

OFFICIAL OPINION NO. 67

November 13, 1952.

Mr. Otto K. Jensen, State Examiner,  
State Board of Accounts,  
304 State House,  
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

“We respectfully request your official opinion upon the following:

“Are prosecuting attorneys of joint judicial circuits entitled to claim and receive a *per diem* fee of \$2.00 for each county in such circuits when engaged in the official duties of the office in both counties on the same day?

“If your answer is in the negative should the *per diem* fee be:

“(a) divided equally by claiming one dollar from each county, or

“(b) charged in the same proportion that the salary in one county bears to the salary in the other county of the circuit?

“Reference is made to Section 1, Chapter 252, Acts 1949 and Section 1, Chapter 188, Acts 1951.”

Chapter 188 of the Acts of 1951 to which you refer, same being Burns' 1951 Replacement, Volume 11, Appendix 6(B) reads as follows:

“§ 1. Additional compensation for certain offices in counties of 95,000 or less—The auditor, clerk of the circuit court, sheriff, recorder, treasurer, assessor, surveyor and prosecuting attorney, *of each county* in this state having a population of not more than ninety-five thousand (95,000), according to the last preceding United States census, shall be paid a *per diem* of two

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dollars (\$2.00) for each day such official shall be engaged in the official duties of his office, said *per diem* to be in addition to all other provisions of law for his compensation, regardless of any limitation set by law on the compensation received by any such county official.”

It is important to note that this statute refers to the Prosecuting Attorneys of each county while Prosecuting Attorneys are technically district officers rather than county officers. However, the Prosecuting Attorney of a joint circuit normally receives specified sums from each of the counties in his district. Comparing this statute with other legislation dealing with compensations of Prosecuting Attorneys, Burns' 49-2604 through 49-2694 provides a stated salary from each county to the Prosecuting Attorney in that county. Under these statutes the Prosecuting Attorney of a joint circuit receives a specified portion of his salary from each county in the circuit.

Section 95 of Chapter 253 of the Acts of 1945, same being Burns' 49-2695 concerns mileage allowance for Prosecuting Attorneys and provides in part as follows:

“\* \* \* Said mileage of the prosecuting attorney shall be apportioned in the circuit on the ratio that the salary paid the prosecutor from each county bears to the total salary paid said prosecutor, and mileage of the deputy prosecuting attorneys shall be paid by the county in which the duty arose which necessitated the travel.  
\* \* \*”

In official opinion No. 69 of 1950, same being 1950 O. A. G. 273, it was held that the same person serving as judge *pro tempore* and a special judge on a single day can only receive compensation for one day. To the same effect see 1942 O. A. G. 102 and the case of *City of Columbus v. Ryerson* (1925), 195 Ind. 620, 148 N. E. 602. Remembering that the claim to be made by the prosecutor is made to the county for a specific day served, it becomes apparent that if the prosecutor is engaged in the business of only one county in his district on a certain day, his only right is to make a claim against the county from which the business arose. If, however, the prosecutor should be engaged in the business of both counties

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during a single day, he would have a claim against each county. However, under the authorities previously cited, in my opinion he could receive compensation from only one of those counties. It would seem to be a question for an election on the part of the prosecutor as to which county he would collect from. There is no provision for apportionment between the counties for a single day, nor is there any requirement that he apportion the days as a whole between the counties.

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November 13, 1952.

Mr. J. A. Franklin,  
Vice President and Treasurer,  
Indiana University,  
Bloomington, Indiana.

Dear Mr. Franklin:

I am in receipt of your letter of October 16, 1952 which states as follows:

“It is the established policy of Indiana University to encourage, by every proper means, the development and growth of any responsible Greek letter or other fraternity or sorority which is now or may hereafter be established on the campus of the university, including assistance and advice to such organizations in obtaining financing for the purchase or construction of chapter house facilities when such organizations are in need of more adequate housing and study facilities.

“Also, the university is interested in acquiring or restricting the use of certain real estate adjacent to the campus for its own protection in maintaining the integrity of the areas around and adjacent to the lands now owned by the university.

“Several fraternities and sororities are now engaged in one or more of the following transactions for the