

OFFICIAL OPINION NO. 59

November 14, 1961

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

Dear Mr. Worley:

This is in response to your letter of November 3, 1961, requesting an Official Opinion upon the subject stated therein as follows:

“This office has pending before it certain additional appropriation requests from three counties for the restoration of salaries of county officials, judges and prosecuting attorneys, for the year 1961, based upon the provisions of House Bill 499, Chapter 221, Acts of 1961.

“We respectfully request your official opinion as to the effect of the 1961 Act on the classification of counties, and specifically the date on which the classifications under that Act and the resultant increases in salaries shall become effective.”

The Acts of 1961, Ch. 221 is found in Burns' (1961 Supp.), Section 49-1070, and your question relates particularly to the operational effect of that Act which flows from the emergency clause which is a part thereof. This Act is an independent act affecting the operation of the Acts of 1957, Ch. 319, as found in Burns' (1961 Supp.), Section 49-1053 *et seq.*, the Acts of 1959, Ch. 85, as found in Burns' (1961 Supp.), Section 4-3229 *et seq.*, and the Acts of 1959, Ch. 277, as found in Burns' (1961 Supp.), Section 49-2601 *et seq.*

The Acts of 1957, Ch. 319, *supra*, is an act concerning the compensation, fees and travel allowances to be paid to the following county officers: The auditor, treasurer, clerk of the circuit court, sheriff, assessor, recorder, surveyor, coroner, county commissioners and county councilmen. The express purpose of that Act was that, for the determination of salaries, each of the counties of the State of Indiana be graded annually, based upon the population of the county, and upon

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the gross assessed valuation of the property within the county. The 1957 Act established a formula for determining the grade of each county, and from the determination of the grade by the application of such formula, each county is made to fall within one of thirteen classifications. The salary of such county officers is then established by a schedule, whereby Class 1 results in the maximum salary provided by the Act, and, thereafter, the salaries are scaled downward, becoming smaller as the number of the class increases.

The formula for determining the grade of a county is one hundred times the average of the ratio of the population of the county to the population of the entire state and the ratio of the gross assessed valuation of the county to the gross assessed valuation of the entire state.

In 1959 the General Assembly enacted legislation by which to fix the salaries of judges and by which to fix the salaries of prosecuting attorneys, which legislation was substantially similar in plan and effect to the Acts of 1957, Ch. 319, *supra*. The Acts of 1959, Ch. 85, *supra*, is an act for the fixing of salaries of judges of the circuit, superior, probate, criminal and juvenile courts of the state by which the judicial circuits are to be graded annually by the application of the same formula as in the Acts of 1957, Ch. 319, *supra*, said formula having been adopted by that 1959 statute. The determination of grade automatically establishes the classification into which the judicial circuit falls, which, by the application of a salary schedule, fixes the salary of the judge.

The Acts of 1959, Ch. 277, *supra*, is an act concerning the office of prosecuting attorney in the various judicial circuits of the state, which, again, utilizes the same formula provided by the Acts of 1957, Ch. 319, *supra*, for determining the grade of the judicial circuit in which the prosecuting attorney is serving so as to establish the class of the judicial circuit for the purpose of fixing the salary to which he is entitled.

With the foregoing brief summary of the purpose and theory of the three acts heretofore discussed, we now turn to the Acts of 1961, Ch. 221, *supra*, which reads as follows:

“AN ACT concerning the classification of counties for salary purposes.

“WHEREAS, The county officers’ salary act, Chapter 319 of the Acts of 1957; and the judges’ salary act, Chapter 85 of the Acts of 1959; and the prosecuting attorneys’ salary act, Chapter 277 of the Acts of 1959 are determined by reference to a mathematical formula which in part is based upon the assessed valuation of each county in the state; and

“WHEREAS, The Ninety-second General Assembly of the State of Indiana is considering making revisions in the laws concerning the methods and procedures of assessing, which may affect the three aforementioned salary schedules contrary to the intention of the General Assembly which passed said acts: Therefore

*“Be it enacted by the General Assembly of the State of Indiana:*

“SECTION 1. That the classification of salary schedules for judges, Chapter 85 of the Acts of 1959; prosecuting attorneys, Chapter 277 of the Acts of 1959; and county officers, Chapter 319 of the Acts of 1957, shall not be lowered below the classification first fixed by the State Board of Accounts pursuant to such acts, respectively, *notwithstanding ANY provisions to the contrary contained therein.*

“SEC. 2. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage.”  
(Our emphasis)

