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or to be used for carrying said act into full force and effect. As required by the Acts of 1961, ch. 319, § 1408, as amended, as found in Burns IND. STAT. ANN., (1965 Supp.), § 64-1208, such regulation and each and every part thereof, together with such forms, must be adopted and promulgated in compliance with the provisions of the Acts of 1945, ch. 120.

OFFICIAL OPINION NO. 44

October 8, 1965

Hon. Thomas J. Murphy
Indiana State Representative
21 North Hawthorne Lane
Indianapolis, Indiana

Dear Representative Murphy:

Your recent letter and a letter received in conjunction therewith from the Marion County Sheriff request an interpretation of that portion of 1 R.S. 1852, ch. 28, § 1, as amended by Ind. Acts of 1855, ch. 41, § 1; Ind. Acts of 1925, ch. 164, § 1; Ind. Acts of 1959, ch. 314, § 1, Burns IND. STAT. ANN., § 49-501, which reads as follows:

"The . . . county sheriff, . . . may appoint deputies, when necessary or when required, if provision shall have been made for paying such deputies for their services from the funds of the state or of the county or from fees received for their services. . . ."

You have asked for my Official Opinion as to whether the portion of the statute quoted above prohibits a county sheriff from appointing deputies to serve without compensation from public funds where the individuals who are to be appointed are otherwise qualified according to law.

In view of the fact that the portion of the statute quoted above also applies to the appointive powers of the Secretary of State, the State Auditor, the State Treasurer, the clerk and sheriff of the Supreme Court, the clerk of every circuit court and all county auditors, treasurers, recorders, coroners, surveyors, prosecuting attorneys and township assessors as well as county sheriffs, it follows that the answer to be given
OPINION 44

to the above question must apply to these officials as well as county sheriffs. Conversely, if it has been held that any of the above named officials can appoint deputies to serve without compensation from public funds it will follow that a county sheriff may do so.

Burns IND. STAT. ANN., § 49-501 took on its present form with the 1925 amendment thereto and the only subsequent amendment which was enacted in 1959 did nothing to alter the provision of the statute which gives rise to our present question. The 1925 version of this statute was considered by the Indiana Supreme Court in Applegate v. State ex rel. Pettijohn, 205 Ind. 122, 185 N.E. 911 (1933). The Applegate case involved the appointment of a deputy by the county treasurer and the provision of the statute in question was interpreted to have the following legislative intendment:

"... In its original form, as passed in 1855, this statute merely provided that the officers therein mentioned might appoint deputies. No reference to compensation was made. By the amendment of 1925 the Act was made to provide that certain officers may appoint deputies when necessary or when required 'if provision shall have been made for paying such deputies for their services from the funds of the state or of the county.'

* * *

"The law contemplates that the treasurer shall perform the duties of his office, and that his salary and allowances shall compensate him for that service, and that if assistance is required he shall pay the expense thereof out of his own compensation, unless there is express statutory provision for an allowance, and the statutes above referred to clearly show such a legislative interpretation of the law." Applegate v. State ex rel. Pettijohn, supra, 205 Ind. at 124-125.

It naturally follows that if an official can appoint a deputy to be paid out of the official's own compensation the same official may appoint an unpaid deputy, and under the above-quoted holding of the Indiana Supreme Court there can be no question but that the statute concerned was not
intended to prevent conscientious citizens from serving the public without pay.

That the General Assembly interprets the statute in this manner is indicated by Ind. Acts of 1957, ch. 115, § 2, Burns IND. STAT. ANN., § 49-2811, which reads as follows:

"Each of the several counties of the state of Indiana shall furnish uniforms for the sheriff and his full time paid deputies." (Emphasis added.)

Unless the appointment and service of full time or part time unpaid deputies was contemplated by the General Assembly, the word “paid” in the statute is meaningless.

In my opinion, the answer to your question is an unequivocal “No.” The first statute quoted herein does not prohibit a county sheriff from appointing deputies to serve without compensation from public funds where the individual’s who are to be appointed are otherwise qualified according to law.

OFFICIAL OPINION NO. 45

October 13, 1965

Hon. Joseph Bruggenschmidt
Indiana State Representative
Rural Route #1
Tell City, Indiana

Dear Representative Bruggenschmidt:

I am in receipt of your letter of July 27, 1965, in which you inquire about compensation in addition to regular salary being paid to city attorneys.

Your specific questions were:

"1. Since the passage of Chapter 107, Acts of 1959 Indiana General Assembly (Burns 48-1233b), may the City Attorney of cities of the 4th and 5th classes, receive additional compensations, in addition to regular salary as city attorney, for the performance of service rendered in connection with the creation or operation of a municipally owned utility or function, provided