

OPINION 48

OFFICIAL OPINION NO. 48

September 30, 1963

Hon. Kenneth J. Brown, Jr.
State Senator
8 Hampshire Lane
Muncie, Indiana

Dear Senator Brown:

This is in response to your letter of August 21, 1963, requesting my Official Opinion concerning the effective date of certain salary increases provided by the last General Assembly.

Acts of 1963, Ch. 324, Sec. 1, as found in Burns' (1963 Supp.), Section 49-1002, is too long to be quoted here, but its effect is to fix the minimum monthly salaries payable to county officials therein named.

The effect of Acts of 1963, Ch. 370, Secs. 1 and 2, as found in Burns' (1963 Supp.), Sections 4-3234 and 4-3236 is to classify counties as to population and to fix the salaries of judges in accordance with class. Both acts are amendatory, and contain provisions for salary increase. In neither act is a date stated upon which the salary increase shall commence; however, each act became effective on August 12, 1963, when finally circulated to the clerks of the circuit courts.

See: 1963 O. A. G., No. 40, (September 10, 1963).

A situation similar to the one presented by you gave rise to my 1961 O. A. G., page 258, No. 42. That Opinion concerned Acts of 1961, Ch. 166, Sec. 1, as found in Burns' (1963 Supp.), Section 49-1061, which raised the salaries of county recorders. Although the legislation there involved amended a former act which contained a section setting an effective date for the salary increase, which element is not present here, that Official Opinion cited a case which has never been overruled and which answers the question which you present.

That was the case of *O'Rourke v. Board of Commissioners of Lake County* (1939), 215 Ind. 195, 18 N. E. (2d) 380, which involved Burns' 49-1002, *supra*, as it then existed. In

effect, the O'Rourke case held that under Acts of 1899, Ch. 154, Sec. 21, as amended, and as now found in Burns' (1960 Repl.), Section 26-521, neither the board of county commissioners nor the county council had authority to provide for additional salary after the annual September meeting of the county council, unless an emergency exists. No emergency existed in that instance, nor has one been shown to exist here.

Therefore, it is my opinion that the salary increases herein provided shall be appropriated in the annual September meetings of the several county councils and shall become effective upon the first day of January, 1964.

OFFICIAL OPINION NO. 49

October 17, 1963

George A. Everett, Superintendent
Indiana State Police
301 State Office Building
Indianapolis, Indiana

Dear Superintendent Everett:

This is in reply to your request for an Opinion on the following question:

"Does Senate Enrolled Act No. 260 of the 1963 General Assembly affect the duties of the Trustee of the Indiana State Police Pension Fund as set out in the Acts of 1937, Ch. 54, as amended, (Burns' 1952 Repl., §§ 47-835 through 47-845, as amended), and if so, to what extent?"

Senate Enrolled Act No. 260 of the 1963 General Assembly being Acts of 1963, Ch. 398, Sec. 1, as found in Burns' (1963 Supp.), Section 31-507, reads as follows:

"In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for any trust heretofore or hereafter created, the trustee thereof shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discre-