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This statute seems to be almost a textbook example of the purpose of the constitutional requirement that the effect of the act be limited to the scope of the title. Here, if the act purportedly repealed were fully repealed and its repeal were given the effect suggested (the effect of giving a resigned legislator two years pay for 61 days service), then legislation would have been enacted blindly. And what is done blindly can easily be the result of deception.

It is my opinion that Acts 1965, ch. 28, § 2 did not repeal Acts 1953, ch. 102, § 1, in relation to legislators who resign prior to the end of their term and, therefore, I find no reason to reach a conclusion different from that reached in 1966 O.A.G., p. 58. Consequently, my answer to the question asked by your predecessor is that salary payments falling due in 1966 cannot be paid to a member of the General Assembly who resigned in 1965.

OFFICIAL OPINION NO. 26

July 25, 1967

GENERAL ASSEMBLY—Legislative Council—Eligibility of Members of Council to Receive Expense Allowance.

Opinion Requested by Indiana Legislative Council.

You have requested an answer to the following questions:

- (1) May the Legislative Council establish and pay to the "leaders" of the General Assembly a fixed annual reimbursement of expense allowance?
- (2) May the Legislative Council reimburse the "leaders" of the General Assembly for their actual

expenses incurred between sessions for stationery, postage and other office supplies, which expenses are incurred by the "leaders" of the Legislature by virtue of their offices in the General Assembly, and are neither expenses of the Legislative Council itself nor incurred in service for it?

It is my understanding that you have used the word "leaders" to mean those officers of the General Assembly who are presently *ex officio* members of the Legislative Council: the President and President Pro Tempore of the Senate, the Speaker and Majority Leader of the House, and the minority leaders and the majority and minority caucus chairmen of both houses, as set out in chapter 50 of the 1967 Acts, House Enrolled Act 1005, Burns §§ 34-601-12. You have explained that by virtue of the offices these members hold in the General Assembly, their official correspondence and travel between sessions is greatly increased over that of the other members of the General Assembly, their official correspondence and travel between sessions is greatly increased over that of the other members of the General Assembly, separate and apart from any services they may be required to perform for a committee or commission created by the General Assembly, and in addition to any time spent in attending meetings of or performing services for the Legislative Council itself. It is my understanding that the type of expense allowance and the expense reimbursement which the Council desires to allow to the officers of the General Assembly is similar to allowances which would have been provided by Senate Enrolled Act No. 300 of 1967, had it become law.

The general rule in Indiana concerning the payment of public officers is that they may receive compensation from the public treasury only when they can show that a specific compensation is fixed by law, and that express authority exists for making the payment out of public funds. *Applegate v. State ex rel. Pettijohn*, 205 Ind. 122, 125, 185 N.E. 911 (1933); *Waymire v. Powell*, 105 Ind. 328, 4 N.E. 886 (1886); *City of East Chicago v. Seuberli*, 108 Ind. App. 581, 31 N.E. 2d 71 (1941); 1948 O.A.G., No. 27. Furthermore, when a specific mode of payment has been provided, that

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mode must be followed, *Board of School Comm'rs. v. Wasson*, 74 Ind. 133 (1881), and no further compensation may be granted to the public officials by the officials themselves, *Waymire v. Powell, supra*. An amount or amounts fixed by law for the compensation of public officials are presumed to be full payment for services and expenses of the official, and any expenses of the official not specifically authorized by law to be reimbursed must be paid from the official's own pocket, *Applegate v. State ex rel. Pettijohn, supra*, 1948 O.A.G., pp. 128, 133. Official duties for which no compensation is provided by law must be performed gratuitously, see *City of East Chicago v. Seuberli, supra*, approving *Board of Comm'rs. v. Gresham*, 101 Ind. 53, 56 (1885).

The Legislative Council was created by House Enrolled Act 1005, chapter 50 of the 1967 Acts, approved and effective March 4, 1967, Burns §§ 34-601-12. Until January 14, 1969, the officers of the General Assembly previously set out herein serve as members of the Council *ex officio* their elected positions. In addition, seven members of the General Assembly are appointed to the Council.

The Council is declared to be "the service and administrative agency for the General Assembly." Act, Section 5, which also requires the Council:

“. . . (6) to coordinate and assist the work of the interim committees or commissions appointed at the direction of the General Assembly or of the Senate or House of Representatives;

“(7) to work with the appropriate committees of the General Assembly or of the Senate or House of Representatives to assure efficient utilization of its employees; . . .

