salaries and other office expense provided for in Acts of 1945, Ch. 223, Secs. 2 and 4, as found in Burns' (1955 Supp.), Sections 5-108c and 5-108e invalid from and after that date; however, payments made pursuant to the Acts of 1945, supra, and prior to April 23, 1957, are not invalid inasmuch as they do not create any liability upon either the officer making said payments or the officer or persons receiving said payments.

PART II

(1) The special census of the City of Gary of August 18, 1956, conducted by the Federal Bureau of the Census should be considered as the last preceding United States census for that City.

(2) The Justices of the Peace of Calumet Township, Lake County, are entitled to receive their salary of $4,200.00 per year after the date of the special census pursuant to the provisions of Acts of 1920 (Spec. Sess.), Ch. 28, Sec. 1, as found in Burns' (1951 Repl.), Section 49-1101, which prevents a decrease in the salary of a public official due to an increase in the population of his political subdivision. This salary continued until the effective date of Acts of 1957, Ch. 322.

(3) Said Justices of the Peace are now governed by the provisions of the Acts of 1957, supra, as to their salary, docket fee, clerk hire and jurisdiction.

OFFICIAL OPINION NO. 32

August 9, 1957

Mr. Howard F. Tudor
Chairman
Indiana Real Estate Commission
145 West Washington Street
Indianapolis, Indiana

Dear Mr. Tudor:

I am in receipt of your letter of July 10, 1957, in which you request an Official Opinion with regard to Acts of 1949, Ch. 44, Sec. 14 and which reads as follows:
“Section 14 of the Real Estate License Law of the State of Indiana (Burns’ (1951 Repl.), Section 63-2414) provides as follows:

‘All moneys received by the Commission under this Act shall be paid to the Executive Secretary of the Commission, who shall give a proper receipt for the same, and shall at the end of each month, report to the Auditor of the State the total amount received by him under the provisions of this Act, from all sources, and shall at the same time, deposit the entire amount of such receipts with the State Treasurer, who shall place them to the credit of a special fund to be created and known as the “Real Estate Commission Fund.” The Commission shall, by its Chairman and Executive Secretary from time to time, certify to the Auditor of State the necessary expenses incurred by said commission, and the Auditor shall issue his warrant for the same, which shall be paid out of the funds so established for the maintenance of said Commission: Provided, that no order shall be drawn by state officials on any fund other than the above named fund for any salaries or expenses of the Commission incident to the administration of this Act. All funds so paid to the Treasurer of the State, in excess of five thousand ($5,000), shall be turned over to the General Fund and shall remain and be a separate and permanent fund for the maintenance of the Commission.’

“As Chairman of the Indiana Real Estate Commission, I respectfully request an official opinion with reference to the following questions in interpretation of said statutes:

1. Where the Commission, by its Chairman and Executive Secretary, certifies to the Auditor of State the necessary expense incurred by said Commission, is the Auditor of State required by law to issue his warrant for the same, assuming that there are sufficient funds in said ‘Real Estate Commission Fund’ for payment of the same?

2. Can any of the monies received by the Commission under said act, in excess of $5,000.00, be used for
any function of state government other than the necessary expenses of the Indiana Real Estate Commission, or are said monies required to be kept and earmarked in the general fund as a separate and permanent fund for the maintenance of the Commission?"

First of all, let it be said that this section has never been construed by either our Supreme Court or our Appellate Court. However, within a very few months following the adjournment of the 1949 Session of the Legislature, a request for an Official Opinion similar in nature to the one here involved was received by the Attorney General. As a result thereof, 1949 O. A. G., page 194, No. 53 was written.

In answering the questions discussed in the 1949 Opinion, the Attorney General also answered the two questions presented here. That discussion is cited with approval, since its conclusions are also the conclusions of this writer.

Your first question asks:

"1. Where the Commission, by its Chairman and Executive Secretary, certifies to the Auditor of State the necessary expense incurred by said Commission, is the Auditor of State required by law to issue his warrant for the same, assuming that there are sufficient funds in said ‘Real Estate Commission Fund’ for payment of the same?"

The 1949 Opinion, supra, answered the same question which was stated therein as follows:

"1. Is the language of Section 14 sufficient to appropriate (as provided in Article 10, Section 3 of the Constitution) the funds received by the Commission and authorize the Auditor of State to draw his warrant in payment of the expense incurred by the Commission?"

Following a discussion of some length, together with the citation of authority, that Opinion reached the following conclusion:

"This language is amply sufficient under the decisions of the courts to show that it was the intent of the legis-
lature that warrants should be drawn on the funds to pay the expenses incurred and is tantamount to a formal and specific appropriation."

It should be noted that since the writing of the 1949 Opinion, the Legislature has met four times. In each of these Sessions a specific appropriation was made for the Real Estate Commission.

It is therefore my opinion that your first question has already been answered in the affirmative, and that there is no cause at this time for reaching a conclusion contra to that heretofore reached.

Your second question asks:

"2. Can any of the monies received by the Commission under said act, in excess of $5,000.00, be used for any function of state government other than the necessary expenses of the Indiana Real Estate Commission, or are said monies required to be kept and earmarked in the general fund as a separate and permanent fund for the maintenance of the Commission?"

The above question again is similar in nature to question number 2 of the 1949 Opinion. That question was:

"2. Does this section create two separate funds, i.e. the 'Real Estate Commission Fund' and another fund in the General Fund of the State? If your answer is in the affirmative please outline the type of payments that can be paid out of each of such funds."

In discussing the "earmarked" portion of the General Fund, the writer of that Opinion stated:

"* * * I conclude that the effect of the statute as to this fund is merely to earmark it and not to constitute a separate fund and may thereafter be used for the maintenance of the commission under proper additional appropriations. There seems to be no language which makes an appropriation of this latter fund. Therefore, warrants could not be drawn on this separate permanent fund which becomes a part of the General Fund without an additional appropriation."
The foregoing citation answers your second question. Until a specific appropriation is made, no portion of the General Fund may be used, whether it be "earmarked," so-called, or not. Once any monies received by the Commission have become a part of the General Fund, they remain part and parcel thereof, until such time as appropriated by the Legislature, in whatever manner it may see fit.

OFFICIAL OPINION NO. 33
August 27, 1957

Mr. Paul L. Meyers
Chairman
State Board of Correction
210 State House
Indianapolis, Indiana

Dear Mr. Meyers:

This is in answer to your request for an Official Opinion as to the legality of charging an inmate or his family, ten dollars per diem for the payment of a guard to accompany said inmate on an emergency trip under executive order in the event of critical illness or death of an immediate member of the inmate's family.

I see no objection to the collection of the per diem payment from the inmate or his family if said sum is paid to the state as reimbursement for expenses incurred. The service rendered the inmate in this type of situation is one which is discretionary with the Governor and is of benefit only to the inmate and his family. There is no legal restriction upon the exercise of that discretion by the Governor which would prevent the requirement of reimbursement of expenses to the state as a condition of such an emergency trip by an inmate.

Following the receipt of your letter, a conference in your office concerning the same disclosed the further question as to whether or not the ten dollars per diem could be paid to the individual guard performing the services or whether it was to remain in the state fund.

I call your attention to the Acts of 1953, Ch. 266, Sec. 7, as found in Burns' (1956 Repl.), Section 13-1507, which provides,