

Industrial Accident Board, Salary of Employees—Salary of Employees of Industrial Accident Board.

The Industrial Accident Board is without authority to increase the salary of its employees beyond that appropriated therefor by the legislature, but it may decrease the same.

July 13, 1920.

Hon. A. E. Spriggs, Chairman,
Industrial Accident Board,
Capitol.

Dear Sir:

I have your letter of May 27th, 1920, in which you call my attention to Section 2 (k) of Chapter 96, Laws of 1915, known as the Workmen's Compensation Act, which said section reads as follows:

"All officers and employes of the Board shall receive such compensation for their services as may be fixed by the Board, shall hold office at the pleasure of the Board, shall perform such duties as are imposed on them by law or by the Board."

Further, there is involved in your letter Section 2 (1) of said above named act, reading as follows:

"The salaries of members of the Board, secretary and every other person holding office or employment under the Board, as fixed by law or by the Board, shall be paid monthly after being approved by the Board upon claims therefor to be audited and approved by the State Board of Examiners."

The question upon which you desire an opinion is as to whether or not your Board has authority to determine and fix the compensation of the employees in your office and not thereby conflict with the provisions of the legislative enactments as they have stood since the last legislative session in 1919. In this connection it is necessary to resort to the appropriation act of the last legislative assembly known as House Bill No. 438, which begins in the following language:

“Section 1. That the following sums, or so much thereof as may be necessary, be, and the same are hereby appropriated out of any money in the State Treasury, etc., for the objects and purposes hereinafter expressed, for the period commencing March 1st, 1919, and ending February 20th, 1920.”

In this bill the legislature appropriated a sum of money to cover salaries of all persons connected with the Board for the two years, and also provided for the payment of extra clerical hire, office and traveling expenses, etc.

You state that it is the desire of your Board to change the salaries of your clerical force as provided by the appropriation act—in particular your file clerk—which, by the appropriation bill, has been provided with a salary of \$1,800.00 per year. As I understand it, you desire to pay the individual filling this position only \$1,500.00 and distribute the other \$300.00 among such employes as you have delegated to assist the filing clerk in the discharge of the duties of that particular position.

I do not believe that there is any doubt that your Board has the authority to pay less than the sum specified for any particular position. The act itself provides that “the following sums, *or so much thereof as may be necessary*, etc., are appropriated.”

It is ordinarily the law that an individual discharging the duties of a particular government position is entitled to that amount of compensation for which the legislature makes appropriation. (22 R. C. L. 538, Section 235.) I think, however, that the bill itself contemplates a lower rate of pay than the amount stated in figures. Therefore, if you can obtain any person who will fill a particular position for a sum less than the appropriation figures, which I believe to be the maximum amount, there can be no objection to such an arrangement in your office.

With reference to the point which you raise in your letter as to whether or not you have the authority to take that amount which you cut off from a particular position and add it to the salary of those filling other positions, you present a much more difficult question.

There is no doubt of the fact that your Board had the very best of intentions in what it desires to do. There is further no doubt of the fact that your Board desires to take the action indicated from the best of motives and with entirely impartiality. There are, however, principles of public policy which surround public offices that are in specific instances cumbersome where applied as a general rule, they lay down salutary safeguards which promote the efficiency of public offices.

In the examination of the proposition which you present, a court perhaps would look at the possibilities which inhere in the action you desire to take. If such action could be taken by your Board, it would open the door to partiality, favoritism and the payment of political debts. For instance, the salary of any number of employes might be cut down and such deductions added to the salary of such employes as stand particularly well in the favor of the supervising officers. It is possible that the supervising officers might have relatives—members of their immediate family—whom they would place in their office and compensate with such amounts as they see fit. This is entirely possible under the scheme which you propose, and a possibility which I believe it is the policy of the law to prevent.

Compensation for extra services rendered by a public official or any one discharging the duties of a particular public position is decidedly not favored in the law. It is generally held that an officer or person discharging public services is entitled to only such compensation as is specifically provided by law. The law attaches the salary as an incident to the public position. (22 R. C. L. 532, Section 227; also p. 537, Section 233.) It is further held that where the salary of a public office or position is definitely fixed by law, it is intended to include the entire remuneration of the person discharging the duties of such position and expressly to preclude extra charges for any services whatsoever. (15 C. J. 497, Section 163.)

