## OFFICIAL OPINION NO. 23

August 26, 1969

Hon. John M. Ryan
5640 Washington Boulevard, North
Indianapolis, Indiana 46220

Dear Senator Ryan:

This is in reply to your request for my Official Opinion regarding the following question:

> "Does Chapter 427, Acts of 1969, which contains an emergency clause, require an immediate recomputation of police pension fund benefits as of the effective date of the act, or should the recomputation and subsequent tax levy determination be made the following calendar year in the normal course of budget procedure?"

It is my opinion that such recomputation as is necessary to arrive at the amount of the benefits payable pursuant to the amendment should be done forthwith, and that the beneficiaries are entitled to such benefits from and after the effective date of the Act.

Acts of 1969, Ch. 427, contains an emergency clause making it effective at the time of signature of the Governor (March 15, 1969) and the time of computation of benefits is not related to nor dependent upon the computations with respect to any tax levy.

The computation with respect to tax levy, if any, to which the question has reference is that which is done pursuant to Acts of 1953, Ch. 34, Sec. 10, as found in Burns' (1963 Repl.), Section 48-6440. This section was *not* amended by Acts of 1969, Ch. 427, and pertinent part provides as follows:

> "If in the judgment of the pension board the amount of money which will become available for any year, and from whatsoever source derived, will be insufficient to pay the benefits, pensions and retirement allowances which, by the provisions of this act, the board is obligated to pay, the pension board shall, *at*

*any time prior to the date on which the budget of such city is adopted * * * prepare an itemized estimate * * ** of the amount of money which will be received into and disbursed from the police pension fund *during the fiscal year next ensuing*. The *estimated receipts* so set forth shall consist of the several items enumerated in Section 9 of this act. The *estimated disbursements* shall consist of an estimate of the amount of money which will be needed by the board during *the fiscal year next ensuing* to defray the expenses and obligations thereof, and in making payments as prescribed in this act to retired members of the police department, to members who are eligible and expect to retire during the ensuing fiscal year, to disabled members of the police department, and to the various dependents of deceased members thereof. * * * If the amount of receipts shown in such estimates shall be less than the amount of the disbursements therefrom * * * a tax levy shall be made by the common council in such an amount as will yield a sufficient sum to equal any such deficit and the money derived from such levy shall, when collected, be credited exclusively to the police pension fund * * *" (My emphasis)

The emphasized portion of the above quotation, reveals that the Legislature intended that the pension board could not be expected to forecast the precise amount of the various benefits. For example, as stated in Pavey v. Pavey (1942), 220 Ind. 289, 293, 42 N. E. (2d) 30, when strictly construed, the above-quoted section does not include disbursements for the lump-sum death benefits, the amount of which was raised from $600.00, as provided by Acts of 1953, Ch. 34, Sec. 13(b), as found in Burns' (1963 Repl.), Section 48-6443 (b), to $1,200.00 by the 1969 amendment. It cannot be said that the "tax levy" section of the statute, Burns' 48-6440, *supra,* requires the conclusion that benefits payable on account of a legislative increase must await a subsequent tax levy.

Nor is such a conclusion required by Acts of 1953, Ch. 34, Sec. 13(a), as found in Burns' (1963 Repl.), Section 48-6443

(a) which requires pensions to be computed on an annual basis and paid monthly. This provision must be read in connection with the sentence that follows it:

> "* * * Such pensions shall be computed on an annual basis but shall be paid in twelve (12) equal monthly instalments. At any time that the salary of a first grade patrolman is increased or reduced, the pensions payable hereunder shall be proportionately increased or reduced." Burns' 48-6443(a), *supra.*

Except for the above-mentioned lump-sum benefit, all the pensions, annuities and benefits provided by the statute are computed by applying percentage figures to the salary of a first grade patrolman and subsequently adjusted.

It is my opinion, therefore, that Acts of 1969, Chapter 427, does require an immediate recomputation of police pension fund benefits.