

donated to said society become the property of the county to be dealt with under the provisions of this Act.

Section 12 of this Act provides that all historical societies provided for by prior acts are subject to the provisions of the 1929 Act and in my opinion the answer to the two foregoing questions would be the same whether the society herein in question organized under the 1929 or prior acts.

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**ACCOUNTS, STATE BOARD OF: Deputies, number of deputies authorized for the several Lake County offices. Chap. 45, Acts of 1937, construction of same.**

June 23, 1937.

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

Dear Sir:

I have before me your letter calling attention to chapter 45 of the Acts of 1937, the same being an Act entitled:

“AN ACT to amend section 1 of an act entitled ‘An Act to amend section 2 of an act entitled “An act fixing the compensation of certain public officials, their deputies and assistants and fixing manner of payment thereof; authorizing the appointment of deputies and assistants; prescribing certain duties; making a division of deputy’s and assistants (assistant’s) compensation unlawful and providing a penalty therefor; providing for the collection of fees and mileage and the disposition of same; repealing all laws in conflict therewith and fixing the time of taking effect,” approved February 16, 1933,’ approved February 26, 1935.”

Acts of 1937, page 279.

On the basis of the provisions of the above Act, you request an official opinion in answer to the following questions:

“1. Does the official have to discharge his employee and rehire so that he may not be increasing a salary in violation of the constitutional provision?

"2. Inasmuch as Lake County has two or more courts, can the officials listed in the Act designate a chief deputy for each court?

"3. Inasmuch as Crown Point, the county seat, has two court houses (Criminal and Circuit), can the officials listed in the Act name a chief deputy for each court house?

"4. Can the county clerk name as chief deputies the clerks in charge of the juvenile court and the registration office when they are located within the Circuit Court House?

"5. Do the various officials listed in the Act have to submit for approval to the Board of County Commissioners a list of the various chief deputy offices they wish to designate, and does the Board of Commissioners have to recommend the salary to be paid?"

As will be observed from the title, the 1937 Act, *supra*, is an amendment of section 1 of the 1935 Act on the subject which is itself an amendment of section 2 of the original Act of 1933. The material changes which give rise to your questions are contained in the last part of the Act, which reads as follows:

"In counties having a population of two hundred and fifty thousand or more, according to the last preceding United States census, the salary of the chief deputy county treasurer, the chief deputy clerk of the Circuit Court, the chief deputy county auditor, the chief deputy county recorder and the chief deputy sheriff shall not be less than three thousand six hundred dollars per year nor more than four thousand two hundred dollars per year. *In counties having two or more courts and two or more court houses in which branches of the various county offices are maintained, the deputies in charge of the various branches shall rank as chief deputies and shall receive compensation as such.* The salaries of all deputies to be fixed and approved by the county council within the limits designated herein.

"The estimates of compensation to be paid deputies and other assistants submitted by the respective officials of each county shall be itemized so as to state

the annual rate of salary of each deputy and each assistant and in case of part time deputies and assistants said estimate shall state the pro rata part of the year each is to be employed. The appropriation by the county council shall be itemized in conformity with the aforesaid estimate." (Our italics.)

Acts of 1937, page 281.

In the above quoted language where the words "two hundred and fifty thousand" appears, there appears in the 1935 Act the words "four hundred thousand." In listing the officers to whom the provision quoted applies there are added the chief deputy county recorder and the chief deputy sheriff; and the salaries scheduled are changed from not exceeding three thousand six hundred dollars per year to not less than three thousand six hundred dollars per year, nor more than four thousand two hundred dollars per year. There is added the language which is underlined.

The effect of the change in the population requirement is to include Lake County within the provisions of the quoted part of the Act.

Your first question becomes important because of the very apparent increase of salary of the chief deputies provided for, the question being as to whether such an increase violates the provision of the Constitution prohibiting the increase of salary during the *term* of an officer. This provision, of course, in its very nature applies to officers having *terms*. The deputies of the several officers described in this Act by the terms of the Act hold during the pleasure of the officer appointing them and, in my opinion, have no *term* of office within the meaning of the constitutional provision referred to. I think your first question should be answered in the negative.

I think it must be apparent also that your second question must be answered in the negative. The underlined language in the above quotation as applied to counties with the requisite population provides that "in counties having two or more courts and two or more court houses in which branches of the various county offices are maintained, the deputies in charge of the various branches shall rank as chief deputies and shall receive compensation as such." The number of deputies ranking as chief deputies does not depend upon the sole condition of there being two or more courts in the

county. There is the additional requirement that there must be two or more court houses in which branches of the various county offices are maintained. The fact that Lake County may have two or more courts would not, in and of itself, entitle the deputies assigned to said courts, which apparently would apply only to the clerks and the sheriffs, to be ranked as chief deputies. The second question is answered in the negative.