It is to be noted from the preamble of the 1961 statute, and from its history in the Ninety-second Regular Session of the Legislature as House Bill No. 499, that Ch. 221, *supra*, was originally meant to guard against any future lowering of the classification of salary schedules for county officers, judges and prosecuting attorneys, which might result because of legislation enacted by the same 1961 Regular Session of the General Assembly. The first printing of this bill (February 15, 1961) discloses no emergency clause, and the idea then was to “freeze” salaries of county officers, judges and prosecuting attorneys at the current amounts, for it then stated

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the classification "shall be, *and remain*, the same classification as fixed and determined by the State Board of Accounts and certified by them *for the year 1961.*" (Our emphasis)

The specific assertion that the Ninety-second General Assembly of the State of Indiana "\* \* \* is considering making revisions in the laws concerning the methods and procedures of assessing, which *may* affect the three aforementioned salary schedules contrary to the intention of the General Assembly which passed said acts \* \* \*," obviously referred to House Bill No. 122, previously introduced, now Ch. 319 of the Acts of 1961, known as the "Property Assessment Act of 1961," effective (except as to certain sections) from and after January 1, 1962. (Our emphasis) The Acts of 1961, Ch. 319, *supra*, is an act concerning taxes, repealing certain laws, and establishing new procedures for taxation of real and personal property. Some of its changes, particularly in the field of valuing personal property for assessment purposes, may result in affecting the gross assessed valuation of the county which, in turn, could affect the grade of the county or judicial circuit. We are here dealing in the field of uncertainty, and that was apparently the reason for House Bill No. 499 in the form in which it first appeared. However, salaries payable *in 1962* would not have been affected by changes in gross assessed valuations which may hereafter result from the "Property Assessment Act of 1961," because assessments pursuant to that Act will be first made as of March 1, 1962. Thus, for its original purpose, House Bill No. 499 needed no emergency clause and, accordingly, had none in the early stages of the legislative processes.

Careful consideration of the legislative history of House Bill No. 499 and the comparison of that Bill in its original form with the form in which it was finally enacted as Ch. 221, *supra*, discloses that the original idea of purpose was completely abandoned. Further, there is every indication that this Act, as finally enacted, was intended to affect a presently existing condition immediately and not just to be applied prospectively.

It is a fact, as revealed by a comparison of the classifications of the counties as determined each year since July 1, 1957, that some counties had already sustained a lowering of

classification prior to 1961, resulting in the reduction of salaries payable in the year 1961 to county officials, judges and prosecuting attorneys. Statistics in the State Board of Accounts reveal that the number of such counties which would be so lowered in grade would have been thirty-two (32), as certified on July 1, 1961, if it were not for Ch. 221, *supra*, of the Acts of 1961. This appears to be the result of population shifts whereby certain of the rural counties are not keeping abreast of the overall population increase of the entire state, thereby affecting the population ratio of the county to the entire state.

In changing House Bill No. 499 from the version as printed on February 15, 1961 to the form in which it was finally enacted, the Legislature completely abandoned the idea of "freezing" the salaries fixed by the grading for the year 1961. Instead, it established a "floor" below which the classifications should not go. The "floor" so established is the classification "*first fixed* by the State Board of Accounts pursuant to such acts, respectively, *notwithstanding ANY provisions to the contrary* contained therein." (Our emphasis) This tends to indicate that the Legislature was aware of such salaries having already been reduced for the year 1961 in some instances, and definitely establishes that it did not intend for the salaries as paid in 1961 to be the criterion for future salaries. Instead, it restored the classification for county officers as a "floor" which had been fixed as of July 1, 1957. It restored the classification for judges as a "floor" which had been fixed as of July 1, 1959. And it restored the classification for prosecuting attorneys as a "floor" which had been fixed as of July 1, 1959.

Chapter 221, *supra*, is obviously for the purpose of having an effect upon and to protect the salaries of county officers, judges and prosecuting attorneys, and from the emergency clause which was added it "shall be in full force and effect from and after its passage" on March 9, 1961. Are we giving full force and effect from and after March 9, 1961 if the county officers, judges and prosecuting attorneys for whose benefit it was passed must wait until January 1, 1962 to have salary cuts restored? Is such an interpretation in harmony with the requirement that the Act be given immediate and full effect from and after March 9, 1961?

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Chapter 221, *supra*, noticeably does not contain a statement that it shall be effective as to salaries payable after January 1, 1962, although, by contrast, the January 1st effective date appears in two of the earlier acts, Acts of 1957, Ch. 319, Sec. 18, stating that it "shall be in full force and effect on and after January 1, 1958" and Acts of 1959, Ch. 85, Sec. 7, stating that "On and after January 1, 1960, the annual salary of each judge shall be, as hereinafter provided, \* \* \*."

To the contrary, the effective date of Ch. 221, *supra*, of the Acts of 1961 is March 9, 1961, *from* and after which date it shall be given "*full* force and effect." (Our emphasis) The purpose of such an emergency clause is for the act to be of instant effect, unless otherwise intended, and, with respect to a salary statute, such may take effect in the middle of or during a calendar year.