“(9) to employ such staff as it deems necessary to carry out the provisions of this act. . . .”

The Council is empowered by Section 6

“. . . (2) to appoint committees and subcommittees which shall be subject to the authority of the Council; . . .

“(6) to receive appropriations and make allocations for the reasonable and necessary expenditures of the Council and the interim committees. . . .” (Emphasis added.)

The Council is authorized to establish a pay scale for all employees of the Council, including the Executive Director, section 7 (c). Specific provision is made for compensating each of the members of the Council for meeting attendance:

“The members of the Council shall receive the per diem of members of the General Assembly for time spent in attendance at the meetings of such Council. The members of the Council shall also be reimbursed for actual necessary expenses incurred while attending such meetings. Such per diem and expenses of the Council shall be made from the appropriation of the Council upon approval by the Chairman.” Section 8(b)

(This paragraph is a re-enactment of language contained in Acts 1945, ch. 88, § 5, Burns § 60-1705, which created the Legislative Advisory Commission, except that the 1945 Act excluded the Lieutenant-Governor from per diem and expenses.) The only expenses which the Council is authorized by this statute to pay are those expenses of the members as provided by section 8(b), the expenses of interim committees and expenses of the Council itself. Since section 8(b) does provide that the members of the Council shall be reimbursed per diem and actual expenses for attendance at meetings, that compensation must be considered the only compensation which members of the Council can collect for service for the Council unless some other statutory provision authorizes further compensation. The Council is not authorized by this statute to pay compensation or make reimbursements of any kind to legislators for expenses incurred in service to the General Assembly rather than to the Council itself. However, there are other provisions made by law for payment and reimbursement of expenses for members of the General Assembly, and they too must be examined in order that your question be answered.

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Legislative salaries are provided by Acts 1955, ch. 65, § 1, as amended by Acts 1963 (Spec. Sess.), ch. 25, § 1, Burns § 34-201f:

“From and after November 7, 1956, the salary of the members of the General Assembly shall be eight-hundred dollars annually.”

Section 1a of the 1955 Act, as added by section 1 of Acts 1957, ch. 245, as amended by section 2 of the 1963 Act, Burns § 34-201i, declares that the salary provided in section 1 is “solely for the purpose of compensating the members of the General Assembly for services rendered during the regular sixty-one day session . . . and said salary shall be in full for their attendance at the regular session. . . .” An extra payment of five dollars (\$5.00) per day during the session is provided for both the Speaker of the House and the Lieutenant-Governor, section 2 of the 1955 Act, as amended by section 3 of the 1963 Act, Burns § 34-201g. The same section provides a mileage allowance for legislators during a session. Section 3 of the 1955 Act, as amended by section 4 of the 1963 Act, Burns § 34-201h, read as follows:

“No other *compensation for services*, except as provided in Sections 1 and 2 of this Act, shall be paid to the members of the General Assembly: Provided, however, The members of the General Assembly shall be allowed any compensation, either per diem or per diem and expenses, for services performed for any committee or commission which is created by an act of the General Assembly.” (Emphasis added.)

The 1963 amendment to section 3 deleted language limiting compensation for *expenses* as well as for *services* to the amount provided in the 1955 Act. The 1963 Special Session thus recognized otherwise authorized allowances for expenses incurred in the performance of duties other than service for a legislative committee or commission, and did, in fact, appropriate a “per diem expense” for the members of the General Assembly for “*every day* of any special or regular session of the General Assembly” (emphasis added), and a “mileage allowance” for one round trip each week of a session, Acts

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1963 (Spec. Sess.), ch. 35, § 2. That authorization was substantially re-enacted in the 1965 Appropriations Act, ch. 191, section 2, at pp. 369-371 of the 1965 Acts, and, with language providing that it applies to the 95th and succeeding sessions as well, in section 2 of ch. 298 of the 1967 Acts, House Enrolled Act No. 1015, the 1967 Appropriations Act.

The 1967 Appropriations Act establishes the amount of the per diem expense allowance and mileage to be paid members of the General Assembly in several situations:

“Any member of the General Assembly or any person who is appointed either by the Governor, the Speaker of the House, President Pro tem, the President of the Senate, or by the Indiana Legislative Advisory Commission to serve on any research, study or survey committee or commission, except the Budget Committee, shall be entitled, when so specified by the appointing authority, to receive a per diem expense allowance of \$25.00 *for each and every day in actual attendance of any meeting of such committee or commission.* In addition to the per diem allowance such persons shall be allowed the sum of eight cents (8¢) per mile within the State for each mile necessarily traveled to attend any meeting of the committee or commission. PROVIDED, That if such meetings are held outside the State of Indiana then travel reimbursement shall be based on the most direct and economical mode of transportation. The per diem herein stated shall be in full payment of such service and shall not be considered as supplemental to any per diem otherwise provided.

