in substance, that the "State Personnel Act" shall govern as to prison employees. In that latter Act, Acts of 1941, Ch. 139, Sec. 12, as found in Burns' (1951 Repl.), Section 60-1312, provides for the establishment of a specific pay plan for all employees holding positions for which compensation is not fixed by law. Section 32 of the same Act, as found in Burns' (1951 Repl.), Section 60-1332, prohibits the payment of any sum in violation of the established pay plan or the rules pertaining thereto.

Unless payment of the ten dollars per diem to the guard performing the services is specifically provided for in the established pay plan, any payment of such per diem to the guard would be in violation of Section 60-1332, supra.

Our conclusion, therefore, is that the ten dollars per diem charge may be made against the inmate or a member of his family, but that said charge may not be paid to the individual guard performing the services unless expressly included in the established pay plan.

OFFICIAL OPINION NO. 34

September 4, 1957

The Honorable Willis K. Batchelet
State Senator
113 East Broad Street
Angola, Indiana

Dear Senator Batchelet:

This is in reply to your letter of August 14, 1957, in which you request an Official Opinion relative to the Acts of 1957, Ch. 322, being Burns' (1957 Supp.), Sections 5-128 to 5-137, 5-205a and 5-1721 to 5-1722. Specifically, you state in your letter, in part:

"It would be appreciated if you could give an opinion as to the meaning of Section 5 of this Act and as to its application to the rest of the Act."

Inasmuch as your letter deals entirely with Justices of the Peace in townships of less than twenty thousand, and with the effect of Sec. 5 upon the fee system and the jurisdiction of
these Justices, the answer to your broad request, for interpretation, will be limited to these two matters.

Chapter 322, supra, concerns Justices of the Peace and its effect is to create a unified system of Justice of the Peace jurisdiction as well as to repeal all conflicting laws. It divides townships of the State into three classes, and bases the classification upon township population. Sections 4 and 5 relate specifically to one such class and read as follows:

"SEC. 4. In all townships having a population according to the last preceding United States census of not more than twenty thousand, there shall not be more than two justices of the peace chosen as now provided by law. Any justices of the peace shall not receive any salary for his services except as hereinafter provided in section 7, and for his services as such justice of the peace shall be entitled to retain a portion of the docket fee in criminal and civil proceedings in lieu of all other fees except in proceedings in which the justice of the peace is authorized by law to act other than in such criminal and civil proceedings; Provided, however, That the total of all such fees to be retained by such justice of the peace for his remuneration in any one calendar year shall not exceed the sum of three thousand dollars. Any fees taxed and collected by any such justice of the peace in excess of said three thousand dollars shall be paid over and accounted for to the township trustee for the benefit of the township in the manner as now provided by law. There shall not be more than one constable elected or appointed to serve any such justice of the peace.

"SEC. 5. In any township as defined by section 4 of this act where there are now serving more than two duly elected or appointed justices of the peace and duly elected or appointed constables serving such justices of the peace, the provisions of this act shall not apply until the expiration of their respective terms of office."

See Burns' (1957 Supp.), Section 5-130 and Compiler's Note.

As you state in your letter, Pleasant Township, Steuben County, clearly comes within the classification as defined by
Secs. 4 and 5, since its population is less than twenty thousand and since there are now serving three Justices of the Peace.

You ask whether Sec. 5, making the provisions of this Act inapplicable in townships defined therein until the expiration of the terms of office of the incumbent Justices of the Peace, is applicable to all Sections of the Chapter. If, as you point out, the effect of Sec. 5 is to make this entire Act inapplicable to the three Justices now holding office in Pleasant Township, and at the same time, applicable to the one or two Justices in each of the other townships of Steuben County, the effect will be to create unequal jurisdiction under Sec. 9 of the Act, and to establish unequal docket fees under Secs. 14 and 15.

