1970 O. A. G.
OFFICIAL OPINION NO. 17

July 16, 1970

Hon. Bernard W. Konrady
State Senator
524 Cleveland Street
Gary, Indiana 46404

Dear Senator Konrady:

This is in response to your request for my Official Opinion on the following question:

"Is it legal for mayors or other municipal officials and employees to accept additional emolument from foundations or other private sources to perform the public duties for which they already receive a full-time public salary?"

ANALYSIS

Indiana Acts of 1933, Ch. 233, Sec. 20b, as added by Acts of 1959, Ch. 107, Sec. 7, states in part as follows:

"The salaries of the elected city officials as fixed by ordinance of the common council pursuant to the provisions of Sec. 20a (Sec. 48-1233) of this act shall be in full for all governmental services and in lieu of all fees, penalties, fines, interests, costs, forfeiture, commissions, and percentages * * *"

In general a municipal official may not receive additional compensation for performing official duties required by law, and he is entitled to only such compensation as authorized by law. See: City of East Chicago v. Seuberli (1941), 108 Ind. App. 581, 31 N. E. (2d) 71; City of Indianapolis v. Lamkin (1916), 62 Ind. App. 125, 112 N. E. 833; 1954 O. A. G. No. 34; 1946 O. A. G. No. 12.

A mayor or other municipal officer or employee who accepts additional emolument from private sources to perform a pre-existing public duty may also run the risk of being charged with the crime of bribery (Burns' 10-601 et seq.), a crime which has been defined as follows:
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“Bribery is offering or giving, or soliciting or accepting a thing of value to influence public officers * * *” 4 I. L. E. Bribery § 2

“A ‘bribe’ is any gift, advantage, or emolument offered, given, or promised to or asked or accepted by any public officer to influence his behavior in office.” Williams v. State (1919), 188 Ind. 283, 296, 123 N. E. 209.

However, if a mayor receives additional money from a private source on behalf of the city and not for himself, this may legally be done provided it is within the statutes and is authorized by the city council of the respective city. Burns’ 48-1407(6) empowers the city council to establish provisions for accepting grants from private sources:

“The common council of every city shall have power to enact ordinances for the following purposes: * * * To receive gifts, donations, bequests, and public trusts and to agree to conditions and terms accompanying the same and bind the corporation to carry them out.”

If a city had such an ordinance, and if the council of that city authorizes the mayor to accept such a grant on behalf of the city (for the city council as their agent) then this grant would be legal. However, it should be further noted that it is the common council, and not the mayor, which authorizes the acceptance of gifts for the city from private sources; so that unless the council authorizes the mayor to accept a particular grant for the city, the mayor would be exceeding his authority to accept such grant even though he is accepting it in behalf of the city.

CONCLUSION

It is my opinion that a municipal official or employee may not personally receive additional compensation from any source to perform those functions which he already has a pre-existing duty to perform by virtue of his office, and to do so may very well fall within the state bribery statute. Certainly, Burns’ 48-1233(a) is clear in asserting that the salaries of elected city officials are fixed by the ordinances of
the common council to cover all of their governmental services. In the matter of accepting grants or gifts for the benefit of the city, however, if the official accepts such a grant *for the city*, he may do so legally, provided the city council gives him the authorization.