

1969 O. A. G.

OFFICIAL OPINION NO. 10

May 29, 1969

Hon. Leo Sullivan
529 West Fifth Street
Peru, Indiana 46970

Dear Senator Sullivan:

You have requested an Official Opinion concerning the statute authorizing an increase in the registered county surveyors' salaries which request may be stated thusly:

"Is the County Council required to increase the salary of a registered county surveyor by the exact sum of \$2000 per year?"

Your inquiry is directed to Sec. 10 of Acts of 1957, Ch. 319, as amended by Acts of 1967, Ch. 280, Sec. 1, as found in Burns' (1968 Supp.), Section 49-1062, which provides in part as follows:

"The salary for a county surveyor who is not a registered engineer shall be: Class 1, \$6,600.00; Class 2, \$5,400.00; Class 3, \$4,600.00; Class 4, \$4,000.00; Class 5, \$3,600.00; Class 6, \$3,200.00; Class 7, \$2,800.00; Class 8, \$2,600.00; Class 9, \$2,400.00; Class 10, \$2,200.00; Class 11, \$2,000.00; Class 12, \$1,800.00; Class 13, \$1,600.00.

"If the county surveyor is registered under the Indiana board of registration for engineers and land surveyors, then the salary shall be one and one-half [$1\frac{1}{2}$] times the base salary as set out above. *If the county surveyor is registered as above set out, then the county council shall increase the salary of one and one-half [$1\frac{1}{2}$] the base salary by an amount not to exceed \$2,000.00 per year.*" (Emphasis added)

The question to be resolved is whether the Legislature intended that all county councils increase their registered county surveyors' salaries by the sum certain of \$2,000.00, or whether the county councils are permitted to use their own judgment

OPINION 10

concerning the amount of increase, limited only by the maximum amount of \$2,000.00.

The primary object of statutory construction is to ascertain and effectuate the intent of the Legislature as shown by the whole act, the law existing before its passage, the changes made, and the apparent motive for making them.

In the portion of the Act with which we are concerned, the Legislature changed "may increase . . . by any amount" to "shall increase . . . by an amount." The Legislature herein indicated its desire to make mandatory an increase in the salary of county surveyors. However, by its failure to delete the words of limitation "not to exceed," the Legislature demonstrated its intent to permit the county council to continue to exercise its discretion concerning the *amount* of such increase.

One basic principle of statutory construction has been adopted by the Legislature. Section 1 of 2 R. S. 1852, Ch. 17, as found in Burns³ (1967 Repl.), Section 1-201, provides:

"Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

The words and phrases in question, namely "shall increase . . . by an amount not to exceed \$2,000.00 per year," are not "technical words and phrases having a peculiar and appropriate meaning in law," and thus should be taken in their ordinary and usual sense.

The words "not exceeding" are commonly used as interchangeable with the words "not to exceed." *Stuyvesant Ins. Co. v. Jacksonville Oil Mill* (6th Cir. 1926) 10 F. 2d 54.

The words "not to exceed" are commonly used only as words of limitation, indicating a maximum, not as words indicating a sum certain.

In conclusion, it is my opinion that the Legislature intended that the County Council must increase the salaries of registered county surveyors (one and one-half [$1\frac{1}{2}$] times the base salary) but that the amount of such increase may not exceed the sum of \$2,000 per year.