

Your attention is called to an exception in the above mentioned section of the statute, which recites:

“And, provided, further, That nothing in this Act shall interfere with the performance of mechanical work on inanimate objects by any person employed in or operating a dental laboratory.”

It might be contended that this corporation and its employes come within this exception. However, a careful reading of this proviso in conjunction with that portion of the section first quoted will show that there is no merit in such contention.

It is evident that the legislature, by this proviso, intended to exempt technicians in dental laboratories and not persons who supply artificial teeth or assume the responsibility of guaranteeing “a perfect fit.”

“The cardinal principle in construing a statute is to ascertain and give effect to the legislative intent.”

State, ex rel., v. Orange, 200 Ind. 506, 510;

State, ex rel., Fox v. Board of County Commissioners of Carroll County, et al., 203 Ind. 23, 34.

Also by guaranteeing a perfect fit of a plate constructed from an impression sent by mail, would require considerably more skill than “mechanical work” as exempted in this proviso.

I am, therefore, of the opinion that this corporation comes within the provisions of section 63-522, *supra*. Further, that the proviso above quoted is not applicable to this case, and they are therefore practicing dentistry within the meaning of the statute.

TAX COMMISSIONERS, STATE BOARD OF: Taxation.

Power of State Tax Board to increase amount fixed by council for payment of salaries.

Hon. Philip Zoercher,

November 18, 1937.

Chairman, State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of November 15 in which you submit the following question:

"We find that in some counties the county council reduced appropriating items affecting court bailiffs and court reporters.

"Does this board have a right in making its findings to restore these items in the budget?"

In reply to this question your attention is directed to an opinion issued to your board under date of April 12, 1937, in which it is held that the salary of a court reporter as fixed by the judge cannot be reduced by the county council and that the duty is mandatory upon the county council to appropriate a sum sufficient to meet such salary as so fixed. In that opinion the case of *State, ex rel., v. Steinwedel*, 203 Ind. 457, is cited in which the Supreme Court of our state discusses the rights of the county council with respect to salaries and contains this sentence, "Having adjourned without making an 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 the performance of the duty."

It is my opinion, therefore, that the county council has no legal authority to reduce salaries as fixed by the court for bailiffs and court reporters and that they are under a mandatory duty to appropriate sums sufficient to pay such salaries in the amount as fixed. Having failed to do this, the question arises as to whether the state board of tax commissioners has authority in reviewing the budget to make such an increase.

In answer to this question your attention is directed to section 8, chapter 119 of the Acts of the Indiana General Assembly of 1937, which reads in part as follows:

"Said state board shall have power to inquire into and review any or all of the various budgets and rates which make up the total aggregate budgets and total aggregate rate affecting property within the unit from which the appeal has been filed and shall have the power to revise, change or increase any levy and rate as petitioned for, but only within the limit of the levy and rate originally fixed by such municipal corporations. Any change or increase made in the levy and rate and the resulting revision or change in the budget shall be certified to the county auditor and to such

municipal corporation taking such appeal. Such change or revision shall be made only in respect to the total amounts budgeted for each office or department within each of the budgeted classifications as prescribed by the state board of accounts. Said board shall not revise, change or increase the detailed items included in the totals in such budget. The budget, levy and rate as fixed by the order of the state board of tax commissioners on such appeal shall be the only budget, levy and rate upon which taxes shall be levied, collected and expended during the ensuing year, and the action of the state board of tax commissioners shall be final and conclusive."

It will be noted from a reading of this section that the state board of tax commissioners has authority to increase the levy and rate only within the limit of the levy and rate originally fixed by such municipal corporation. It would appear, therefore, that the state board of tax commissioners is without authority to increase the levy and rate in an amount in excess of that appropriated by the county council for these budgeted items. If it be conceded, however, that the state board of tax commissioners does have such authority to increase the amount over that appropriated by the county council, such an increase would not operate to accomplish the result desired for the reason that such salaries could not be paid until the county council had met and appropriated a sum sufficient to meet such obligations.

Chapter 110 of the Acts of the Indiana General Assembly of 1935 specifically requires that:

"In all other instances, including all payments from any general or special fund to be used by any county or by the board of commissioners of any county in the construction, maintenance or repairs of any highways or bridges therein, or for any purpose other than as above stated no warrant shall be drawn upon, or money paid out of the county treasury, unless an appropriation by the county council therefor has been made, for the calendar year in which the payment is made, and which appropriation remains unexhausted."

It would seem, therefore, that since it is a mandatory duty upon the county council to appropriate an amount sufficient

to pay the salaries of the bailiff and court reporter as fixed by the court, and since such salaries cannot be paid in the absence of an appropriation by such county council that the better procedure for the state tax board to follow would be to require that proper steps be taken in the local municipalities to compel a proper discharge of these duties. Your question is accordingly answered in the negative.

TAX COMMISSIONERS, STATE BOARD OF: Appropriation of motor vehicle highway funds allocated to counties—necessity of such appropriation; when same may be made.

November 18, 1937.

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

Dear Mr. Zoercher:

I have before me your letter in which you submit the question as to when the receipts from the motor vehicle highway account that are unexpended at the end of this year can be appropriated. You follow this question with the further question, namely:

“Could they be appropriated immediately during the first part of 1938, or would they have to wait until the next regular budget is prepared?”

I think that ordinarily this unexpended balance should have been considered as an estimated receipt and as such included in the annual 1937 budget and appropriated at the same time as other regular appropriations were made for the year 1938. Your second question, however, indicates that this was not done and the question, therefore, arises as to whether it may be done at a later time and prior to the formation of the next regular budget in 1938. I shall pass at once, therefore, to the consideration of your second question which, after all, is the only one of any particular importance at this time.

I think it may be of some importance to review briefly the development of the several acts providing for the establish-