Mr. Evan A. McLinn,
State Representative,
Floyd County,
State House,
Indianapolis, Indiana.

Dear Sir:

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

"Since the enactment of Chapter 319 of the Acts of 1947, same being Burns 5-1711, several questions have arisen as to Justices of the Peace and Constables of New Albany Township of Floyd County.

"Is that township entitled to elect more than one Justice of the Peace and Constable or may the board of Commissioners appoint more than one Justice of the Peace and Constable and should the Justice of the Peace receive fees or a salary. What fees are to be charged in criminal cases and in civil cases and may they be charged in advance?

"What effect will the 1950 decennial census have on the foregoing questions if the population of New Albany Township is in excess of 35,000 according to that census?

"By way of explanation, two persons ran for Justice of the Peace in New Albany Township in 1950 and both received some votes. Were both of these men elected or only one and, if both were elected are both entitled to salaries?

"I would greatly appreciate your official opinion on the foregoing questions."

I.

Number of Justices of the Peace
And Constables.

The first classification contained in Chapter 319 of the Acts of 1947, that is (a) includes every township in this
state having a population of less than 35,000 according to the last United States census and in which is wholly located a city of the third class. New Albany is a city of the third class and is wholly contained in New Albany township of Floyd County and the population of that township, according to the 1940 decennial census, was 25,590.

Therefore, New Albany Township of Floyd County is within the scope of Class A of Chapter 319 of the Acts of 1947. Section 2 of Chapter 319 of the Acts of 1947 limits the number of Justices of the Peace and Constables in townships falling into classifications of B and C but there is no provision in that act which limits the number of Justices of the Peace in townships which fall into classification A. Therefore, the number of Justices of the Peace and Constables in New Albany Township is determined by a general statute on that subject which provides for two Justices of the Peace, plus one additional Justice for each incorporated city and town contained in the township. The number of Justices of the Peace and Constables are to be regulated by the Board of County Commissioners pursuant to Section 1 of Chapter 308 of the Acts of 1913, same being Burns 5-101.

II.

Compensation of Justices and Constables.

You ask whether Justices of the Peace and Constables will receive fees or a salary. Section 1 of Chapter 319 of the Acts of 1947 specifically provides that in all townships which fall within the classifications imposed, the salary of the Justice of the Peace shall not be less than $1,200.00 nor more than $2,000.00 and the salary of any constable shall not be less than $800.00 nor more than $1,500.00 per annum. These salaries are to be fixed by the township advisory board and are in lieu of any fees otherwise receivable.

If the 1950 census should show that the population of New Albany Township is such that it would no longer fall within the provisions of Chapter 319 the Justices of the Peace and Constables would be entitled to fees rather than salary. The fees of a Justice of the Peace are set out in Section 2 of Chapter 308 of the Acts of 1913, same being Burns 5-1701, and the fees of a Constable are set out in Section 1 of Chapter 140 of the Acts of 1897, same being Burns 49-3404. The
Justice would be entitled only to those fees provided for Justices of the Peace and a Constable would be entitled to all of the fees provided for a Constable. Under Section 5 of Chapter 319 of the Acts of 1947, same being Burns 5-1715, the Justice of the Peace will be entitled to allowances for office rent, clerical expense and miscellaneous expenses. If under the 1950 census the township is not under Chapter 319 the Justice of the Peace is entitled to no such expense allowance.

III.

Fees to be Charged.

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.

Chapter 319 makes no provision as to fees in criminal cases. Therefore, Burns 5-1701 and 49-3404 would be applicable in criminal cases. These fees are small amounts itemized for each service rendered and should not be charged in advance.

IV.

Effects of the 1950 Census.

The 1950 decennial census is not yet official. When made official, it will be effective as of April 1, 1950. Until it is made official we are obliged to act under the 1940 census. After it is made official in the absence of the enactment of corrective or remedial legislation it will be necessary to adjust actions to the 1950 census. That is if a Justice of the Peace is paid a salary beginning January 1, 1951, under the 1940 census, when he should have received fees under the 1950 census, he is technically required to pay back to the township the excess of his salary over the fees he should have received. Inasmuch as such payments made before the
1950 census becomes official are certainly made in good faith it is extremely doubtful whether such payments could be required to be returned from such Justice of the Peace or Constable receiving them during the interim. However, once the figures are made official, if they are sufficient to take New Albany Township out of the classifications under Chapter 319, all Justices of the Peace and Constables in that township would go back on a fee basis and there would no longer be any authority to charge a $6.00 docket fee in civil cases. However, fees as are provided in Sections Burns 5-1701 and 49-3404, should be charged when the specified act is performed.

OFFICIAL OPINION NO. 7.

January 24, 1951.

Ruth V. Kirk,
Executive Secretary,
Indiana State Board of Medical Registration and Examination,
1138 K. of P. Building,
Indianapolis, Indiana.

Dear Miss Kirk:

Your letter of January 19, 1951, has been received and reads as follows:

"Since it has been repeatedly brought to the attention of the Board of Medical Registration and Examination of Indiana that various persons have asserted that Section 1, Chapter 248, Acts of 1927, same being Section 68-1311 Burns, is unconstitutional as far as injunction actions filed under said Section are concerned on the asserted basis that a trial by jury is not provided for or authorized, said board requests an official opinion from you as to the constitutionality of said injunctive provision of said Section of said statute."

The only provisions of the Indiana Constitution providing for trials by jury are Article 1, Section 19 and Article 1, Section 20.