“. . . [T]he Chairman of the Indiana Legislative Advisory Commission may call a pre-session conference of the members of the General Assembly at a time subsequent to the general election held in even numbered years and prior to the time when the regular session of the General Assembly convenes. The duration of the conference shall not exceed five days and *those in attendance* shall be entitled to the per diem and travel allowance authorized by the foregoing provisions; PROVIDED, That travel allowance is limited to one round trip during the entire period of the

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conference. In addition, the members of the 95th General Assembly and all sessions thereafter will be entitled to the per diem expense provided in this section *forevery day of any special or regular session* of the 95th General Assembly and all sessions thereafter, and the mileage allowance for one (1) round trip each week for every week of any special or regular session of the General Assembly.

“When not otherwise provided for by a specific appropriation, for the support of a given department or agency, the Legislative Advisory Commission may authorize payment of *per diem expense allowance and/or mileage* from the Legislative Advisory Commission appropriation to any member of the General Assembly, or any person who is appointed either by the Governor, the Speaker of the House, the President of the Senate or by the Indiana Legislative Advisory Commission to serve on any research, study or survey committee or commission. *The amount of such per diem may not exceed \$25.00 per day.*” (Emphasis added.) Acts 1967, ch. 298, § 2, at pp. 982, 983.

These paragraphs follow an appropriation to the Legislative Advisory Commission, the facilities and responsibilities of which have been transferred to the Legislative Council. The first paragraph quoted above authorizes a per diem expense allowance only for days spent in attending meetings of the specified study committees. The portions of the second paragraph quoted authorize the payment of per diem for time spent in attendance at meetings of a pre-session conference, limited to five days, and a per diem expense allowance for every day of a special or regular session. (This last authorization is not specifically limited to days spent in attendance at a session.) The third paragraph is somewhat ambiguous. One possible interpretation of this paragraph is that it is an authorization to the Legislative Advisory Commission to pay from its own appropriation per diem expense allowances authorized in the first paragraph for attendance at study committee meetings when the committee attended does not have an appropriation from which such per diem may be paid. In view of the legislative history of the appropriations to the

Legislative Advisory Commission, this interpretation seems to me to express the General Assembly's intention.

Appropriations have been made to the Legislative Advisory Commission in the following acts: 1955, ch. 303, §§ 14 and 14a, at pp. 914-915; 1957, ch. 285, § 14, at pp. 723-724; 1959, ch. 114, § 2, pp. 250-251; 1961, ch. 298, § 2, pp. 745-747; 1963 (Spec. Sess.), ch. 35, § 2, at pp. 120-122; 1965, ch. 191, § 2, at pp. 369-371; 1967, ch. 298, § 2, at pp. 982, 983.

The first cited section of the 1955 Appropriation Act contained substantially the first paragraph quoted above (except for a difference in dollar amount of the allowance). The second section authorized the same amount of per diem expense and travel allowance for the members of the Legislative Advisory Commission "for time spent in attendance at the meetings of the commission". The appropriation to the Legislative Advisory Commission covered only allowances for the commission members. In 1957, the two sections were combined into one, and the Legislative Advisory Commission thereupon became responsible for paying from its own appropriation *all* allowances authorized for attendance at sutdy committee meetings. Allowances could be paid only when "specified by the appointing authority". In 1959, the provisions concerning the appropriation from which the payments were to be made were changed completely:

"When not otherwise provided for by a specific appropriation, the Legislative Advisory Commission may authorize payment of per diem and/or mileage from the Legislative Advisory Commission appropriation to any member of the General Assembly, or any person who is appointed either by the Governor, the Speaker of the House, the President of the Senate or by the Indiana Legislative Advisory Commission to serve on any research, study or survey committee or commission." At 251 of the 1959 Acts.

This paragraph was followed by an open-ended appropriation from the General Fund of the amounts required.

Since this paragraph replaced the provisions for the preceding biennium that the Legislative Advisory Commission

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appropriation must be used to pay all per diem expense allowances for attendance at meetings by study committee members, it is my opinion that the Legislature actually intended this paragraph to mean that payments should be made from the Legislative Advisory Commission appropriation only in those instances when no appropriation had been made to a particular committee from which such allowances were authorized to be paid. However, the language used, if literally interpreted, does not so restrict the meaning of the paragraph.

