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Neither can the State Scholarship Commission create a legal obligation of the State of Indiana by agreeing, as part of a program insuring the repayment of loans, to buy defaulted loans from lenders, except to the extent that such purchases may be made from funds advanced by the federal government.

In summary, it is my opinion that the State Scholarship Commission is not authorized by Acts 1965, ch. 157, to establish a reserve fund to be used for insuring the repayment of loans made by private financial institutions to eligible students for educational purposes nor may the Commission's appropriated funds be diverted to such a reserve fund. Furthermore, the State Scholarship Commission has not been authorized by said Act to accept federal funds to implement any federal program. The Governor of Indiana, however, by executive order as heretofore outlined, may designate the State Scholarship Commission as the state agency to receive federal funds and as the state agency to administer the loan insurance program here considered, but none of the funds appropriated by Acts 1965, ch. 157, may be used to defray the administrative costs of such a program.

OFFICIAL OPINION NO. 15

August 15, 1966

STATE OFFICERS—LIEUTENANT GOVERNOR— Entitlement of Expense Allowance for Members of General Assembly.

Opinion Requested by Hon. Robert L. Rock, Lieutenant Governor.

I am in receipt of your recent inquiry as to whether, as President of the Senate, you are entitled to the \$20.00 per day

expense money paid to Legislators during the 1965 regular and special sessions of the General Assembly.

Such expense money for members of the General Assembly is provided by Acts 1965, ch. 191, § 2, which reads, in part:

“. . . In addition, the members of the General Assembly will be entitled to the per diem expense provided in this section (\$20.00) for every day of any special or regular session of the General Assembly. . . .” (Parenthetical statement added.)

In your letter you indicate that Art. 5, § 23, of the Indiana Constitution might affect the answer. That section provides:

“The Lieutenant-Governor while he shall act as President of the Senate, shall receive, for his services, the same compensation as the Speaker of the House of Representatives; and any person acting as Governor shall receive the compensation attached to the office of Governor.”

In my opinion the reimbursement of expenses involved herein is not compensation, and therefore the above provision is inapplicable. However, the inapplicability of the Constitutional provision is not conclusive in determining the intent of the Legislature in this matter.

The compensation paid to the Lieutenant Governor, unlike that paid to most other state officers, is distinctly a composite of the compensation paid him for performing two separate functions. The Lieutenant Governor receives compensation for his services as President of the Senate, and he also receives compensation for his services in the executive department of the state government. This principle was stated in *Armstrong v. Townsend*, 8 F. Supp. 953, 957 (1934), thusly:

“It must be conceded that if the Lieutenant Governor is a member of the executive department of the government and as such may perform administrative duties fixed by the Legislature, then the Constitution does not forbid the Legislature from fixing a salary to compensate him for the performance of such duties. The only

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provision of the Constitution bearing upon the question as to the amount of his compensation is that which provides for compensating him for his services as President of the Senate. This provision does not limit the amount of his salary as Lieutenant Governor, and cannot be construed so as to prevent the Legislature from fixing an annual salary for his services, aside from compensating him as President of the Senate, which position he fills by virtue of his office. The Legislature has the authority to fix the compensation and define the duties of an officer unless prohibited therefrom by the Constitution. It is the exclusive judge as to the amount of such salary and the extent of the duties to be performed.”

That the Legislature is well aware of the dual character of the functions performed by the Lieutenant Governor and the separate compensation to be paid for the performance of each function is evidenced by several Acts of the Legislature of which the following are examples.

Acts 1951, ch. 216, § 1, as amended by Acts 1961, ch. 128, § 1, the same being Burns IND. STAT. ANN., § 49-901a, provides *inter alia*:

“The annual salary of the elected officials of the state shall be as follows :

. . .

“For lieutenant-governor, sixteen thousand five hundred dollars [\$16,500] per year.

. . .

“. . . Provided, further, That the salaries for the foregoing elected officials, excepting the lieutenant-governor, shall be in lieu of all other fees and compensation allowances, as provided by statute and are to be considered as the total emolument for the respective position.”

