that in all change of venue cases clerks of circuit courts are entitled to tax and charge as costs a per diem fee as expressly stated in this opinion, and that although the clerk would be entitled to but one change of venue per diem per day yet if the court does any business, either in regular, special, adjourned term, or in chambers, the clerk would be entitled to tax and retain his per diem even in matters which did not involve the trial of the cause. This opinion will supplement my opinion of October 5, 1943, on change of venue expenses and costs.

STATE BOARD OF ACCOUNTS: Townships—Trustee cannot contract with voluntary fire-fighting association where township owns no fire-fighting equipment, but equipment is owned by the voluntary association.

August 3, 1944.

Opinion No. 70

Hon. Otto K. Jensen, State Examiner,
Department of Inspection and
Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of July 25th in which you submit four questions, the first of which is as follows:

"Can the township trustee of a township which has not purchased and does not own any fire-fighting and fire-extinguishing apparatus and equipment enter into an agreement and contract with a volunteer fighting company or companies for the use of fire-fighting and fire-extinguishing apparatus and equipment owned by such volunteer fire-fighting company or companies, as shall best conduce to the saving from destruction by fire of the property of citizens of such township and of public property therein situated?"

Section 65-507, Burns' R. S. 1933, 1943 Replacement, referred to in your letter, is as follows:
“Whenever any township trustee shall purchase for any township any fire-fighting and fire-extinguishing apparatus and equipment under the provisions of this act, such township trustee, by and with the consent of the township advisory board, is hereby authorized and empowered to make and enter into such agreement with any volunteer fire-fighting company or association, which may be or may have been organized for the purpose of fighting fires within the limits of such township, for the use and operation of such apparatus and equipment, as shall best conduce to the saving from destruction by fire of the property of citizens of such township and of the public property therein situated.”

The above section is Section 7 of Chapter 229, Acts 1927, page 658. Other provisions of the same Act give authority for a township trustee “to contract with any city or town that has and maintains adequate fire-fighting equipment” for fire protection in a town, but there is no provision in the Act expressly authorizing the township trustee to contract with any volunteer fire-fighting company or association other than the section above quoted. It will be observed that the section quoted only authorizes the township trustee to contract with a volunteer fire-fighting company or association “Whenever any township trustee shall purchase for any township any fire-fighting and fire-extinguishing apparatus and equipment under the provisions of this act.” Said section therefore does not authorize the trustee to enter into a contract or agreement with a volunteer fire-fighting company or association where such company or association owns the fire-fighting equipment and none is owned by the township.

It is well established that a township trustee is a special agent possessing only statutory power; that he can bind the township only when authorized by the statute and then only in the manner specified by law. In the case of Angola, etc., Tile Co. v. Millgrove School Township, 73 Ind. App. 557 at page 561, the court said:

“It has been uniformly held in this state that a township trustee is a special agent, possessing only statutory powers, and can only bind the township when authorized by statute and in the manner specified there-
in, and that all who deal with him must, at their peril, take notice of the extent of his authority, * * * ."

In the case of Ohio Township v. Lipking, 91 Ind. App. 277, at page 282 the court said:

"The authority of a trustee is statutory, and he can only bind his township when his acts are within the statutory limits. * * * ."

See also:

Clinton School Township, etc. v. Lebanon National Bank, etc., 18 Ind. App. 42 at 45.

It has also been held that a trustee must proceed in the manner provided by the statute. Otherwise his contract is void. In the case of Patterson v. Middle School Twp., etc., 50 Ind. App. 460, at page 465, the court said:

"It has also been held that a trustee must proceed in a manner provided by statute when he seeks to bind his township, otherwise his contracts are void, and no subsequent act can estop the township from setting up their invalidity. * * * ."

In the case of Bloomington School Township v. National School Furnishing Co., 107 Ind. App. 43, at page 45, the court said:

"* * * In dealing with such trustee, all persons are bound to take notice of his official and fiduciary character, and to know that he can only bind his township by his contracts, verbal or written, when it appears, or is shown by proper averment and proof, that such contracts are authorized by law. * * * ."

The above quoted statute only authorizes the township trustee to enter into agreements with a volunteer fire-fighting company or association when the township has purchased fire-fighting apparatus under the provisions of that Act. The Attorney General can not pass upon what might be most expedient. The statutes and decisions being clear it is my opinion based thereon that the trustee is not authorized to enter into an agreement or contract with a volunteer fire-
fighting company or association for the use of fire-fighting and fire-extinguishing equipment owned by such volunteer fire-fighting company or association. If it is desirable to permit trustees to contract with volunteer fire-fighting associations who own their own equipment this should be presented to the Legislature.

Since your first question is answered in the negative no answer is required to your questions numbered 2 to 4, both inclusive.

STATE BOARD OF ELECTION COMMISSIONERS: Elections—Names of candidates for United States Senator should be placed on national ballots in general elections at which a president and a vice-president are to be elected. STATUTES—Form specified in a statute is controlling—Departmental construction entitled to weight. Constitutional law—presumptions are in favor of validity. Titles should be liberally construed. Purpose of Sec. 19, Art. 4.

August 4, 1944.

Opinion No. 71

Hon. David M. Lewis, Member,
State Board of Election Commissioners,
129 East Market Street,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of August 2nd in which you ask the following questions:

1. "A question has arisen as to whether or not the candidates for the office of United States senator should be placed on the national ballot. In view of the above quoted Acts and the opinion of the Attorney General, which is all of the authority that I have been able to find on the subject, I would like to have your opinion as to whether or not the offices of the United States senator should be placed on the national ballot or on the State ballot as provided by the Act of 1933 which your predecessor said was still in full force and effect.

2. "Should it be your opinion that the candidates for the offices of United States senator should appear