

“The Trustees of Indiana University are hereby authorized to conduct a medical school in Marion County, Indiana, and to receive gifts of real estate and other property on behalf of the State of Indiana for the maintenance of medical education in said county, conditioned that said trustees shall conduct as an integral part of the Indiana University School of Medicine a full four (4) years’ course in medicine in said Marion County, Indiana.” * * *

I want to call your attention to part of the above quoted section which limits the trustees to the receipt of gifts of real estate and other property for the maintenance of medical education. Nothing is said about the fixing of charges as against indigent patients to be paid by the townships of which they are legal residents.

In view of the sections of the various Acts above quoted, particularly the intent of the donors of the Long and Coleman Hospitals and more particularly in view of the limitation on the powers of the Trustees in connection with the maintenance of the Indiana University School of Medicine, it is my opinion that the Board of Trustees of Indiana University do not have legal authority to make a charge to the township trustees of the state for any portion of the cost involved in caring for indigent patients referred to the Indiana University Medical Center by any township trustees.

TAX COMMISSIONERS, STATE BOARD OF: Effective date of chapter 45 of Acts of 1937, involving certain salary increases.

July 2, 1937.

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

Dear Mr. Zoercher:

I have before me your letter of June 30 reading in part as follows:

“Under the Acts of 1937, p. 279, the legislature provided for the appointment of the number of deputies

and other assistants for county officers, and prescribed the limits to be allowed as salaries for such officers.”

You request an official opinion in answer to the following questions:

“1. Could this be effective the remainder of this year when no provision was made in the budget for the year 1937 to pay the same?

“2. Would this board have any authority to reduce the amount submitted to us for approval for such salaries if the same were fixed by the county council within the limitation provided in the statute, if such council fixed it at the maximum amount?

“In other words, could this board, on the question of approving additional appropriations or on an appeal from ten or more taxpayers, reduce any salaries from the maximum fixed by the council, to any point, so long as the same remained within the minimum?

The same law provides that:

“3. ‘In counties having two or more courts and two or more courthouses 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.’ Would this apply in a county where only part of the branches of county government were represented in such court house?”

These questions grow out of the amendment of section 1 of the Acts of 1935 amending section 2 of chapter 21 of the Acts of 1933, said latter Act being 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 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.”

Acts of 1933, p. 88.

Your third question has been under consideration by this department and answered in an official opinion dated June 23, 1937, addressed to Honorable William P. Cosgrove, State Examiner. A copy of that opinion is enclosed herewith for your use.

As to your first and second questions, the Constitution of Indiana provides that,

“No Act shall take effect until the same shall have been published and circulated in the several counties of the State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body, of the law.”

Section 28, article 4, Indiana Constitution.

The Act under consideration is chapter 45 of the Acts of 1937, page 279. It contains no statement of emergency either in the preamble or in the body of the law. It would not, therefore, be effective until it has been published and circulated in the several counties of the state by authority. While this provision of the Constitution is stated negatively, it has always been construed to mean that in the absence of an emergency declared in the preamble or in the body of the Act or in the absence of some special date being fixed by the legislature itself, an Act will take effect from the date of the publishing of the same in all of the counties of the state.

State, ex rel., Rhodes v. Indiana Board of Pharmacy, 155 Ind. 414;

Sudbury v. Board of County Commissioners, 157 Ind. 446.

Chapter 45 of the Acts of 1937 accordingly became effective at 5:25 P. M. of June 7, 1937.

As already indicated, said chapter 45 is an amendatory Act amending section 2 of chapter 21 of the Acts of 1933, as said section was amended in 1935. The material changes brought about by the amendment are in the last part of the Act and read 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 such 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, p. 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.

Unchanged portions of the Act, among others, are the following provisions:

(1) “The salaries and other compensation of such deputies and other assistants, to be paid by the county, shall be fixed by the county council within the prescribed limits designated herein.”

Acts of 1937, p. 280.

(2) "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."

Acts of 1937, p. 281.

From the foregoing, I think it was contemplated that the salaries to be fixed by the county council within the prescribed limits designated in the Act were to be fixed at least not oftener than annually and in the absence of an express provision in the Act authorizing and/or requiring the county council to meet and fix salaries within the prescribed limits as fixed by the amended Act at an earlier date, it seems to me that the usual rule would apply in the construction of amendatory sections, which is, that the amended section is to be construed prospectively as if it were a part of the original enactment. Thus construed, the earliest time when the county council could fix the salaries of the designated officers would be at the regular annual date for the preparation of a budget and the making of appropriations in conformity with the items as suggested and requested by the several officials.

In the above sense, chapter 45 of the Acts of 1937 would not, in my opinion, be effective during the remainder of this year, and your first question is answered accordingly. This conclusion is not reached upon the basis of there being no budget to pay an increased salary, but rather upon the basis that there apparently is no authority in the county council to act in fixing the salaries within the limits set out in the amended Act until the regular time contemplated in the salary Act as a whole for the fixing of such salaries.

I am further persuaded to this view by the provisions of chapter 212, Acts of the Indiana General Assembly, 1937, which provides that:

"If at any time after the adjournment of the regular annual meeting in September, an emergency should arise for further appropriation(s), for any purpose

for which the council is authorized to appropriate by this Act, such further appropriations may be made at a special meeting of the council, on estimates prepared and presented as hereinabove provided, by an ordinance passed by at least a two-thirds vote of all the members of the council and not otherwise; * * *.”

It will be noted that additional appropriations can only be made to meet an emergency. I cannot believe the mere fact that the legislature has authorized a raise in salaries would be deemed such an emergency as was within the contemplation of the legislature when they authorized additional appropriations to meet an emergency. However, it is possible that conditions might exist which would warrant such action on the part of the county council. Such circumstances, however, are questions of fact to be determined by the local authorities.

With respect to your second question, I think this Act and the Act which it amends places the authority for fixing the salaries of deputies and other assistants in the county council, the same to be fixed within the limits prescribed in the Act. The county council, therefore, would have the authority to fix the salaries at the maximum limit and I do not think that the state board would have any authority to reduce the salaries so fixed. Your second question is answered accordingly.

FIRE MARSHAL, STATE: Firemen's Pension Fund, Acts of 1937, application to cities of the fourth class.

July 6. 1937.

Mr. Clem Smith,
State Fire Marshal,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of July 2, 1937, calling attention to chapter 31, section 1 of the Acts of 1937, known as the 1937 Firemen's Pension Act which reads as follows:

“Be it enacted by the General Assembly of the State of Indiana, That a firemen's pension fund and a board of trustees of the firemen's pension fund are hereby