Section 9, being Burns’ (1957 Supp.), Section 5-205a, provides that each Justice shall have co-extensive jurisdiction throughout the county of which his township is a part in civil actions up to and including the amount of five hundred dollars [$500.00]. Prior to the passage of this Act, the jurisdictional limit was two hundred dollars [$200.00], except where judgments were confessed, and, in that case, the limitation was three hundred dollars [$300.00]. Sections 14 and 15, being Burns’ (1957 Supp.), Sections 5-1721 and 5-1722, establish a new system of docket fees in criminal as well as in civil cases, and are closely related to Sec. 4 set forth above, because they provide for payment of the fees, a portion of which is retained by the Justice for his remuneration.

If the effective date as set forth in Sec. 5 is applicable to Secs. 9, 14 and 15, the result will be to make their provisions applicable throughout the several counties of the State at the close of 1958, at which time the terms of office of the several Justices of the Peace will expire. Meanwhile, there will not be uniformity in the jurisdictional limit or in the system of docket fees.

In construing this Chapter and its meaning, the sequence of the several Sections is of great importance. Section 5 specifically limits the application of the Act with respect to the class of townships defined in Sec. 4 immediately preceding it. While Sec. 5 precedes the Sections here under consideration relating to jurisdictional limit and to docket fees, it should be noted that Secs. 14 and 15 and the material therein relate directly to Sec. 4.
Sutherland, Statutory Construction, 3rd Ed., Vol. 2, states at Sec. 4936, p. 474, as follows:

"* * * Generally an exception is considered as a limitation only upon the matter which preceded it, but if it is clear from a legislative intent that it is considered a general limitation on the entire act it will operate to restrict all provisions of the act."

The same Section also places a proviso within the same classification as an exception stating, in part, as follows:

"Provisos and exceptions both operate to restrict the generality of legislative language. Normally a proviso occurs within the body of a section while an exception is drafted as an individual section."

With respect to provisos and exceptions, our Supreme Court said in Morrison et al. v. State (1914), 181 Ind. 544, 550, 105 N. E. 113, as follows:

"* * * The rational and appropriate function of a proviso is to restrain and qualify the preceding clause or clauses in the section in which it is found, yet, where it is manifest that the legislature intended to give the proviso a scope beyond such section, it may be held as modifying a preceding one. * * *"

See also: 1953 O. A. G., page 183, No. 40.

From an examination of the Act as a whole, I do not believe that the Legislature has made manifest an intention to make the limitation set forth in Sec. 5 generally applicable to all Sections of the Act. In saying that "the provisions of this Act shall not apply until the expiration of their respective terms of office," the Legislature referred to the provisions of Sec. 4 immediately preceding this limitation, and to Secs. 14 and 15 which relate directly to Sec. 4. Section 5 places no limitation upon any other provision of the Act.

It is therefore my opinion that:

1. The jurisdictional limit of Justices of the Peace is now uniform at five hundred dollars [$500.00].
2. Docket fees of all Justices of the Peace shall be uniform at the end of 1958, at which time the terms of office of the incumbent Justices of the Peace shall expire.

Until that time, in all townships having a population according to the last preceding United States census of not more than twenty thousand, docket fees as provided in Burns' (1957 Supp.), Sections 5-1721 and 5-1722, *supra*, are now in full force and effect, except in any township where there are now serving more than two duly elected or appointed Justices of the Peace, and duly elected or appointed Constables serving such Justices of the Peace. In those townships, the system of fees remains the same as it was prior to the passage of this Act.

OFFICIAL OPINION NO. 35

September 5, 1957

The Honorable Kenneth J. Brown, Jr.
State Senator for Delaware County
1517 North Tillotson Avenue
Muncie, Indiana

Dear Senator Brown:

In your letter of August 2, 1957, you request an Official Opinion on the following question:

"Does the Board of County Commissioners have the authority to legally enter into a contract with a private ambulance service to furnish emergency ambulance service for the residents of Delaware County outside the City of Muncie, Indiana?"

Both the Indiana Supreme Court and the Indiana Appellate Court have held that the Board of County Commissioners can exercise only statutory powers and cannot make any contract or impose any obligation without statutory authority expressed or implied.

*State v. Goldthait (1909), 172 Ind. 210, 87 N. E. 133; Wallace v. Board of Comrs. of Shelby County (1909), 46 Ind. App. 695, 92 N. E. 230;*