

d. An additional exemption for a spouse in the sum of \$500.00 if the spouse has attained the age of sixty-five before the close of the taxable year if a separate return has been made by the taxpayer and if, for the calendar year in which the taxable year of the taxpayer begins, such spouse has no gross income and is not the dependent of another taxpayer; plus

e. An additional exemption of \$500.00 for the taxpayer who is blind at the close of the taxable year; plus

f. An additional exemption of \$500.00 for the spouse of the taxpayer, if the spouse is blind at the close of the taxable year if a separate return is made by the taxpayer and if, for the calendar year in which the taxable year of the taxpayer begins, such spouse has no gross income and is not the dependent of another taxpayer.

In conclusion, I wish to emphasize that the "Adjusted Gross Income Tax Act of 1963," being the Acts of 1963 (Spec. Sess.), Ch. 32, with which this Opinion deals, was not presented to my office for an examination as to constitutionality prior to its approval by the Governor on April 20, 1963, nor since that time. Furthermore, this Opinion has been confined to answering the questions presented and thus is not to be construed as having considered the constitutionality of the act nor of any section or provisions thereof.

OFFICIAL OPINION NO. 46

September 25, 1963

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

This will acknowledge receipt of your letter requesting an Official Opinion relative to the Acts of 1917, Ch. 144, the

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County Hospital Act, as that act was most recently amended by the Acts of 1963, Ch. 361.

Prior to the 1963 amendment, the Acts of 1917, Ch. 144, Sec. 3, as amended, and as found in Burns' (1950 Repl.), Section 22-3218, provided that the county treasurer should serve as the treasurer for the hospital board of trustees. This section of the act also provided for a salary of \$180.00 per year for the chairman of the board, \$150.00 per year for the secretary of the board and \$120.00 per year for the remaining members. The Acts of 1963, Ch. 361, Secs. 1 and 2, as found in Burns' (1963 Supp.), Sections 22-3218 and 22-3218b amended and added to the earlier provisions of the 1917 Act by doing two things: First, Burns' 22-3218, *supra*, now provides for a salary of not to exceed \$600.00 per year for all members of the board regardless of their official position on the board, with no change in the provision making the county treasurer the treasurer for the hospital board of trustees; second, the new amendment represented by Burns' 22-3218b, *supra*, now permits the hospital board of trustees to elect a treasurer of their own with the approval of the board of commissioners of the county. This latter section maintained the salary scale at \$180.00 per year for the chairman, \$150.00 per year for the secretary and \$120.00 per year for the remaining board members.

Based upon this background of legislative activity, your letter asks the following questions:

- "1. If the board elects their own treasurer are they limited to the compensation set out in the original act?
- "2. May the board elect a treasurer from their own members?
- "3. If the answer to question 2 is yes, may the board member elected as treasurer receive additional compensation for such service?
- "4. If the board elects their own treasurer will they serve as a special board of finance for the purpose of designating depositories instead of the county board of finance?"

It seems apparent that the Legislature was fully aware that they were establishing a different salary schedule for the trustees in the two sections of the statute passed at the same legislative session. These two sections, sections 1 and 2, concern the same identical subject-matter, that is, the treasurer for the board of trustees and the salary for the board of trustees. In Burns' 22-3218, *supra*, the Legislature increased the salary for the whole board, but maintained the earlier provision that the county treasurer would serve as the treasurer for the board. In Burns' 22-3218b, *supra*, they maintained the salary of board members which had been established by the earlier act, but changed the provision with respect to the treasurer so as to permit the board to elect a treasurer of their own.

It is not necessary to look beyond the language of either section (Burns' 22-3218, *supra*, or Burns' 22-3218b, *supra*) to ascertain the salary of the hospital board of trustees whether the county treasurer is serving the board or whether they elect their own treasurer. I am unable to find any ambiguities in either of the two sections which would require the application of technical rules of statutory construction.

Therefore, in answer to your first question, it is my opinion that members of a hospital board of trustees who elect their own treasurer pursuant to Burns' 22-3218b, *supra*, are limited to the salary established in said section which carries the same salary limitations as the original act.

Burns' 22-3218b, *supra*, does provide that the trustees may elect, with the approval of the board of commissioners of the county, a treasurer to serve the board. There is no language which states or limits who may be elected treasurer under said statute.

Your second question is whether or not the board of trustees can elect one of their own members to serve as treasurer under the provisions of Burns' 22-3218b, *supra*. The rule which seems to be in force in the State of Indiana is to the effect that if the statute gives a board authority to appoint or elect a person to perform a duty, then such board cannot appoint or elect one of their own members to perform such duty.

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Waymire *et al.* v. Powell *et al.* (1885), 105 Ind. 328,
4 N. E. 886;

The City of Fort Wayne v. Rosenthal (1881), 75
Ind. 156;

67 C. J. S. Officers, § 20.

Based upon the above cited rule and authorities in support thereof, it is my opinion, in answer to your second question, that the hospital board of trustees cannot appoint or elect one of their own members to serve as treasurer of the board under Burns' 22-3218b, *supra*.

Since the answer to your second question is in the negative, it will not be necessary to answer question No. three.

By virtue of the Acts of 1937, Ch. 3, Sec. 8, as found in Burns' (1961 Repl.), Section 61-629, the board of county commissioners in each county shall serve as the county board of finance. Section 11 of this Act, Burns' (1961 Repl.), Section 61-632, does provide for a special board of finance in certain cases where *municipal corporations* are operating or maintaining some enterprise or property under a legally authorized consolidation. I do not believe that Burns' 61-632, *supra*, was meant to be applicable to the situation represented by the present set of facts even though the hospital board of trustees is now permitted to elect its own treasurer.

There is no indication in Burns' 22-3218b, *supra*, that the Legislature intended in any way to change the provisions of Burns' 61-629, *supra*, in order to allow the hospital board of trustees to serve as a board of finance separate and distinct from that of the board of county commissioners.

In answer to your fourth question, therefore, it is my opinion that the hospital board of trustees cannot serve as a board of finance and such authority is still vested in the board of county commissioners pursuant to Burns' 61-629, *supra*.