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nor those payable under the Social Security Act, when payable directly to eligible beneficiaries, constitute transfers which are subject to the tax imposed by the Indiana Inheritance Tax Law from which follows the ultimate conclusion that such lump-sum benefits are not taxable under that act.

OFFICIAL OPINION NO. 61

November 29, 1961

Honorable George W. Stocksdale
State Representative
407 Riverside Drive
Huntington, Indiana

Dear Representative Stocksdale:

This is in reply to your recent request for an Official Opinion in reference to the Acts of 1957, Ch. 319, Sec. 10. Your first question is as follows:

“Is a County Surveyor who is registered under the Indiana Board of Registration for Engineers and Land Surveyors, as a Land Surveyor, entitled to the \$2.00 per mile provision for each mile of active court drains and ditches as set out in Section 10, paragraph 2, chapter 319 of the Acts of 1957?”

Your second question is summarized as follows:

Is a county surveyor who is a mechanical, electrical or chemical engineer, if licensed as a professional engineer, entitled to the \$2.00 per mile provision for each mile of active court drains and ditches as set out in Section 10, Chapter 319, of the Acts of 1957, even though he may have no actual experience in land surveying?

The Acts of 1957, Ch. 317, Sec. 10, as found in Burns' (1961 Supp.), Section 49-1062, establishes the salary and mileage allowance for the county surveyor. As indicated by your letter, many questions have arisen in regard to the amounts to which such surveyors are entitled when they are registered professional engineers or registered land surveyors as opposed

to what they receive when they are not registered. These questions regarding salary and allowance for the county surveyor arise in connection with Burns' 49-1062, *supra*, which reads as follows:

"The salary for a County Surveyor who is not a registered engineer shall be: Class 1, \$6,600.00; Class 2, \$5,400.00; Class 3, \$4,600.00; Class 4, \$4,000.00; Class 5, \$3,600.00; Class 6, \$3,200.00; Class 7, \$2,800.00; Class 8, \$2,600.00; Class 9, \$2,400.00; Class 10, \$2,200.00; Class 11, \$2,000.00; Class 12, \$1,800.00; Class 13, \$1,600.00.

"If the county surveyor is registered under the Indiana Board of Registration for Engineers and Land Surveyors, then the salary shall be one and one-half times the base salary as set out above. If the county surveyor is registered as above set out, then the county council may increase the salary of one and one-half the base salary by any amount not to exceed \$2,000.00 per year. In addition to the above designated base salaries the county surveyor shall receive the amount of \$1.00 per mile for each mile of active court drains or ditches within the limits of each county, such mileage to be determined by the mileage and description of the drains and ditches certified by the surveyor to, and approved by the Board of County Commissioners. If the county surveyor is a registered engineer as described herein, then he shall receive \$2.00 per mile for each mile of active court drains and ditches certified by him to and approved by the Board of County Commissioners; Provided, however, That if the county surveyor is by the Board of County Commissioners appointed highway superintendent and the compensation as such highway superintendent as fixed by said board is greater than the salary herein fixed, said compensation so fixed shall be in lieu of the salary herein named; otherwise the salary herein named shall be the salary of the surveyor."

The law pertaining to the registration of professional engineers and land surveyors is contained in Acts of 1935, Ch. 148, as amended, and found in Burns' (1951 Repl., 1961

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Supp.), Section 63-1518 *et seq.* Such acts contemplate the issuance of only two types of certificates of registration. Section 15 of said Act, as amended, and as found in Burns' (1951 Repl.), Section 63-1531, contained the following:

“* * * In the case of a registered professional engineer, the certificate shall authorize the ‘practice of professional engineering’ and in the case of a registered land surveyor, the certificate shall authorize the practice of ‘land surveying.’”

It should be noted that under said Act, engineers-in-training receive a “certificate” but they are not “registered” in the same sense as professional engineers and land surveyors. Therefore, when Burns' 49-1062, *supra*, refers to a county surveyor *registered* under the Indiana Board of Registration for Engineers and Land Surveyors, it can only refer to *registered professional engineers and land surveyors* and to no other person or persons.

