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This section provides that the finance committee shall prepare an ordinance and such ordinance may contain items which are decreased from those presented by the mayor to the common council. It then becomes the duty of the common council to adopt such ordinance in the amounts that they see fit subject to statutory restrictions on increases or decreases. In connection with the power of the common council, my 1956 O. A. G., page 228, No. 52, may be of interest to you as being involved in this general subject.

In summary hereof, it is my opinion that the finance committee has no power or duties in connection with the salary ordinance adopted for appointive officers and employees of the city, except the perfunctory process of considering salary amounts in fixing the tax levy. But in preparing a budget ordinance they may reduce any item, from the amount contained in the report of the mayor, except where such item concerns salaries as set by the salary ordinance.

OFFICIAL OPINION NO. 45
August 25, 1964

Hon. Spencer J. Schnaitter
State Representative
K of P Building
Madison, Indiana

Dear Representative Schnaitter:

This is in response to your letter of August 10, 1964, wherein you request an Official Opinion relative to the time limitation contained in the Acts of 1959, Ch. 107, Sec. 6, as found in Burns’ (1963 Repl.), Section 48-1233.

Your specific question is stated in the following paragraph of your letter:

“In light of the above statute, we would appreciate your official opinion as to whether a city council may enact such an ordinance to fix salaries of the next elected city officials, effective January 1, 1968, now or anytime before April 1, 1967, or is the council’s
There being no duties to be performed by the finance committee provided for in this statute, such committee would not officially perform any function in connection with the adoption of the salary ordinance.

The Acts of 1905, Ch. 129, Sec. 84, as amended and found in Burns’ (1963 Repl.), Section 48-1506, reads in part as follows:

“It shall be the duty of each executive department, at the time provided by law, to submit to the joint meeting of the heads of the departments and of the various boards, an estimate of the amount of money required for their respective departments for the ensuing fiscal year, stating with as great particularity as possible each item thereof. The controller shall at the same time submit an itemized statement or estimate of the city expenditures for other purposes, for the ensuing year, over and above the money proposed to be used by the various executive departments. After such meeting, and reports and consultation, the city controller shall proceed to revise such estimates for the ensuing year, and shall then prepare a report to the mayor of the various estimated amounts required, in such controller’s opinion, for each executive department, and for other city expenses, together with an estimate of the necessary per cent of taxes to be levied. The mayor shall at the next meeting of the common council present such report with such recommendations as he may see fit. It shall be the duty of the committee of finance of the common council thereupon to prepare an ordinance fixing the rate of taxation for the ensuing year, and also an ordinance making appropriations by items for the use of the various executive departments and other city purposes for the ensuing year. Such ordinance may reduce any estimated item for any executive department, from the figure submitted in the report of the city controller, but shall not increase the same unless recommended by the mayor. Such appropriation ordinance shall thereafter be promptly acted upon by the common council ***"
authority to enact such an ordinance limited to the period between January 1, 1967 and April 1, 1967."

The portion of Burns' 48-1233, supra, on which your question is based, reads as follows:

"(a) The common council of each city shall, by ordinance duly enacted on or before the first day of April of the year in which elections of city officers are held, fix the annual salaries of all elected city officials, and such salaries when so fixed shall not be changed by the common council during the respective terms of their offices * * * Provided further, That said ordinance shall be published in a newspaper printed in the English language and generally circulated in the city concerned, twice prior to the date of final passage of said ordinance, the first publication of which shall be not less than thirty [30] days prior to the date of final passage of said ordinance."

Your question has been briefly and concisely stated. The answer is dependent upon a statutory construction to ascertain and effectuate the intent of the Legislature as shown by the act.

In 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201, provides, in part, as follows:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary and usual, sense * * *"

An examination of Burns' 48-1233 (a), supra, states that the time for the enactment of said salary ordinance shall be "on or before the first day of April in the year in which elections of city officers are held." (Our emphasis) It is clearly apparent that the terminal date for such enactment is the first day of April in the year in which city elections are held, the next such election being in the year 1967.
Let us next consider the key words "on or before." In 67 C. J. S. 496, 497, it is stated:

"On or before *

"With relation to a specified time or event, 'on or before' means immediately at, or at any time in advance of, the instant of such time or event; that is to say, to the exclusion of any time after that to which the proposition has relation, not after *

See also:

Rhoads v. Myers (Iowa), 245 N. W. 705, 706;
Q. A. Talbott v. Byler (Kans.), 217 S. W. 852, 853;

The legislative purpose in the enactment of Burns' 48-1233 (a), supra, was apparently to enable the voters, as well as the candidates, to be aware of what the salaries for such elective city offices would be for the ensuing terms. By making the terminal date, the first day of April in the election year, this procedure requires the fixing of these salaries, by ordinance, enacted prior to the primary elections of such election year.

It is not within my province to weigh arguments, pro or con, on the question of whether the legislative purpose be best served by limiting the time of enactment of such an ordinance to a date between the first day of January and the first day of April, in the year in which city elections are held. Burns' 48-1233 (a), supra, does not contain such a limiting starting date, nor do I find any such limitation elsewhere in the act.

The law is well settled that where a statute prescribes the manner in which a power conferred on a municipal corporation, or its governing body, is to be exercised, the statutory mode must be followed.


To state that the Legislature intended to make January 1, 1967, the starting date for the period during which the salary
ordinance could be enacted, would be to add a limitation not contained in the statute. In this connection it is well to note the language of the Supreme Court in the case of Poyser v. Stangland (1952), 230 Ind. 685, 689, 106 N. E. (2d) 390, wherein the court said:

"* * * We cannot under the guise of construction, put something into a statute that the legislature apparently designedly omitted. The general rule has been stated, thus:

"The general rule is that nothing may be read into a statute which is not within the manifest intention of the legislature as gathered from the act itself, and that a statute should not be construed any more broadly or given any greater effect than its terms require * * * there is no authority to transcend or add to the statute which may not be enlarged, stretched, or expanded, or extended to cognate or related cases not falling within its provisions.' 50 Am. Jur. Statutes, § 229, pp. 214, 215, 216. See also 59 C. J. Statutes, § 569, pp. 953 to 958. Bettenbrock v. Miller (1916), 185 Ind. 600, 606, 112 N. E. 771."

Therefore, it is my opinion, that the salary ordinance authorized in Burns' 48-1233 (a), supra, may be enacted now, or, at any time, on or before the first day of April of the year in which elections of city officers are held, the next such terminal date being April 1, 1967. It is thus my opinion that the right of a common council to make such enactment is not restricted to a starting authorization date of January 1, 1967, in the instant case.