the City Civil Engineer as a member of the Board of Flood Control Commissioners and providing the payment of \$2400.00 per year salary, contravene the provisions of article 15, section 2, of the Constitution of the State of Indiana?"

It will be noted that article 15, section 2, of the Constitution of Indiana provides that,

“\* \* \* 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 city engineer is provided for by section 48-1241, Burns Indiana Statutes, 1933 Revision. This statute provides that,

“The mayor shall appoint a City Civil Engineer who shall be subject to the direction of the Board of Public Works, except in cities of the fifth class, where he shall be subject to the orders of the common council.”

Section 48-1223 amended the above section as to the salary of the city engineer in cities of the first class and provided that the salary of the city engineer should be fixed by the common council at not to exceed \$4500.00 per year. This Act contains the following provision:

“Provided, The salary established within the maximum herein named for the city engineer shall be in full for all services of whatsoever kind or nature, including his services as member of the Board of Sanitary Commissioners and he shall receive no other fees, per diem or emoluments whatsoever! \* \* \*”

Chapter 43 of the Acts of the General Assembly, State of Indiana, for 1937 creates a Department of Flood Control in cities of the first class and provides that,

“\* \* \* That in addition to the existing executive departments of cities of the first class, there is hereby created a Department of Flood Control, which shall be under the control of a board of three members, to be known as the ‘Board of Flood Control Commissioners,’ two of whom shall be appointed by the mayor of such city of the first class, and the third shall be the City Civil Engineer, who shall be a member by virtue of his office.”

Section 2 of the Act provides that,

“The members of such Board of Flood Control Commissioners, including the City Civil Engineer, shall each be paid a salary at the rate of two thousand four

hundred dollars per annum; Provided, that the salary established herein for the City Civil Engineer shall be in addition to his regular salary as now authorized by law."

It is apparent, therefore, that the Act of 1937 repeals by implication the provision in the 1933 Act (Sec. 48-1223 Burns Indiana Statutes, 1933 Revision, insofar as the maximum salary of \$4600.00 is concerned.

The question is therefore presented as to whether or not the salary of the City Civil Engineer may be increased, as provided for by the Acts of the General Assembly, State of Indiana, 1937.

It has been held in this State that the city civil engineer only holds his office during the pleasure of the authority making the appointment.

City of Terre Haute v. Burns, 69 Ind. App. 7;  
Douglas v. Wright, 68 Ind. App. 111.

This being true, it is evident that he has no term of office, as defined in the constitutional provision, forbidding an increase of salary during the term for which he is appointed. The legislature undoubtedly has the authority to invest public officers with additional administrative duties without thereby violating any of the provisions of our Constitution.

State, ex rel., v. ~~Hart~~, 181 Ind. 592.

Indeed it has been held ~~that~~

"The authority to fix the compensation of a public officer, unless restrained by the Constitution, may even during the term of the incumbent be exercised to change his future compensation."

Board, etc., v. Chapman, 22 Ind. App. 60.

It is my opinion, therefore, that if a person is appointed to the office of City Civil Engineer and such appointment is made for no fixed term, the Act of the Indiana General Assembly, 1937, creating the Flood Control Commission and providing an additional salary for the services of the City Civil Engineer on such Commission, does not violate any of the provisions of the Constitution of the State of Indiana.