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OFFICIAL OPINION NO. 35

December 14, 1973

Honorable Philip H. Hayes

Indiana State Senator

16 N. W. Sixth Street—No. 200

Evansville, Indiana 47708

Dear Senator Hayes:

This is in response to your request for my official opinion regarding the following question:

“Are clothing allowances and incentive money bonuses for educational achievement by a policeman considered increases in pay for first-class patrolmen for the purpose of computing pension benefits of policemen?”

ANALYSIS

Your attention is directed to the case of *Vincennes v. McCarter* (1968), 142 Ind. App. 493, 236 N.E. 2d 76, which interprets IC 1971, 19-1-24-3 [Burns' Ind. Stat. Ann. (1973 Supp.), Section 48-6403 (3)], and states that police pensions should be:

“. . . computed on the basis of the highest paid first class patrolman based upon applicable evidence.” Id. at 496, 236 N.E. 2d at 78.

This case relied on *Kilfoil v. Johnson* (1963), 135 Ind. App. 14, 191 N.E. 2d 321, which dealt with firemen's pensions, and which held:

“. . . that a fully paid first class fireman is that first class fireman receiving the highest monthly wage or monthly compensation being paid to any first class fireman working in the same Fire Department and City as himself . . .” Id. at 17, 191 N.E. 2d at 323.

Though there is no statutory or case law as to the specific allowances in question, the operative words in the above cases are “wage” and “compensation.” Indiana law does not dis-

tinguish between the terms “salary,” “wages,” and “compensation” for purposes of this question. See *Board of School Commissioners v. Wasson* (1881), 74 Ind. 133. The 1968 O.A.G. No. 46 provided that salaries of policemen are to be determined by ordinance adopted by the common council, subject to the statutory minimum.

The question, therefore, is whether “bonuses” or clothing allowances are to be considered salary or compensation. IC 1971, 19-1-10-1 [Burns’ Ind. Stat. Ann. (1973 Supp.), Section 48-6153], requires all municipalities to make clothing allowances to policemen who, after one year of service, are required by such city to furnish and maintain their own uniform clothing, arms, and equipment. Educational bonuses, though not required by statute, would appear to be in the nature of increased compensation for those officers who have broadened their educational background and are presumed for that reason to be more valuable employees. Black’s Law Dictionary, 4th Edition, page 354, defines “compensation” as:

“[t]he ordinary meaning of the term ‘compensation,’ as applied to officers, is remuneration, in whatever form it may be given, whether it be salaries and fees, or both combined It is broad enough to include other remuneration for official services; . . . such as mileage or travel expenses; and also the repayment of amounts expended”

From the foregoing, it appears that clothing allowances and “bonuses” for obtaining a college education would be considered as compensation or salary to policemen and, as such, would come within the scope of *McCarter* and *Kilfoil*, the latter by analogy, so that these payments should be considered as contributing to that salary which is received by the highest paid first-class patrolman on a given municipal police department as compensation. This result is consistent with the rule that pension laws should be liberally construed in favor of those intended to be benefited. *Kilfoil, supra*, at 325 and cases cited.

It should be noted that this holding may have federal and state income tax consequences. If the educational bonuses and clothing allowances are in the nature of employer reimburse-

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ments for expenses, then they are taxed to the extent such reimbursements exceed the expenses incurred by the policeman. If the educational bonus is in the form of a higher salary paid to a policeman depending on the level of education completed, then such higher salary is taxable to the same extent as any other salary or wage.

CONCLUSION

It is, therefore, my Official Opinion that clothing allowances and incentive money bonuses for educational achievement by a policeman may be considered as increases in salary to a first-class patrolman for the purpose of computing pension benefits of policemen. But such bonuses and allowances might then be taxable in accordance with federal and state income tax laws.