The courts have universally held that an appointment to a public office or position created by law with an appropriation made for the payment of services therein rendered, does not create a contract of employment in the ordinary sense of the word as it obtains in private business. Unless prohibited by the Constitution, the legislature may increase or decrease the duties of the position from time to time, as well as the salary thereto attached. It is said that the individual is at liberty at any time to resign the employment and thus terminate the relation if it is not satisfactory to him. (Lock vs. City of Central, 4 Colo. 65, 34 Am. Rep. 68; Peterson vs. Butte, 44 Mont. 401, 120 Pac. 483, Ann. Cas. 1913-B, 538.)

It has been said by the Supreme Court of the State of Montana that when a public official claims compensation for the performance of duties pertaining to his office he must be able to support the claim by pointing out specific provisions of law authorizing the particular amount claimed. Unless compensation is made by law for the duties devolving upon the person in a particular public position, payment for such services rendered cannot lawfully be demanded. (Peterson vs. Butte, supra.) This rule would likewise apply to any one claiming compensation from the State, or subdivision thereof, for services rendered. It is also true, as a matter of course, that when the law provides the amount of compensation which a person shall receive for the filling of a particular public position a greater sum cannot be paid therefor. public officials do not have the same discretion in the payment of public funds for services rendered as prevails in private industry. Specific authorisation of law must be pointed out, clearly and unequivocally granting authority to make a particular payment of the public funds.

For instance, the Supreme Court of Montana has held that when the legislature fixes the compensation of a county surveyor at \$7.00 per day for public work, he cannot in addition thereto hold the county for his personal expenses incurred in the discharge of such public duties. (Wight vs. Meagher County, 16 Mont. 479, 41 Pac. 271, 15 C. J. 506, Section 173.)

When the last legislature met and enacted the appropriation bill here under consideration, all the positions had then been created by your Board, and said legislature in unequivocal words undertook to and did provide compensation as incident to the particular positions by your Board created. By such act they at least fixed the maximum which a person occupying any of such positions might collect. I am of the opinion that under the appropriation measure your Board has no authority to give to any person filling a particular position in your office a sum in payment thereof greater than that specified by the act. This would be true, even though the person filling the position of payroll clerk—as an illustration—should be called upon by your Board to discharge duties outside of such work as could properly come within that particular position. The principles of law which I have invoked in this opinion do not necessarily mean that the supervising officers of your Department could not direct the clerical force therein to discharge the duties as such supervising officer felt should be discharged in order that the efficiency of your department might be thereby promoted. The act itself does not attempt to define what the incumbent of any particular position shall do. It simply fixes the maximum salary incident to these positions.

I have come to this conclusion, notwithstanding a careful consideration of Sections 2 (k) and 2 (1) of the original act creating your Board above quoted. Your Board would have no authority to fix salaries whatsoever, except for provisions found in the acts of the legislature. It is true that Section 2 (k) indicates that your Board may fix salaries of employees working in your Department, yet that provision can always be changed by a subsequent legislature. I believe that under the circumstances a proper interpretation of that section means that your Board may determine upon the amount of salaries of your employees, which must be submitted to the legislature. In other words, your determination is merely a recommendation to the legislature. If the legislature, pursuant to a recommendation of your Board, appropriates money covering the amount you recommend, then that concludes the matter. You will also notice that in Section 2 (1) the original act provides that salaries "*as fixed by law or by the Board*", shall be paid monthly. It is undoubtedly true that when your Department was originally created your Board had authority to employ a clerical force and determine upon its salary, providing there was an appropriation made for this purpose. The legislature in the original act did not attempt to fix the salary of each clerk as it could not in the nature of things have reliable information upon which to act. It therefore appropriated a lump sum and left it to your Board to perfect an organiza-

tion. When said legislature met in 1919, it did have appropriate information upon which to act and for that reason, perhaps on the recommendation of your Board, fixed salaries for particular positions.

An appropriation act is a specific measure of law and binding upon all those coming under the scope of its operation. It is generally held that an appropriation of public money by the legislature "means the setting apart of public moneys by the legislative vote or enactment, to be applied to specific objects and public expenditures." (R. A. P. & L. Law Dictionary; Century Digest; Trustees, etc. vs. Morgan, 60 A. T. L. 205, 71 N. J. L. 663.)

"An appropriation of state funds is a setting apart from the public revenue of a certain sum of money for a specific subject, in such a manner that the executive officers are authorized to use that money, *and no more, for that specific subject.*" (Jabe vs. Caldwell, 125 S. W. 423, 93 Ark. 505.)

For the reasons above given, I am of the opinion that your Board may decrease the amount specified as a salary for the individual filling a particular position but that in no event under the present appropriation act can it pay to such individual more than that specified in said act.

Respectfully,

S. C. FORD,

Attorney General.