transfer costs upon the county of legal settlement of such dependent children in orphans' homes, custodial institutions or foster homes.

The above construction is also in harmony with a recent Official Opinion of this office found in 1955 O. A. G., page 113, No. 29, which construes the second above quoted statute, and it also considers each of the 1955 amendments aforesaid and concludes, "the major change made by the 1955 Acts is that as to cases falling within their provisions a transfer cost is paid by the county in which such legal settlement exists, such payment being made from the general county fund."

OFFICIAL OPINION NO. 48

November 9, 1955

Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Wickersham:

Receipt is acknowledged of your recent letter requesting my Official Opinion with regard to the costs and fees of certain Justices of the Peace. Your letter reads, in part, as follows:

"By reason of an audit of an office of a justice of the peace in Vanderburgh County, it becomes necessary that this office have a legal interpretation in connection with the particular law under which the office operates.

"Chapter 154, Acts 1953, provides for a salary of a justice of the peace in townships containing a greater portion of a second class city having a population of not less than 64,000 nor more than 150,000. Section 2 provides for a $3.00 docket fee in civil actions which is to be paid to the township. All laws and parts of laws in conflict are repealed.

"We would appreciate your official opinion on the following questions:

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“(1) Is this §3.00 docket fee in lieu of all justice of the peace fees and costs as provided in Sections 5-1701 and 5-1720, Burns’ Statutes?

“(2) If the answer to question (1) is in the negative, does the justice tax and charge the fees provided by Sections 5-1701 and 5-1720 in addition to the $3.00 docket fee and upon collection pay such fees to the township?”

The Acts of 1953, Ch. 154, Secs. 1 and 2, as found in Burns’ Indiana Statutes (1946 Repl., 1955 Supp.), Sections 5-108m and 5-108n, provide as follows:

“SECTION 1. In all townships of the state wherein is located a city of the second class, and in townships that contain a greater portion of the city of the second class, said cities having a population of not less than sixty-four thousand [64,000] nor more than one hundred fifty thousand [150,000] according to the last preceding United States census, justices shall each be allowed an annual salary of forty-two hundred dollars [$4,200]. The salary provided herein for the justices of the peace shall be in lieu of any fees of the office of justice of the peace in such townships; the salaries of the justices of the peace and any clerk appointed by said justice as provided herein shall be paid each month out of the funds of the township, by the trustee of the township. (Our emphasis)

“SEC. 2. Upon the institution of any civil action or proceeding, whether by original process or otherwise, there shall be paid by the party or parties so instituting such action or proceeding the sum of three dollars [$3.00] which shall constitute a docket fee payable to the township wherein the court is located. Each clerk of any such court, within three [3] months after the collection of same, shall pay to the trustee of his township, all such docket fees received by him and take his receipt therefor. Justices of the peace of such townships as set out in section 1 [§ 5-108m] of this act are hereby authorized and directed to require by court order the advance payment of such costs.” (Our emphasis)
Section 2 of this statute thus provides that upon the institution of any civil action in the described Justice of the Peace court there shall be paid by the plaintiff the sum of $3.00 which shall constitute a docket fee. However, this Section does not provide that such docket fee shall be in lieu of or in full for all Justice of the Peace fees and costs. By way of comparison, your attention is invited to the Acts of 1945, Ch. 223, Sec. 3, as amended, as found in Burns' Indiana Statutes (1946 Repl., 1955 Supp.), Section 5-108d which provides that with reference to certain Justices of the Peace there is established a docket fee of $3.00 "which docket fee shall be in full for all costs, fees, service of process, as is now provided by law." (Our emphasis) See also the Acts of 1947, Ch. 319, Sec. 3, as found in Burns' Indiana Statutes (1946 Repl., 1955 Supp.), Section 5-1713 for a similar provision whereby a docket fee is stated to be in full for all costs and fees. You will please note that there is no similar provision in the statute which is the subject of your question.

The Acts of 1913, Ch. 308, Sec. 2, as found in Burns' Indiana Statutes (1946 Repl.), Section 5-1701, is the general statute of this state dealing with fees and costs of Justices of the Peace. You will please note that after the lengthy schedule of fees and costs contained in such statute, there is a proviso clause which states that in certain townships no fees specified in such statute other than the docket fees shall be charged or collected. It is, I believe, a part of the historical statutory pattern in this state regarding Justices of the Peace that where a docket fee is to be the exclusive fee and cost taxable by the Justice of the Peace, the statute so specifically states. I am, therefore, of the opinion that the Acts of 1953, Ch. 154, supra, provides for a salary for certain Justices of the Peace, which salary is in lieu of any fees of the office; however, the docket fee of $3.00 in civil actions is not in lieu of Justice of the Peace fees and costs as provided in the Acts of 1913, Ch. 308, Sec. 2, supra. While it is true that the subject Act of 1953, supra, contains a general provision in Section 5 thereof, that all laws or parts of laws in conflict are repealed, there is no conflict between said Acts except with respect to the docket fee, and in this regard the later 1953 Act, supra, will govern.

The same reasoning is applicable to the Acts of 1951, Ch. 139, Sec. 2, as found in Burns' Indiana Statutes (1946 Repl.,
1955 O. A. G.

1955 Supp.), Section 5-1720. This latter statute is a statute of general application which establishes the fee of Justices of the Peace for making up the docket in civil cases as 10¢ for every 100 words or $2.00, whichever amount is the greater; the Act of 1913, supra, provided that the fee for making up a docket should be 10¢ for every 100 words. The later 1951 Act, supra, will govern in this particular situation as to making up the docket in civil cases. There is no conflict between the subject Act of 1953, supra, and the cited Act of 1951, supra. Therefore, the cited Act of 1951, supra, will still be applicable in the situations where it applies. The important consideration for your audits is that the Act of 1953, Ch. 154, Sec. 2, supra, in establishing a docket fee of $3.00 to be paid by the plaintiff in civil actions in certain Justice of the Peace courts, does not specify that this docket fee is in lieu of all other Justice of the Peace fees and costs established by the other statutes referred to in your first question.

With reference to your second question, be advised that the reasoning above is also applicable to such question. The salary provided for in the Acts of 1953, Ch. 154, Sec. 1, supra, is stated to be in lieu of any fees of the office of the Justice of the Peace in such townships. Since these Justices of the Peace are limited to a personal compensation of $4,200 per annum, they may not retain any of the properly assessable fees and costs. Since the Justice of the Peace assesses and collects proper fees and costs as an officer of the township and since he may not retain for his personal use any of such fees and costs, it follows that the fees and costs assessable pursuant to the Acts of 1913, Ch. 308, Sec. 2, supra, and the Acts of 1951, Ch. 139, Sec. 2, supra, must be paid to the township. It was stated in 1954 O. A. G., page 31, No. 11, with reference to another Justice of the Peace statute, as follows:

"* * * Justices of the Peace in townships which fall within the classifications set out in the Acts of 1947, Ch. 319, Sec. 1, may not operate on a fee basis; that is to say, such Justices of the Peace may not retain any of their fees as compensation. The act involved specifies a salary and specifies that the same shall be in lieu of any fees of the office of the Justice of the Peace. Consequently, all fees of the office of the Justice of the Peace in such townships whether such fees be collected
in civil or criminal cases belong to the township. In 1950 O. A. G., page 287, No. 74, it is said:

"'3. If fees are to be collected in criminal cases, will such justices be required to pay over such fees to the township trustees for the benefit of the township fund in view of the salary limitation as provided by the act?"

"'Section 1 of Chapter 319 of the Acts of 1947 specifically provides that the salary granted therein is in lieu of all fees. Therefore, fees collected in criminal cases will be collected for the benefit of the township.'

"The salary and expense provisions of this Act are mandatory and exclusive. With regard to docket fees, please be advised that the Act herein involved relates exclusively to docket fees in civil cases.

"Acts of 1947, Ch. 319, Sec. 3.

* * *

"The 1951 O. A. G., page 14, No. 6, stated as follows:

"'Section 3 of Chapter 319 of the Acts of 1947 provides a docket fee of $6.00 to be taxed in all civil cases which shall be in full for all costs, fees and services of process including changes of venue as is now provided by law. As long as New Albany Township is governed by the provisions of Chapter 319 this fee and this fee alone should be charged for all services of the Justice and of the Constable in civil cases. The term "docket fee" as generally accepted means a fee to be paid when a case is instituted. Thus it is proper for this fee to be charged in advance.' (Our emphasis)

"* * * However, all fees taxed, charged and collected by such Justice of the Peace in both civil and criminal cases become the property of the township and may not be retained by any such Justice of the Peace. The docket fee in civil cases is governed by this Act. The salary and expense provision of this Act, as stated above, are mandatory and exclusive regardless of whether such Justice of the Peace hears civil cases or criminal cases or both."
It is, therefore, my opinion that: (1) The $3.00 docket fee established by the Acts of 1953, Ch. 154, Sec. 2, supra, is not in lieu of all Justice of the Peace fees and costs as provided in the Acts of 1913, Ch. 308, Sec. 2, supra, and the Acts of 1951, Ch. 139, Sec. 2, supra; (2) Justices of the Peace governed by the Acts of 1953, Ch. 154, supra, will tax and charge the fees and costs, except for docket fees, provided by the Acts of 1913, Ch. 308, Sec. 2, supra, and the Acts of 1951, Ch. 139, Sec. 2, supra, which fees and costs are in addition to the above described $3.00 docket fee and upon collection are to be paid to the township.

OFFICIAL OPINION NO. 49
November 28, 1955

Mrs. Pauline H. Shumack, Secretary
Indiana State Board of Registration for Architects
Room 412, State Library Building
Indianapolis 4, Indiana

Dear Mrs. Shumack:

Your letter of November 17, 1955 has been received and reads as follows:

"We are appreciative of your kindness in sending us a copy of the Official Opinion No. 34 relative to the use of rubber stamps instead of seals in relation to the Professional Engineers & Land Surveyors.

"We note that in the Architectural Act the word 'impression' appears with reference to the seal. We, therefore, request an opinion as to whether a rubber stamp may be used legally under the Architectural Act in place of the seal."

The Acts of 1929, Ch. 62, Sec. 13, as found in Burns' Indiana Statutes (1951 Repl.), Section 63-113, provides, in part, as follows:

* * *

"Every registered architect shall have a seal or design authorized by the board, the impression of which shall contain the name of the architect and the words,