As to your third question, under other provisions of the Act as applied to counties with the requisite population, the county auditor, the county treasurer, the clerk of the circuit court, the county sheriff, the county recorder and the county school superintendent are each entitled to appoint one deputy without the approval of the board of county commissioners. The clerk of the circuit court may appoint one for each court. While the Act does not expressly designate such deputy as the chief deputy, apparently one so appointed could be so designated. In that portion of the Act fixing the limits of compensation for chief deputies, the deputy county school superintendent is omitted and, for that reason, that particular officer is omitted in the consideration of your question. Your third question, then, turns upon whether the officials listed are required to maintain branches with an officer in charge in the criminal court house. Apparently the offices in the other court house in Crown Point would not be a branch. The Act under consideration does not authorize the appointment of more than one deputy by the officers named in the Act except with the approval of the board of county commissioners as to number other than in the case of the clerk of the circuit court, the effect of the added provision not being to authorize the appointment of additional deputies but to fix the rank of deputies in charge of branches as determining their compensation. I do not find any statute requiring deputies in charge of the offices in both of the court houses in Crown Point other than in the case of the clerk and with that one exception I think the number would be subject to the approval of the board of county commissioners. If a deputy is appointed to take charge in each court house in Crown Point, I think such deputies under the statute would each rank as a chief deputy. Your third question is answered accordingly.

Clearly, your fourth question should be answered in the negative.

Your fifth question, I assume is intended to be limited to Lake County, as in the case of the other questions. If that is true, then the officers already named, except the clerk of the circuit court, would be entitled to appoint one chief deputy without the approval of the board of county commissioners. The clerk of the circuit court would be entitled to appoint one deputy for each court, but where more than one court is in the same court house only one of such deputies should rank as a chief deputy. All other deputies, however, should be submitted to the board of county commissioners for approval as to number. As to the fixing of salaries, the board of county commissioners is entitled to make recommendations to the county council as to the amount of the salaries within the limits fixed by the Act, but the final fixing of the salaries is delegated to the county council.

Summarizing, it should be remembered that this particular Act provides that in counties having a population in excess of 25,000, certain named officers are entitled to appoint one deputy without the approval of the board of county commissioners as to number. Such officers may appoint other deputies and assistants but the number is subject to the approval of the board of county commissioners except as to the clerk of the circuit court as already indicated. The 1937 amendment does not increase the number of deputies which the several officers may appoint without the approval of the board of county commissioners but does increase the salaries of such deputies, or rather increases the limits within which the salaries may be fixed for such deputies and provides that a deputy in charge of a branch is entitled to the rank of a chief deputy for the purpose of fixing his salary.

I do not find any statutory authority for the appointment by the sheriff of more than one deputy without the approval of the board of county commissioners. With the approval of the board of county commissioners he may appoint more deputies and establish branches in the several court houses of the county. The clerk of the circuit court is ex-officio clerk of the Lake Superior Court and is required to maintain an office in the City of Hammond, in the City of Gary and in the City of East Chicago, and is authorized to appoint a deputy for each court which would include the circuit court at Crown Point and the criminal court at the same place without the approval of the board of commissioners.

What has already been said with reference to the sheriff applies to the treasurer, although, as a matter of fact, it would appear to be necessary for the treasurer, who is ex-officio city treasurer of the cities of the second class within the boundaries of the county, to have branches in Gary, Hammond and East Chicago. The recorder and auditor, of course, would be entitled to appoint one chief deputy each without the approval of the board of county commissioners.

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**PUBLIC SAFETY, DIVISION OF: Power of State over mechanical signaling device on interstate trucks.**

June 23, 1937.

Hon. Don F. Stiver, Director,  
Department of Public Safety,  
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request of June 23, 1937, for an unofficial opinion relative to chapter 99, page 474, of the Acts of 1937.

This Act provides that if motor vehicles are so constructed or loaded that the driver can not indicate by hand signals his movements, the vehicle shall be equipped with a mechanical signaling device approved by the State Safety Committee. The question is whether or not this statute of Indiana is in conflict with the Federal Motor Carrier Law which gives the Interstate Commerce Commission certain power to regulate motor vehicles used in interstate commerce.

As to vehicles not used in interstate commerce, the Indiana law is of course within the power of the legislature to make. The Supreme Court of the United States has held a number of state laws invalid because the laws had to do with the same subject covered by a federal law. It was said that there could be no divided authority over interstate commerce, and in that field the regulation of Congress is supreme.

In the case of *Napier v. Atlantic Coast Line*, 272 U. S. 605, it was held that the federal law providing for the inspection of locomotive boilers by the Interstate Commerce Commission took away from the states any authority to legislate over the equipment of locomotives. An automatic fire-door law and a cab curtain law of the states was held to be invalid. The court said at page 613: