

OPINION 49

OFFICIAL OPINION NO. 49

July 19, 1962

Hon. Walter A. Baran
State Senator
5128 Walsh Avenue
East Chicago, Indiana

Dear Senator Baran:

Your letter of July 9, 1962, requests my Official Opinion upon the following question:

“What is the maximum salary that the Circuit Court may set for the Inheritance Tax Deputy for Lake County?”

The authority for the appointment of “an inheritance tax deputy” by the county assessor, who is the inheritance tax appraiser for his county, is derived from Section 8 of the Indiana Inheritance Tax Law, being the Acts of 1931, Ch. 75, Sec. 8, as amended, as found in Burns’ (1962 Supp.), Section 7-2408, which reads, in part, as follows:

“In all counties in this state containing a population of more than two hundred fifty thousand [250,000], according to the last preceding United States census, the county assessor shall appoint competent full time or part time stenographic assistants and an inheritance tax deputy to assist him as inheritance tax appraiser, *whose salaries shall be within the prescribed limits for stenographic assistants and deputies as now provided by law for such county*, and shall be fixed by the judge of the probate court of such county, or by the judge of the circuit court of any county not having a probate court, and shall be paid monthly out of the county treasury, as a part of the expense of collecting such inheritance tax.” (Our emphasis)

From the above-quoted portion of Section 8 of the Inheritance Tax Law, as amended, it is apparent that the deputy, whose appointment by the county assessor is therein authorized, is not appointed for the purpose of assisting the county assessor in his general duties as county assessor, and is, therefore, not

a regular deputy assessor, but that such deputy is specifically designated as "an inheritance tax deputy" whose statutory duties are "to assist him [the county assessor] as inheritance tax appraiser." Although such deputy is not a regular deputy county assessor, nevertheless, his salary, even though fixed by the judge of the probate court of such county, or the judge of the circuit court of any county not having a probate court, must be "within the prescribed limits for * * * deputies as now provided by law for such county."

The limits for the salaries of deputies now provided by law for Lake County are within the Acts of 1933, Ch. 21, Sec. 2, as amended, as found in Burns' (1962 Supp.), Section 49-1002 and the Acts of 1957, Ch. 316, Sec. 1, as amended, as found in Burns' (1962 Supp.), Section 49-1002a.

The population of Lake County, according to the last preceding United States census in 1960, is 513,269, so that the following paragraph of Burns' 49-1002, *supra*, apparently would be applicable:

"In counties having a population of not less than one hundred fifty thousand and one [150,001] according to the last preceding United States census, the salary of each of said deputies and other assistants shall not be less than two hundred dollars [\$200] per month and not more than five hundred dollars [\$500] per month: Provided, however, That the salary of the first or chief deputy shall not be less than four hundred and fifty dollars [\$450] per month; and provided further, that on and after January 1, 1962, in counties having a population of 650,000 or more, the salary of the first or chief deputy shall not be less than six hundred dollars [\$600] per month and the salary of the second deputy shall be not less than five hundred dollars [\$500] per month."

Because the population of Lake County exceeds 150,001, according to the last preceding United States census, but is less than 650,000, the *minimum* of \$200 per month, prescribed by the above-quoted statute, would apply and the maximum of \$500 per month would seem to apply, if the above were the only statute applicable to Lake County. Therefore, if it were not

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for another statute, it would appear that the maximum which could be paid to any deputy of the county assessor of Lake County would be \$500 per month.

However, as above noted, there is a special statute, applicable to counties having two or more cities of the second class, fixing the minimum and maximum per month salary of a first or chief deputy of the county assessor in such county, along with salaries of such deputies of other county officers therein. Lake County is such a county, so that the minimum and maximum salary per month of a first or chief deputy county assessor of Lake County is as prescribed by the Acts of 1957, Ch. 316, Sec. 1, as amended, as found in Burns' (1962 Supp.), Section 49-1002a, which provides as follows:

“In all counties having two [2] or more cities of the second class, the salary of the first or chief deputy of the county auditor, the county treasurer, the clerk of the circuit court, the county sheriff, the county recorder, the county assessor, the county surveyor, and the county superintendent of schools shall be not less than three hundred fifty dollars [\$350] per month and not more than seven hundred dollars [\$700] per month, and the salary and other compensation of all such deputies to be paid by the county, shall be determined and fixed by the county council within the limits herein prescribed.”

While this is a special act applying only to Lake County and only to the salaries of the first or chief deputy of county officers of that county, it is clear that any first or chief deputy, even though top deputy, is still a deputy. Such deputies are specifically included within the general salary-fixing statute for deputies as seen by reference to Burns' 49-1002, *supra*.

Referring to the portion of Section 8 of the Inheritance Tax Law, as amended, as quoted herein, it will be noted that the salary of the inheritance tax deputy is to be within the prescribed limits for “deputies as now provided by law for such county.” It does *not* say that the inheritance tax deputy's salary shall be within the prescribed limits of deputies, other than first or chief deputies, as now provided by law for such county. There is nothing in the inheritance tax statute which

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would require, or necessarily imply, that the word "deputies," as therein used, did not include all deputies which the county assessor has the authority to appoint. Consequently, I find it necessary to construe the word "deputies," as used in the Inheritance Tax Law, as including a first or chief deputy of a county assessor. From this it follows that, although the *minimum* salary for a deputy county assessor is prescribed by Burns' 49-1002, *supra*, and for Lake County in the sum of \$200 per month, nevertheless, the *maximum* salary for a deputy county assessor of Lake County is prescribed by Burns' 49-1002a, *supra*, and is in the sum of \$700 per month. Thus, for answer to your question, it is my opinion that the maximum salary which the Circuit Court of Lake County may set for the inheritance tax deputy for that county is the sum of \$700 per month.

OFFICIAL OPINION NO. 50

July 20, 1962

Mr. Richard L. Worley, Chairman
State Board of Tax Commissioners
201 State Office Building
Indianapolis 4, Indiana

Dear Mr. Worley:

This is in response to your request for my Official Opinion in answer to a number of questions occasioned by reason of the Acts of 1961, Ch. 319, Sec. 1303, which provides for the addition of certain sums for failure to file property tax returns within the time required by statute. Because there are a number of such problems presented by your letter, all of which are based on that section, before referring to them, it is deemed helpful that that section be set forth, prior to a statement and consideration of the particular questions. That section, as found in Burns' (1961 Repl.), Section 64-1103, provides as follows:

"When any person fails to file a return, statement, or other document, as required by this act, the assessor shall inform the county auditor who shall add the sum of ten dollars [\$10.00] to the tax instalment next payable by such person. In addition, when any person fails