See: 1945 O. A. G., page 136, No. 29;

1957 O. A. G., page 69, No. 16.

It is, of course, always a question of seeking to determine legislative intent, as to which there may be a differing of minds. It is my view that Ch. 221, *supra*, became fully effective on March 9, 1961. It did not require that July 1, 1961 be awaited for a regrading by the State Board of Accounts to be effective for salaries payable after January 1, 1962. The grades and resulting classifications to which Ch. 221, *supra*, refers had already been computed and fixed by the State Board of Accounts on July 1, 1957 and July 1, 1959. There was no need to await further statistics or for the State Board of Accounts to make further computation to establish the "floor." The fixing of the "floor" became automatic by the enactment of Ch. 221, *supra*.

This explains the positive command in Sec. 1 of Ch. 221, *supra*, that the classification of salary schedules shall not be lowered below that first fixed by the State Board of Accounts "notwithstanding any provisions to the contrary contained therein." This phrase, and the word "therein," obviously mean that even if the application of the Acts of 1957, Ch. 319, *supra*, the Acts of 1959, Ch. 85, *supra*, and the Acts of 1959, Ch. 277, *supra*, otherwise were to result in a lower classification than that first fixed by the State Board of

Accounts, pursuant to such Acts, that, nevertheless, such lowering shall no longer be effective. If the change resulting from the enactment of Ch. 221, *supra*, is made to depend upon certification by the State Board of Accounts on July 1, 1961 and to await operational effect until January 1, 1962, then we would be giving effect to contrary provisions of the earlier acts, which the Legislature has specifically stated shall not be done. The emergency clause has the effect of stating that the classification first fixed by the State Board of Accounts, pursuant to these Acts, should immediately be restored as a "floor" as of the effective date of Ch. 221, *supra*, which was March 9, 1961.

Therefore, it is my opinion that with respect to the classification of salary schedules for county officials, the classification fixed by the State Board of Accounts as of July 1, 1957 was restored as a "floor" as of March 9, 1961; that with respect to the classification of salary schedules for judges, the classification fixed by the State Board of Accounts as of July 1, 1959 was restored as a "floor" as of March 9, 1961; and that with respect to the classification of salary schedules for prosecuting attorneys, the classification fixed by the State Board of Accounts as of July 1, 1959 was restored as a "floor" as of March 9, 1961.

The fact that the restoration of salary cuts applicable to salaries payable in 1961 may require additional appropriations would not affect the above answers, unless there were some provision in Ch. 221, *supra*, or some other statute forbidding such action by the county council. Insofar as is known to me, there is no statutory provision to prohibit a county council from enacting such an additional appropriation under such circumstances. Clearly, Ch. 221, *supra*, contains no such prohibition.

Having concluded that the date upon which the Acts of 1961, Ch. 221, *supra*, became fully and automatically effective was March 9, 1961, it is also my opinion that that Act prohibits *only* the lowering of the classification of a county or judicial circuit below that first fixed by the State Board of Accounts, but does not affect the function of that Board annually, as of July 1st, to determine the grade of each county and judicial circuit by the application of the formula of the

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Acts of 1957, Ch. 319, *supra*. It then must certify either the classification first established by it, or the newly established classification, whichever is the higher. Thus, the 1961 Act would not prevent a salary raise, but would prohibit a salary lower than that established and paid pursuant to the July 1, 1957 certification for county officers, and that of July 1, 1959 for judges and prosecuting attorneys of the various judicial circuits.

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### OFFICIAL OPINION NO. 60

November 28, 1961

Mr. T. Michael Smith, Administrator  
Inheritance Tax Division  
106 State Office Building  
Indianapolis 4, Indiana

Dear Mr. Smith:

This is in response to your letter of recent date in which you request an Official Opinion upon the following subject:

“Would you please advise me, in the form of an Official Opinion, whether the lump sum benefits payable under the Railroad Retirement Act and the Social Security Act are taxable for inheritance tax purposes.

\* \* \*”

All questions concerning liability for the inheritance tax imposed by the Acts of 1931, Ch. 75, as found in Burns' (1953 Repl.), Section 7-2401 *et seq.*, depend upon the basic determination of whether the particular transfer involved is one includible within the transfers enumerated by said Act upon which it imposes a tax. The transfers to which the Act applies are specified in Section 1 of that Act, as found in Burns' (1953 Repl.), Section 7-2401, and, for the most part, are contained in the fourth grammatical paragraph of that section, which provides as follows:

“All transfers enumerated in this section shall be taxable, if made by will; or if made by the statutes regulating intestate descent; or if made in contempla-