Not only is the "per diem" not limited to per diem for expenses, but this paragraph, when read with the other paragraphs of the Legislative Advisory Commission appropriation, could be interpreted to authorize per diem compensation in addition to the per diem expense allowances authorized in the first paragraph for study committee members. No dollar limitations were provided for the per diem.

The succeeding General Assembly limited the language of its appropriation to the Legislative Advisory Commission by re-enacting the above quoted paragraph with the following changes: the words and punctuation "for the support of a given department or agency," were added after the words and punctuation "appropriation," in the first clause, and the words "expense allowance" were inserted between the words "per diem" and the words "and/or". The last sentence of the present act was also added, specifying that the amount of the per diem may not exceed the same dollar amount specified in the first paragraph as allowable for attendance at study committee meetings.

The same language contained in the 1961 Act was re-enacted in 1963, 1965 and 1967, changing only the dollar amount of per diem to be paid, and the name of the particular fund of the Legislative Advisory Commission from which the payments were to be made.

Each expense allowance authorized by the Legislative Advisory Commission appropriation, except for the per diem expense allowance provided for every day of a session of the General Assembly, is specifically limited to payment for a day of attendance at a study committee meeting or a pre-legislative conference.

Even should my interpretation of the statute be too narrow, the statute nevertheless does not, in my opinion, authorize the allowances concerning which your request is made. A per diem allowance is "an allowance fixed by law at a definite amount per day, to compensate a person for discharging public duties," and is payable only for the days in which the officers are performing the duties for which per diem is allowed, *Seiler v. State ex rel. Board of Comm'rs*, 160 Ind. 605, 619, 65 N.E. 922, 66 N.E. 946, 67 N.E. 488 (1903); 1945 O.A.G., pp. 149, 150; 1945 O.A.G., p. 188. Therefore, even should the last paragraph of the Legislative Advisory Commission appropriation quoted above for 1965 and 1967 be construed to include per diem allowances for services other than days of a session and attendance at study committee meetings or pre-legislative conferences, it could not be construed to authorize a fixed annual or monthly allowance payable regardless of the number of days engaged in performing such services, and it could not be construed to authorize the payment of reimbursement of actual office expenses.

Section 2a of the 1967 Appropriations Act, at pp. 1075, 1076 of Acts 1967, ch. 298, authorizes the State Budget Agency to fix and prescribe payment of per diem in lieu of actual traveling and hotel expenses otherwise provided by statute or by the Appropriations Act for officers of the state. (The comparable 1965 provisions may be found in section 2a of ch. 191, at pp. 429-430 of the 1965 Acts.) It is my opinion that this section was not intended to apply to travel of members of the General Assembly. However, even should it be applicable to them, it also provides only a "per diem" allowance for each day actually traveled, and requires that the Auditor of State shall receive a paid lodging receipt before per diem reimbursement is made for overnight travel. Of course, authorization of payment of traveling and hotel expenses cannot be considered an authorization to pay office expenses such as stationery and postage.

Therefore, in my opinion, the answer to both of your questions is in the negative. Under present statutes, the Legislative Council is not authorized by law to establish and pay to the leaders of the General Assembly a fixed annual reimbursement of expense allowance, and may not reimburse the

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leaders of the General Assembly for their office supply expense incurred as officers of the General Assembly between sessions.

OFFICIAL OPINION NO. 27

August 7, 1967

OFFICERS—MUNICIPAL CORPORATIONS—Power to Fix Compensation of Employees of Municipally Owned Public Utilities—Authority of Board of Public Works or Board of Public Works and Safety.

Opinion Requested by Mr. Richard L. Worley, Chief Examiner, State Board of Accounts.

Your recent letter requests advice concerning the fixing of compensation of municipal utility employees which I have taken the liberty of restating in the form of a question as follows:

Is the Board of Public Works (or the Board of Public Works and Safety, as the case may be) of a city of the third, fourth or fifth class which operates a municipal utility for such city, authorized to fix the compensation of the employees of the city who perform the work of maintaining and operating the utility, or is the mayor the officer so authorized?

Your question concerns the relationship between two separate statutes concerning the salary of city employees. The first, Section 109 of the Public Utility Act (Acts 1913, ch. 76), which was completely rewritten by Section 19 of Acts 1933, ch. 190 (which Act also amended the title of the Public Utility Act to embrace the material contained in the rewritten Sec-