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OFFICIAL OPINION NO. 49

December 20, 1967

OFFICERS, JUDICIAL—Supplementing Salary of Circuit Judge as Automatic Grant of Increase to Superior Court Judges.

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

I am in receipt of your inquiry concerning the increase in salary allowed the judge of the Circuit Court of Delaware County by the Board of Commissioners of that County. You ask whether the two superior court judges in that county are automatically entitled to the same increase in salary.

The increase in the circuit court judge's salary was granted pursuant to Acts 1965, ch. 204, § 1, the same being Burns § 4-3241a, which provides:

“In all judicial circuits of this state composed of one county, whether for circuit, superior, probate, criminal or juvenile court, whenever fifty or more resident freeholders of any such county shall, by their petition filed with the board of commissioners of such county, represent that the *annual salary of any judge* is not an adequate compensation for the *services of such judge* and should be supplemented and increased by such county in the sum to be specified in such petition, then the board of commissioners of such county, in open session and without delay, shall consider such petition and hear evidence thereon. Thereupon such board of commissioners may, by entry of record, fix and allow a certain sum as a supplement to and increase of the *annual salary of such judge*: Provided,

That the gross *salary of such judge* as established by Acts of 1963, Chapter 370, Section 2, or as the same may from time to time be amended, shall not be supplemented and increased by such county by more than four thousand dollars (\$4,000.00), and in no event shall such county supplementation be in excess of the sum specified in such petition. No appropriation by the county council shall be required to authorize such supplementation or the payment thereof." (Emphasis added.)

The language in the statute above appears to indicate that any increase in the salary granted under the provisions of the statute is to be given only to the judge or judges specified in the petition. The consistent use of the singular person, as indicated by the emphasized portions of the statute, would permit no other interpretation. If the Legislature had intended the increase to apply to all the judges in the circuit, they could easily have so indicated through the use of plural nouns.

This interpretation is partially supported by the case of Board of Comm'rs v. Davis, 136 Ind. 503, 36 N.E. 141 (1894), which case involves a similar statute enacted in 1893. A petition had been filed on behalf of both the circuit court judge and the superior court judge in Vigo County. The county commissioners refused to grant the increase and the petitioners sought judicial review of that decision. The sole question involved was whether the commissioners' decision was subject to judicial review, but in deciding that the decision was not subject to such review the Indiana Supreme Court analyzed the statute and made several comments pertinent to the present question.

"The legislative grant of power to increase salaries certainly involved the duty of judging of the wisdom and propriety not only of the amount to be added, but as to whether any addition should be made." (at 507 of 136 Ind.)

"The statute under consideration confers the power upon the board to bind the county as by contract, and

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should be strictly construed. Robinson's County and Township Officers, section 38, and authorities there cited.

"Rules of construction applicable to legislation, in which the public at large are interested, require liberality, while, with reference to legislation granting powers or privileges to individuals, for their own advantage, require strict construction as against such individuals. *Ryan v. Vanlandingham*, 7 Ind. 416 (422); *Bradley v. New York, etc., R.R. Co.*, 21 Conn. *294." (136 Ind. 510)

"The fixing of the amount of increase in the case before us is, as we have already stated, discretionary. The object of hearing testimony is not to require an allowance, but to enable the board to exercise its discretion with a knowledge of the value of the service of the judges, a knowledge which it could not be presumed the board possessed." (at 513 of 136 Ind.)

Applying the same analysis to the Supplemental Salary Act of 1965 (Burns § 4-3241a, *supra*) can lead only to the conclusion that a salary supplement granted to one judge on whose behalf a petition is filed is not automatically granted to all other judges in the county.

There is, of course, the possibility that some peculiarity in the acts establishing the superior courts in Delaware County would require the judges of those courts to receive an increase in salary whenever the judge of the Delaware Circuit Court receives a salary increase. Therefore, those acts must also be considered before a complete answer can be reached.