Burns' 49-1062, *supra*, establishes a base salary for all county surveyors. It then states that if the surveyor is “registered under the Indiana Board of Registration for Engineers and Land Surveyors * * * the salary shall be one and one-half times the base salary * * *.” Since the Indiana Board of Registration for Engineers and Land Surveyors issues *certificates of registration* only to two distinct groups, i.e., professional engineers and professional land surveyors, it is only an individual so *registered* that is eligible to receive one and one-half times the base salary established in the salary act.

The mileage allowance a surveyor is to receive for certification to the Board of County Commissioners on each mile of active court drains or ditches is also prescribed in Burns' 49-1062, *supra*. This section provides that the county surveyor shall receive \$1.00 for each mile of such drains and ditches certified to and approved by the Board of County Commissioners. However, for the same duties where the county surveyor is a registered engineer, “*as described herein*” he is to receive \$2.00 per mile. Had the words “*as described herein*” been omitted, it is clear the term “registered engineer” could only refer to an *engineer* registered under the Indiana Board of Registration for Engineers and Land Surveyors, and, not to one registered as a land surveyor by that Board. In the

absence of such clarifying language, it is a question of interpretation based upon legislative intent.

Nowhere in said Act is the phrase "registered engineer" defined or described, and it appears that the words "as described herein" are mere surplusage. It could hardly be thought that the Legislature, which specified additional compensation for a county surveyor "registered under the Indiana Board of Engineers *and Land Surveyors*," would be unaware that land surveyors would be registered by such Board as well as engineers; therefore, it is clear that the legislative intention was to include the registered land surveyor within the terms of this Act as it related to additional compensation above the base salary.

It does not appear, however, that the \$2.00 per mile compensation for "each mile of active court drains and ditches" certified by him "to, and approved by the Board of County Commissioners" applies equally to registered professional engineers and registered land surveyors. Except for a possible indirect inference from the beginning phrase of this Act, there is no other direct or indirect reference to a registered land surveyor in connection with the compensation of \$2.00 per mile "for each mile of active court drains and ditches." Had the Legislature intended the \$2.00 per mile compensation to apply to the registered land surveyor equally with the registered engineer, it could have so stated.

In the Acts of 1913, Ch. 40, as found in Burns' (1951 Repl.), Section 49-3302, the Legislature, in establishing the bond for the county surveyor, distinguished between his separate duties and fixed his bond for the "faithful performance of all duties required of such surveyor and *also duties required of him as a civil engineer in the work of the county * * * including the preparation of plans and specifications for and general supervision of all bridges, turnpikes, roads, ditches, drains, levees and all other civil engineer work * * **" (Our emphasis) The failure to describe a registered land surveyor in connection with the \$2.00 per mile provision leads me to the opinion that the Legislature intended the provision under consideration to apply *only* to a "registered engineer" and would not entitle a registered land surveyor to the \$2.00 per mile for certification of active court drains and ditches.

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In reply to your second question, it is my opinion that it must be answered in the affirmative. It is to be noted that the Acts of 1935, Ch. 148, Sec. 15, as amended and as found in Burns' (1951 Repl.), Section 63-1531, *supra*, in part provides:

“The board shall issue a certificate of registration,
* * * to *any* applicant who, in the opinion of the board,
has satisfactorily met all requirements of this act.”
(Our emphasis)

It is clear, therefore, that if a county surveyor is a mechanical, electrical or chemical engineer who has satisfactorily met the requirements of the Act, in the opinion of the Board, and has been issued a certificate of registration authorizing him to practice professional engineering, he is entitled without further qualifications to the \$2.00 per mile provision for each mile of active court drains and ditches as set out in Acts of 1957, Ch. 319, Sec. 10, *supra*.

In summary, it is my opinion that only the county surveyor who is registered under the Indiana Board of Registration for Engineers and Land Surveyors as a registered professional engineer is entitled to the \$2.00 per mile provision for each mile of active court drains and ditches, and that said provision would also cover a mechanical, electrical or chemical engineer if he is licensed as a professional engineer and holds a certificate of registration issued by the Indiana Board of Registration for Engineers and Land Surveyors.

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November 29, 1961

Mr. Allan Rachles, Secretary
Reciprocity Commission
Public Service Commission of Indiana
901 State Office Building
Indianapolis 4, Indiana

Dear Mr. Rachles:

This is in response to your request for an Official Opinion in answer to the question presented by you, which reads as follows: