

be the consideration for the work done; that is to say that the customer shall pay for the personal service rendered on her. In the case of demonstrators, their pay or compensation comes about purely as a result of commissions which they receive on the sale of their product and does not come about as a result of doing anyone or a combination of the six things set out in section 2 of chapter 72 of the Acts of 1935.

These demonstrators are not practicing beauty culture or any correlative function such as to come within the provision of said chapter 72. Thus, you do not have the right to prevent such work nor to require that the demonstrators become licensed pursuant to the laws of Indiana.

ACCOUNTS, STATE BOARD OF: City engineers—right to draw additional salary as superintendent of city sewage disposal plant.

June 29, 1937.

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

Dear Sir:

I have before me your letter of June 25, in which you submit the following question:

“Can the city engineer of a fourth class city serve as superintendent of the sewage disposal plant, and receive and retain for such services compensation in addition to his salary as city engineer?”

In reply to this question your attention is directed to section 7, chapter 233, Acts of the Indiana General Assembly, 1933, which provides that:

“The mayor shall appoint a city civil engineer, a city attorney, a chief of fire department, a chief of police, and such boards, commissions, officers and other employes, in accordance with the provisions of laws now in effect and as hereinafter provided.”

The Act further provides that the Board of Public Works and Safety shall be composed of the mayor, city attorney and city civil engineer.

Section 21 of the Act above designated reads as follows:

“The common council of each and every city shall, by ordinance duly enacted on or before the first Monday in September, 1933, and thereafter on or before the first day of April of the year in which elections for election of city officers are held, fix the annual salaries of all officers provided for in this Act at not to exceed the amounts herein specified, and such salaries when so fixed for such officers shall not be changed during their respective terms of office. The salaries as herein authorized shall be in full for all services performed for the city including services for any public utility or utilities owned and operated by such city; except that the common council of any city which owns and operates a public utility or utilities shall, by ordinance duly enacted on or before the first Monday in September, 1933, and thereafter on or before the first day of April in the years in which elections for election of city officers are held, provide that the mayor, city attorney, city civil engineer, and city controller of such city may receive, from the funds of such utility or utilities, a salary in addition to the annual salary herein otherwise authorized, which additional salary shall not exceed the sum total of six hundred dollars per year.”

Your question does not give the population of the city of the fourth class and since chapter 97 of the Acts of 1935, classifies cities of the fourth class as cities having a population of ten thousand or over and less than twenty thousand, I am unable to determine the salaries which would apply in your particular city for the reason that section 16 and section 17, chapter 233, Acts of the Indiana General Assembly, 1933, do not follow this classification. However, this is perhaps unimportant since section 21 of the above described Act provides that,

“The salaries as herein authorized shall be in full for all services performed for the city including services for any public utility or utilities owned and operated by such city; * * *”

If the common council of any city which owns and operates a public utility desires so to do they may, by ordinance, increase the salary of the mayor, city attorney, city civil engineer and city controller by an additional sum, not to exceed six hundred dollars per year, to be paid from the revenues of the utility. But when this has been done the law is definite that such salary shall be in full for all services performed by the city engineer, both for the city and for the utility.

It is clear, therefore, that the city engineer may not receive for his services as superintendent of the sewage disposal plant an additional salary as compensation for such services. As to whether or not he can be appointed as superintendent of the disposal plant, since he is a member of the Board of Public Works whose duty it is to hire a superintendent, your attention is directed to a former opinion of this office under date of December 21, 1934, to the effect that the office of a city civil engineer is not a lucrative office within the meaning of clause 9, article 2 of the Indiana Constitution, which forbids the holding of two lucrative offices.

I assume, of course, that the sewage disposal plant in question has been constructed pursuant to the provisions of chapter 61, Acts of the General Assembly, Special Session, 1932, and that such sewage disposal plant is operating as a revenue-producing service and is, therefore, properly classed as a public utility.

Section 48-4303, Burns Indiana Statutes, 1933 Revision, provides that the Board of Public Works may employ a superintendent for such plant and may fix his compensation. Without going into a discussion of the public policy involved in cases where an employing board seeks to employ one of its own members, the legislature provided in section 48-4316, Burns Indiana Statutes, 1933 Revision, that where a sanitary board was created to take charge of such sewage disposal plant that,

“No officer or employee of the city or town whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board.”

It is my opinion, therefore, that the city engineer of a fourth class city cannot be paid additional compensation for his services as superintendent of the sewage disposal plant, except as provided in section 21, chapter 233, Acts of the Indiana General Assembly, 1933, as above quoted.