OPINION 3

O. A. G., page 290, No. 69. In 1938 O. A. G., page 23, it was stated as follows:

"It is my opinion, therefore, that the clerk is entitled to but one per diem for his services in attending court in any particular calendar day. If the time of the court during that day is occupied with business sent to it on change of venue from another county, the clerk is entitled to charge to that county his per diem for attending court under the rules above announced * * *."

The applicable statutes are all cited in the prior opinions of the Attorney General.

It is my conclusion that services performed by a Clerk of a Circuit Court in connection with business sent to such Court on a change of venue from another county constitutes attending Court in regular, special, or adjourned term, or in chambers whereby a per diem fee of $2.00 is authorized pursuant to Acts of 1927, Ch. 131, Sec. 2, as found in Burns' Indiana Statutes (1951 Repl.), Section 49-1302, Acts of 1933, Ch. 21, Sec. 7, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 49-1007, and Acts of 1913, Ch. 210, Sec. 1, as amended, as found in Burns' Indiana Statutes (1946 Repl., 1953 Supp.), Section 2-1417.

---

OFFICIAL OPINION NO. 3

February 14, 1955

Mr. Wilbur Young
Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Young:

Your letter of February 2, 1955 has been received and reads as follows:

"A few days ago I referred a letter to you asking for an Unofficial Opinion concerning a member of the Terre Haute School Board who died after the time of the election and before she was to have taken office, as re-
quested by Mr. Wayne P. Watson, Superintendent of the Terre Haute City Public Schools.

"Will you please give me an Official Opinion concerning this case on the following two questions?

"1. Do the remaining members of the board appoint a successor, or

"2. Does Mr. Liggett hold over?

"The original letter from Mr. Watson and the attached statement of facts are on file in your office."

In Mr. Watson's letter, referred to in your letter, among other things he states:

"Recently, we had a question develop concerning the membership of the Board of School Trustees of the School City of Terre Haute. The question has arisen as the result of the death of the person receiving the fifth highest number of votes elected in the November 6, 1951, election. Inasmuch as Miss Mary Hollis died after the time of election and before the time that she was to take office (January 3, 1955) * * *.

The statute governing the election of such Board of School Trustees is Acts of 1921, Ch. 22, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-1801 et seq. Section 4 of said Act, supra, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-1804, provides "each of said trustees shall hold office for a term of four [4] years, and until his successor is elected and qualified."

Other sections of the above Act, supra, provide that such Trustee shall be elected at the time of the election of city officials. This person was elected in 1951 to take office in January of 1955. She died in 1953 and had never taken oath of office. Therefore, she had not "qualified."

Section 7 of the above Act, supra, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-1807, provides as follows:

"If a vacancy shall occur in the office of school trustee in any such city by reason of death, resignation, disqualification or otherwise, except expiration of term,
the remaining trustees shall, at their next regular meeting, or at a special meeting called for that purpose, elect a successor to fill such vacancy for the remainder of the unexpired term.”

In the case of State ex rel. Fares v. Karger (1948), 226 Ind. 48, 77 N. E. (2d) 746, at page 48 of the original opinion the Indiana Supreme Court quotes from, approves and applies the statement of said Supreme Court taken from the case of State ex rel. Culbert v. Linkhauer (1895), 142 Ind. 94, 41 N. E. 325, as follows:

“‘After the expiration of the term fixed by the General Assembly, the tenure, or title of the officer is not under or by virtue of legislative authority, but by the continuing and superior authority of the Constitution. (Authorities.) The effect of the constitutional provision is to add “an additional, contingent and defeasible term to the original fixed term, and excludes the possibility of a vacancy, and consequently, the power of appointment, except in case of death, resignation, ineligibility or the like.”’” [Citations omitted]

Under the foregoing authorities it is clear the incumbent member of the board holds over; that there is, therefore, no vacancy in the office and consequently, no authority exists for the remaining members of the board to appoint a successor in place of the person who so died.

Your first question is therefore answered in the negative and your second question in the affirmative.

OFFICIAL OPINION NO. 4

March 24, 1955

Mr. Wilbur Young
State Superintendent of Public Instruction
State House
Indianapolis, Indiana

Dear Sir:

Your letter has been received requesting an Official Opinion as to the following:

16