and I do not believe that such per diem as special judge falls within the provisions of Section 2 of Chapter 242.

Conclusion

I am, therefore, of the opinion that your questions should be answered as follows:

1. Where a judge of the circuit court is eligible to and receives the salary of $4,800.00 per year, established by Chapter 242 of the Acts of 1945, he is not entitled to receive in addition thereto the per diem provided by Chapter 295 of the Acts of 1945.

2. A judge receiving such salary of $4,800.00 is entitled to receive the per diem of $5.00 per day for the time he actually serves in trying causes on change of venue.

3. A judge receiving the statutory salary of $4,800.00 per year is entitled to receive the per diem provided by law for the days during which he tries cases as special judge in another court.

OFFICIAL OPINION NO. 40

April 15, 1946.

Hon. Roy J. Jorg, Member,
State Board of Tax Commissioners,
State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of April 5, 1946, has been received in which you request an official opinion on the following questions:

"1. Is the classification of townships set forth in Section 1 of Chapter 242 of the Acts of 1943 a valid classification under the constitution of Indiana?

"2. If not, to what townships do the provisions of this Act apply, if any?"
Section 1 of Chapter 242 of the Acts of 1943, same being Section 28-3419 Burns' 1945 Supplement, reads as follows:

"Whenever twenty-five (25) per cent of the freeholders of any township, having a population of not less than one thousand six hundred fifty (1,650) and not more than one thousand seven hundred fifty (1,750) and containing a portion of any fifth class city having a population of not less than eight thousand (8,000) nor more than eight thousand three hundred (8,300), according to the last preceding United States census, in the state of Indiana, shall petition the township trustee, of such township, for the erection, construction and equipping of a room or building in which to teach and instruct the students of such township in the arts of agriculture, domestic science, or physical or practical mental culture, and in which to hold school or township entertainments, or to be used for township purposes, the township trustee, with the concurrence of the advisory board of such township, shall be authorized and empowered to provide such room or building, as may best suit such needs in such township, by erecting, building and equipping such room or buildings, as aforesaid, to meet the requirements and necessities therefor: Provided, however, That nothing contained herein shall be construed as modifying, limiting or repealing 'An act concerning tax levies, rates and budgets and providing for the fixing thereof, limiting the amount of the same and declaring an emergency,' approved March 9, 1937, and being chapter 119 of the Acts of 1937: and Provided, further, That the provisions of said 'An act concerning tax levies, rates and budgets and providing for the fixing thereof, limiting the amount of the same and declaring an emergency,' approved March 9, 1937, and being chapter 119 of the Acts of 1937, shall be complied with before any bonds of such civil township shall be issued pursuant to the provisions of this act. If any phrase, sentence, or provision of this section shall be held to be unconstitutional, the same shall not affect any other phrase, sentence or provision hereof, but this
section shall be construed as though such unconstitu-
tutional phrase, sentence or provision were not set
forth herein.”

1. In answer to your first question it is submitted Article
4, Section 22 of the Constitution of Indiana provides in part
as follows:

“The General Assembly shall not pass local or special
laws, in any of the following enumerated cases, that is
to say:

“(13) Providing for supporting common schools,
and for the preservation of school funds;”

Article 4, Section 23 of the Constitution of Indiana pro-
vides as follows:

“In all the cases enumerated in the preceding Sec-
tion, and in all other cases where a general law can be
made applicable, all laws shall be general, and of
uniform operation throughout the State.”

It has been held that while the legislature may enact legis-
lation applicable only to political subdivisions of the State
coming within a certain classification according to population,
that such classification must be reasonable. Any attempt to
pass a special law under the guise of a classification according
to population, where the subject matter of said special law
shows no reason exists for the law being applicable only to
certain political subdivisions, renders such provision as to
classification unconstitutional and void.

School City of Rushville et al v. Hayes (1904),
162 Ind. 193, 200 to 203;
Bullock v. Robison (1911), 176 Ind. 198, 203 to
206;
Groves v. Board of Commissioners, Lake County
(1936), 209 Ind. 371, 376.)

In answer to your first question I am therefore of the
opinion the exception in the foregoing statute in favor of only
those townships “having a population of not less than one
thousand six hundred fifty (1,650) and not more than one thousand seven hundred fifty (1,750) and containing a portion of any fifth class city having a population of not less than eight thousand (8,000) nor more than eight thousand three hundred (8,300), according to the last preceding United States census, in the state of Indiana, is unconstitutional and void for the reason said classification as to population is so narrow in its limitations in fact to point to only a certain township in which it could be applicable. It is to be noted no practical reason exists why the right to erect, construct and equip a building in which to teach the arts of agriculture, domestic science or physical or practical mental culture, and in which to hold school or township entertainments should be restricted to only a few townships in the State. Its subject matter is equally a right to be enjoyed by any township school corporation, and the Act in this respect is class legislation and discrimination.

It is to be noted the foregoing statute prior to its amendment in 1943 was equally applicable to any township in the State of Indiana.

Section 1, Chapter 88, Acts 1941.

In answer to your first question I am therefore of the opinion the foregoing provision of the statute limiting its application to the townships therein referred to by such classification is unconstitutional and void.

2. In answer to your second question it is to be noted said Act is capable of operation without loss of any of its beneficial provisions of the clause limiting its application to certain townships is deleted. It is also to be noted the statute specifically provides that if any "phrase, sentence or provision" thereof is held unconstitutional said section shall be construed as though such unconstitutional phrase, sentence or provision was not set forth therein.

It has been held that in case of partial invalidity of a statute, if the remainder of the statute is workable after deleting such unconstitutional provision, and the intent of the legislature can still be carried out, the valid portion of said statute will be sustained and such unconstitutional provision ignored. This is especially true where the legislature
has provided such a severability clause as contained in the foregoing statute.

Pennington v. Stewart (1937), 212 Ind. 553, 563;
Tucker, Secretary of State v. Muesing (1942), 219 Ind. 527.

In answer to your second question I am therefore of the opinion the foregoing statute should be construed valid as written except the restriction as to certain townships by classification should be ignored so that the benefits of said Act would be equally available to any township in the State.

OFFICIAL OPINION NO. 41
April 26, 1946.

Hon. Ross Teckemeyer,
Executive Secretary,
Public Employes' Retirement Fund,
307 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sir:

I have your letter of April 16, 1946 in which you make the following inquiry:

"In your official opinion, would an employe who has been employed by a State department more than fifteen years be required to retire July 1, 1946, if he was more than seventy years of age, or could he continue until July 1, 1947?"

Section 9 of Chapter 340, page 1589 of the Acts of 1945 provides in part as follows:

"On July 1 of the year next following the effective date as herein defined, any member who shall have attained the age of seventy years, and who shall have completed at least fifteen years of service, shall be compulsorily retired, and shall be entitled to the normal retirement benefit herein provided. * * *"