

divisions. Under the direction of the Governor these funds distributed for school purposes will go into the special school fund.

I am, therefore, of the opinion that the respective local units of government will be required to appropriate the money which they receive prior to its expenditure. However, I am further of the opinion that the receipt of such additional funds by the respective political subdivisions of government creates a situation which makes applicable the statutory provisions authorizing an emergency appropriation. (See *Moore v. City of Kokomo* (1944), 223 Ind. 293.)

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OFFICIAL OPINION NO. 46

June 28, 1948.

Hon. C. E. Ruston,  
State Examiner,  
State Board of Accounts,  
State House, Room 304,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of recent date in which you quote a part of Section 1, Chapter 176, Acts 1947, same being Section 2-1417, Burns' 1933 Supplement which reads as follows:

“The term ‘trial’ shall mean and include the impaneling of the jury, the actual trial, argument on demurrer, a trial on the issues joined on a plea in abatement, and argument or ruling on any motion for new trial.”

This section further provides in part that “the regular judge or judge *pro tempore* of the court in which any cause on a change of venue is pending shall be allowed the sum of ten dollars per day or any part thereof for his services in the trial of such cause: \* \* \*”

You state that some confusion exists as to what actions would entitle the judge of the court to which a case has been venued from another county to the \$10.00 allowance.

The specific questions on which you request my official opinion are as follows:

"1. Is the judge entitled to a fee of \$10.00 per day on a case venued from another county to his court for any action in that case which is not included in those actions which are contained in the definition of 'trial' as provided in chapter 176, Acts of 1947, or does the word 'trial' include those things mentioned in said chapter but not confined thereto?"

"2. Would a judgment to dismiss be considered as part of the 'trial' as defined in chapter 176, of the Acts of 1947 and entitle the judge to the \$10.00 allowance?"

Ordinarily, where a statute defines words or terms used therein, no wider or different meaning may be given such words or terms. (*Fahnestock v. State* (1885), 102 Ind. 156 (164)). Furthermore, if the definition enlarges upon the ordinary meaning and signification of the word or term, as was done in the instant case, such definition should be strictly construed. (50 Am. Jur. Statutes, Sec. 263, p. 255.)

Considered in the light of the above, the answer to your first question would be that a judge on a change of venue case should be allowed a *per diem* for his services in connection with only those things mentioned in the statute as included in the meaning of the word "trial."

However, you will note that the definition of the term "trial" as used in said statute includes not only certain specific steps or proceedings which may occur in the progress to a final determination of a cause of action but also includes the *actual trial*.

No confusion is indicated as to the entitlement of a judge to a *per diem* for his services in change of venue cases wherein the steps taken or proceedings had are specifically enumerated in the above definition of a "trial."

But in order to answer your first question completely it is necessary to determine what steps or proceedings were meant to be included in the term "the actual trial" as used in said statute, for this is the only term used in said definition which may include more than one step or proceeding in connection with a cause of action.

Our Legislature has defined the word "trial" as follows:

"Trial defined—The trial is a judicial examination of the issues, whether of law or of fact, in an action."

Section 2-1901 Burns' 1933, Acts 1881 (Spec. Sess.) Chapter 38, Section 371.

In an official opinion of this office rendered on January 3, 1944 (1944 O. A. G. No. 1) it was stated that by the above language "the Legislature has clearly stated that a trial means only the proceedings which take place from the time that a cause is submitted to the court for hearing and determination until judgment is rendered, or from the time that a cause is submitted to the jury until the return of the verdict and judgment."

In *Lindley v. Kemp, et al.* (1906), 38 Ind. App. 353, page 359, cited in the above official opinion, it was stated:

"\* \* \* by general acceptance or use, the word 'trial' includes 'all the steps taken in the case from submission to the jury to the rendition of judgment.'"

I am of the opinion that the word "trial" as used in the phrase "the actual trial" contained in the above statute was intended to be taken in its generally accepted meaning and includes all steps taken or proceedings had in a cause of action from the submission thereof to a court or jury, as the case may be, for hearing and determination of the issues to the rendition of the final judgment therein.

In further answer to your first question, it is my opinion therefore that the regular or *pro tempore* judge of the court in which any cause on a change of venue is pending is entitled to the sum of \$10.00 in addition to his regular salary for any day or part thereof in which he renders services in such cause in connection with the impaneling of a jury, argument on demurrer, a trial on the issues joined on a plea in abatement, argument or ruling on any motion for new trial, and any steps taken or proceedings had from the time the issues of such cause are submitted to a court, or jury, as the case may be, for judicial examination and determination, to the time when the final judgment therein is rendered.

It is provided in Section 2-901 Burns' 1933, that:

"An action may be dismissed without prejudice—

"First. By the plaintiff, before the jury retires; or, when the trial is by the court, at any time before the finding of the court is announced.

"Second. By the court where the plaintiff fails to appear on trial.

"Third. By the court, on the refusal to make the necessary parties, after having been ordered by the court.

"Fourth. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.

"Fifth. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action.

"In all cases, upon the trial, the decision must be upon the merits."

Also, in Section 2-902, Burns' 1933:

"The plaintiff may dismiss his action in vacation, by filing with the clerk a writing to that effect. The clerk shall enter such written dismissal in the order-book, and the court shall enter judgment accordingly at the next term. The plaintiff shall not be liable to the defendant for any costs made by him after notice of the dismissal."

It is to be noted that the plaintiff may as a matter of right dismiss his action without prejudice at any time before the jury retires or before the finding of the court is announced, or at any time in vacation of court. The court may dismiss an action for the reasons stated in the above statute. The dismissal of an action by the plaintiff, or by the court, and the entering of a judgment of dismissal are not, in and of themselves, steps or proceedings in the actual trial of the cause of action involving "a judicial examination of the issues, whether of law or fact" in the action. Such steps or proceed-

ings are not specifically enumerated in the statutory definition of a "trial." It is therefore my opinion that the answer to your second question is in the negative. However, I call your attention to the fact that there may be instances where the proceedings resulting in a dismissal of a cause by the court may involve a judicial examination of issues of law or fact or both. In such instances the judge would be entitled to the *per diem* provided in the statute, not for the entering of a judgment of dismissal, but for such judicial examination of the issues.

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OFFICIAL OPINION NO. 47

July 9, 1948.

Mr. Forrest V. Carmichael,  
 Executive Secretary,  
 Indiana State Teachers' Retirement Fund,  
 336 State House,  
 Indianapolis, Indiana.

Dear Mr. Carmichael:

This will acknowledge your letter of June 12 in which you request an official opinion relating to the question propounded as follows:

"Is a legally qualified teacher who is employed in a charitable, benevolent or correctional institution of the State of Indiana, and who was qualified under the teachers' retirement fund act previous to such employment, eligible to receive annuity or disability benefits from the teachers' retirement fund while in such employment?"

We will first give consideration as to the persons who may be eligible to receive annuities under the provisions of the Teachers' Retirement Act. Sub-section (a) of Section 2 of Chapter 353 of the Acts of 1947, the same being Sub-section (a), Section 28-4511 of Burns' Revised Statutes, provides in part as follows:

"The members and beneficiaries of this fund shall include any legally qualified and regularly employed