The court known as Delaware Superior Court was established by Acts 1929, ch. 244, the same being Burns §§ 4-701 through 4-710. The third section of that Act, Burns § 4-703, provides in part:

"The present judge of the superior courts now existing in the counties of Grant and Delaware, known as the Grant superior court and the Delaware su-

perior court, respectively, and who is the judge of the Grant and Delaware superior court district, shall be and continue to be the judge of the Delaware superior court as heretofore created and defined, and shall hold his office for the remainder of the term for which he was elected, that is, to January 1st, 1931; and the judge of the Delaware superior court shall receive the same compensation for his services annually, payable monthly out of the state treasury, as is now or may be hereafter authorized by law for the judge of the Delaware circuit court, and, in addition to the salary paid to such judge by the state, he shall receive and be paid annually by Delaware county, Indiana, an additional salary in a sum equal to the amount which is now or may hereafter be allowed by the board of county commissioners of Delaware county, Indiana, to the judge of the Delaware circuit court as an increase of or addition to the salary of said judge of the Delaware circuit court under the statutes of the State of Indiana, which additional salary shall be paid to said judge of the Delaware superior court out of the treasury of Delaware county without appropriation by the county council, in monthly installments, upon warrants drawn by the auditor of said Delaware county upon the treasurer of said county."

If only the statute above were to be considered, then the conclusion would be that the judge of Delaware Superior Court is entitled to the increase granted to the judge of the Delaware Superior Court even though no petition were filed in his behalf. However, the 1959 General Assembly did pass an act entitled:

"AN ACT fixing the salaries of judges of the circuit, superior, probate, criminal and juvenile courts of the state; fixing the salaries and subsistence allowance of the judges of the Supreme and Appellate Courts; providing for the payment of such salaries and subsistence allowance; making an appropriation therefor; and repealing all laws in conflict herewith."

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The body of that Act, Acts 1959, ch. 85, the same being Burns §§ 4-3229 to 4-3236 and 4-3242, establishes the salary of all circuit, superior, probate, criminal and juvenile court judges throughout the state. The Act established twelve classes of circuits (reduced to nine classes by Acts 1963, ch. 370) according to the population and assessed valuation of property in that circuit, and set a salary for each class. The seventh section of the Act, Burns § 4-3235, provides that:

“On and after January 1, 1960, the annual salary of each judge shall be, as hereinafter provided, according to the county in which he holds office. . . .”

The twelfth section of the Act did, as the title indicates, repeal all previous statutes in conflict with the Act.

It could be argued that the 1929 Act dealing specifically with the salary of the judge of the Delaware Superior Court is a special statute and thus survives the passage of the 1959 Act which is a general statute dealing with the salary of judges. The rule in such cases, as quoted in *State v. La-Rue's, Inc.*, 239 Ind. 56, 59, 154 N.E. 2d 708 (1958) is as follows:

“. . . [I]t is a rule of statutory construction that a general statute, without negative words, does not repeal the particular provisions of a former statute on a special subject to which the general language of the later act, if it stood alone, might be deemed to apply unless the two statutes are irreconcilably inconsistent.”

The 1959 Act does contain negative words in that it purports to repeal all statutes in conflict. The 1929 statute and the 1959 statute are irreconcilably inconsistent in that the former provides that the superior court judge's salary is to be based on the circuit court judge's salary and the latter provides that the salary of all superior court judges is to be based on the classification of the circuit in which they hold office. Therefore, the 1959 Act must be considered as repealing the 1929 Act. (This opinion assumes, *arguendo*, that

the 1929 provision had not been repealed prior to 1959 by Acts of 1941, ch. 45, a salary statute similar to and superseded by the 1959 Act. The true conclusion of this opinion is that the 1929 provision and the 1959 Act cannot co-exist.)

The other superior court in Delaware County, the Superior Court of Delaware County, Number 2, was created by Acts 1959, ch. 109, the same being Burns §§ 4-731 through 4-756. The tenth section of that Act, Burns § 4-740, provides:

“The judge of said court shall receive the same salary as is now or may hereafter be provided by law to be paid to a judge of a superior court, which salary shall be paid at the time and in the same manner as judge of the superior courts are now paid.”

The Act setting the salary for all judges in accord with the classification of their circuit and the Act creating the Superior Court of Delaware County, Number 2, were passed by the 91st Session of the Indiana General Assembly. Thus there can be no doubt that the statute above is to be interpreted as providing that the salary of the judge is to be determined by the classification of his judicial circuit, as is the salary of all other superior court judges.

The 1959 salary statute set the salary of all judges in a given judicial circuit classification at the same level. The apparent attempt of the 1965 salary supplement statute is to permit the residents of a circuit to reward a judge who possesses unusual ability or who has performed exceptional services by increasing his salary to an amount greater than that received by other judges in the same judicial circuit classification. That intent would be defeated were the statute to be interpreted as automatically granting to all judges in a given circuit the raise granted to a particular judge in that circuit.

Therefore, in answer to your question, the judges of the Superior Courts of Delaware County are not entitled to the salary increase that has been granted to the judge of the Circuit Court of Delaware County.