Acts 1955, ch. 65, § 2, as amended by Acts 1963 (Spec. Sess.), ch. 25, § 3, the same being Burns IND. STAT. ANN., § 34-201g, provides, in part:

“ . . . The speaker of the house of representatives and the lieutenant governor, for serving as president of the senate, shall receive during the sessions of the general assembly an additional five dollars [\$5.00] per day.”

From the foregoing, we see that the Legislature is cognizant that the Lieutenant Governor performs a function in the General Assembly and that for performing that service the Lieutenant Governor ordinarily receives compensation equal to that received by the Speaker of the House. Therefore, from the foregoing alone, we could reasonably conclude that unless the contrary is specifically indicated, the Legislature intends that the Lieutenant Governor receive for his services with the General Assembly the same compensation as does the Speaker of the House. However, in the instant situation we need not rely solely on that conclusion.

The Legislative Advisory Commission is created by, and its membership established by Acts 1945, ch. 88, § 2, as last amended by Acts 1959, ch. 78, § 1, the same being Burns IND. STAT. ANN., § 60-1702, which provides, in part:

“There is hereby created a joint committee of the general assembly to act in an advisory capacity to the bureau. Said committee shall be known as the Indiana legislative advisory commission. It shall be composed of the president of the senate, the speaker of the house of representatives, seven [7] members of the senate to be named by the president of the senate, not more than four [4] of whom shall be members of the same political party, and seven [7] members of the house of representatives to be named by the speaker, and not more than four [4] of whom shall be members of the same political party. The president of the senate shall be the chairman of said commission, and the director of the Indiana legislative bureau shall act as the secretary of the commission.”

As mentioned earlier in this opinion, the per diem expense presently being discussed is provided by Acts 1965, ch. 191, § 2. The pertinent paragraph of that section reads:

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“The members of the Indiana Legislative Advisory Commission, except the chairman of the commission, shall receive the per diem expense and travel allowance, as provided in this Section, for the time spent in attendance at the meetings of the commission and the 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 conference. *In addition, the members of the General Assembly will be entitled to the per diem expense provided in this section for every day of any special or regular session of the General Assembly and the mileage allowance for one (1) round trip each week for every week of any special or regular session of the General Assembly.*” (Emphasis added.)

It is to be noted that the emphasized portion of the above statute is the provision set out earlier, and is the provision upon which both your question and this opinion are based. It also should be noted that the above passage supports the analysis suggested earlier in that it is a specific instance where the Legislature did not wish the compensation provided for the Speaker of the House to also apply to the Lieutenant Governor and so specifically indicated. More important insofar as your question is concerned, the above statute is an instance where the following principle, stated but not applied in *Highland Sales Corp. v. Vance*, 244 Ind. 20, 25, 186 N.E. 2d 682, 685 (1962), is applicable:

“It is an elementary rule of statutory construction, that when a definite provision is made with reference to one particular subdivision of a section of the law dealing with the identical subject matter as the other subdivisions thereof and a similar reference is omitted

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from the other subdivisions thereof as well as from all of the rest of the section, the particular reference is intended to apply solely to the subdivision in which it is contained and to exclude its application from all of the rest.’”

In the statute under consideration the Legislature referred to two different classes of duties to be performed by the Lieutenant Governor, the Speaker of the House, and other members of the General Assembly, set out a per diem expense allowance for days spent performing such duties, and specifically excluded the Lieutenant Governor from receiving any expense allowance in connection with one of the two classes of duties. The principle expressed in *Highland Sales* would permit no conclusion but that the Legislature intended that the Lieutenant Governor receive the expense allowance connected with the performance of the other class of duty.

For the above reasons it is my opinion that you, the Lieutenant Governor, are entitled, as President of the Senate, to the \$20.00 per day expense allowance paid to Legislators during the 1965 regular and special sessions of the General Assembly.

OFFICIAL OPINION NO. 16

September 8, 1966

**COUNTY OFFICERS—County Drainage Board—Procedure
for Collecting Assessments—Duties of County Auditor
—Duties of County Treasurer—Option of
Landowners to Pay in Installments.**

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

I am in receipt of your recent letter requesting my Official Opinion on certain aspects of the Indiana Drainage Code, Acts