

1971 O. A. G.

OFFICIAL OPINION NO. 22

August 30, 1971

Hon. Robert D. Orr
P. O. Box 3397
Evansville, Indiana 47701

Dear Senator Orr:

This is in response to your request for my Official Opinion concerning the authority of the County Tax Adjustment Board in view of House Enrolled Act No. 1684 which amends IC 1971, 17-1-24 by adding a new section, numbered Section 18.1, 18.2, 18.3, 18.4, and 18.5. You have specifically asked whether or not County Tax Adjustment Boards still have jurisdiction over salaries of local office holders and their employees in the sense of being able to make reductions.

ANALYSIS

Prior to the passage of the 1971 Amendment, the County Tax Adjustment Boards, hereinafter referred to as the "County TAB," had the power and responsibility to "cause reductions" on a "budget classification" total basis. The County TAB specifically had no authority to "cause reductions" on a detailed item basis.

The authority, duty, and responsibility of the County TAB is set forth in IC 1971, 6-1-46-5, as found in Burns' (1970 Supp.), Section 64-1908, as follows:

"The *officers* of each *municipal corporation* shall * * * file with the county auditor * * * copies of budgets * * *

* * *

"It shall be the duty of such tax adjustment board to examine, revise, change or reduce, but not increase, *any budget*, tax levy, or rate and to hold such budget within the total of the amount of revenue to be raised therefor from any source whatsoever, to reduce such budget in accordance therewith * * * *but said board shall make such revision, change or reduction only*

OPINION 22

*in respect to the total amounts budgeted for each office held within each of the budgeted classifications as prescribed by the state board of accounts. Such board shall not revise, change or reduce the detailed items included in such budgeted classifications * * ** (My emphasis)

The 1971 amendment gives the county council or any equivalent and successor county legislative body the authority to "fix" the salaries of officers, deputies, assistants and employees whose salaries are payable from any county fund.

The intent of the 1971 amendment is set forth in Section 18.4 as follows:

"It is the intent of this chapter to confer the power to recommend and fix salaries upon the several boards of county commissioners and county councils, as set forth herein, and it shall be declared the policy that salaries fixed as herein provided shall be lawful to the same extent as if fixed by law * * *"

The definition of what is meant by the phrase "fix salaries" and "be lawful" is critical to the resolution of the question posed.

Relying on the rules of statutory construction, it is necessary to determine the Legislative intent. The intent is to be ascertained from an examination of all sections. *Steiert v. Soultter* (1913), 102 N.E. 113, 103 N.E. 117.

It is specifically noted that there is no express statement and no definite inference in the 1971 amendment indicating the Legislature intended the county councils' actions not to be subject to review and change by the county TAB or any other board normally charged with the responsibility of review. Further, the sections relating to the county TAB's review were not amended.

Three points should be considered. First, the choice of words used in IC 1971, 6-1-45-5, indicates a Legislative intent that the county tax adjustment board shall review *all* budgets on a budget classification basis and the review shall extend uniformly to all budgets. *No exceptions are made.* Second,

1971 O. A. G.

this provision has been in effect since 1937 with no change in the board's power or scope of review. Third, it must be assumed the Legislature knew of the county TAB's review power; and since no amendments or modifications were made thereof, it must be assumed the Legislature intended the county TAB to continue to have the power to review and reduce the services personal budget classification.

Construing the phrase "fix salaries" in light of the object and purpose of the 1971 amendment, but keeping in mind the obvious evils inherent in too liberal an interpretation, one must conclude that the Legislature intended the county council to be authorized to determine the salary level commensurate with the particular workload of the job, but subject to the county TAB's review of the services personal budget classification.

In reading the phrase "shall be lawful to the same extent as if fixed by law" one must conclude the Legislature intended the salaries as fixed by the county council be only a recommendation and lawful as such but still subject to a review by authorized boards. To interpret the phrase to mean the Legislature authorized or adopted the county council's determination as their own, would raise doubts as to the constitutionality as it relates to the Indiana Constitution, Art. 4, Sec. 22 concerning special legislation. It is presumed that an act of the Legislature is valid and all doubts must be resolved in support of the act. *Parker v. State* (1892), 32 N.E. 836.

Since both the 1971 amendment and IC 1971, 6-1-46-5 relate to the same area, budget classification, the powers and responsibilities of the county council and the county TAB must be reconciled and read together as constituting one law and harmonized if possible. *Indianapolis Northern Trac. Co. v. Rushville* (1906), 76 N.E. 808. Reading the 1971 amendment and Section 5 together, one concludes that the county council has the authority to fix the number of personnel and salaries on a detailed item basis, and that the county TAB still has the authority to review, revise, change or reduce the services personal budget classification.

OPINION 22

CONCLUSION

The change in law was intended to allow county councils within their jurisdiction to make salary adjustments for county officers without requiring a separate act of the Indiana General Assembly for every adjustment.

The 1971 amendment neither vests additional authority, nor negates any authority or responsibility vested in the county Tax Adjustment Board by prior legislation, so that the county Tax Adjustment Board is still authorized to make reductions on a "budget classification" basis.