August 28, 1951.

Honorable Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Mr. Jensen:

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

"Chapter 147, Acts of 1951 permits the creation of a General Ditch Improvement Fund in each county and requires county councils to appropriate money from the county general funds for the purpose of paying preliminary expenses on ditches.

"May I please have your official opinion on the following questions:

"1. When proceedings are being taken in circuit court to construct a ditch, should allowances for preliminary expenses be made by the judge of the circuit court or by the board of commissioners of the county?

"2. When construction of a ditch is pursuant to establishment by the circuit court, should allowances for the cost of construction be made by the judge of the circuit court or by the board of commissioners of the county?

"Question 2 arises by reason of Sec. 24, Chapter 221, Acts of 1945 as amended by Chapter 150, Acts of 1951 which provides that no payments for any purpose shall be made out of the ditch improvement fund until a verified bill has been presented to the surveyor and by him approved and is filed with the auditor and allowed by the commissioners."

Section 1 of Chapter 147 of the Acts of 1951, same being Burns' 27-131, provides in part as follows:

"* * * County councils shall appropriate money from the general fund of the county with which to pay preliminary expenses which preliminary expenses
shall be remitted to said general fund from the first
assessments paid or receipts from sale of bonds, or
monies received from petitioners if proceedings fail."

From a reading of the statutes concerning ditches, it is
clear that the court establishing the ditch, whether the cir-
cuit court or the Commissioners' Court, allows and deter-
mines preliminary expense.

The only statutory provisions which might seem to require
county commissioners to allow all expenses is found in Chap-
ter 150 of the Acts of 1951 but same is limited to expendi-
tures from the General Ditch Improvement Fund. There is
no authority or direction that the appropriation to be made
pursuant to the above quoted statute is to be channeled
through the General Ditch Improvement Fund.

Therefore, in my opinion, the answer to your first ques-
tion is that, when proceedings are being taken in the Circuit
Court to construct a ditch, allowances for preliminary ex-
penses payable from appropriation by the County Council
pursuant to Chapter 147 of the Acts of 1951 should be made
by the judge of the Circuit Court.

In considering your second question, it is necessary to
understand the system of financing ditches contemplated by
the acts concerning General Ditch Improvement Fund as now
constituted.

Chapter 147 of the Acts of 1951 provides that substantially
all money available for ditch construction shall be channeled
through the General Ditch Improvement Fund. Chapter 150
of the Acts of 1951, same being Burns' 27-133, provides in
part as follows:

"* * * No payments for any purpose shall be made
out of the ditch improvement fund until a verified bill
has been presented to the surveyor and by him ap-
proved and is filed with the auditor and allowed by the
commissioners."

Thus, a system is created by which the body which has
been petitioned for the establishment of the ditch, after
establishing the ditch, approves the contract for construction,
and the assessment roll and then its work is completed. All
allowances from the General Ditch Improvement Fund for
construction thereafter are allowed by the Board of County Commissioners. (Subject to the terms and conditions of the contract as approved by the court.)

Thus, in answer to your second question, it is my opinion that, when a ditch is established by the Circuit Court, allowances for the cost of construction should be made by the Board of County Commissioners and not by the judge of the Circuit Court.

OFFICIAL OPINION NO. 76
August 29, 1951.

Honorable 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:

"Under the provisions of Section 1, Chapter 316, Acts of 1951, it provides:

'The maximum salary of any chief adult probation officer, regardless of the court to which he is attached, shall not be more than fifty percent of the salary of the circuit court judge of the county in which the officer is employed.'

"Chapter 129, of the Acts of 1949 fixes the salaries of judges of the several courts on a population basis. Section 10 of this Act was amended by Chapter 262 of the Acts of 1951. There is an uncertainty as to the proper interpretation to be placed on the words 'salary of the circuit court judge' as same appears in Section 1, of Chapter 316.

"We would like to have your official opinion upon the question of whether or not the words 'salary of the circuit court judge' as it appears in Section 1 is to be construed as referring to the basic salary as set out