"Under the above sections" (sections 19 and 21 of article 4) "the Act cannot be held to be an amendment."

In the present case, unless the Act is an amendment, it is nothing, since there is no title which could possibly sustain it as original legislation. Since the body of the Act in this case must be regarded as original legislation, and since the title is appropriate for only an amendment, it is apparent that the subject of the Act is not expressed in the title as required by Section 19 of Article 4 of the Indiana Constitution, and in my opinion the Act is invalid.

You also refer to Senate Bill No. 74, which will be known as Chapter 218 of the Acts of 1943. This Act purports to be orginal legislation, contains a title appropriate for original legislation, and if the Act is embraced in the title, which I think it is, no objection could be made to its title. It went into effect upon passage by virtue of a declared emergency as set out in Section 12. In the absence of any particular objections, in my opinion the Act is valid.

BOARD OF ACCOUNTS: Compensation of judges in certain cases involved in returning to bench to rule on a motion for a new trial after expiration of term of office.

April 2, 1943.

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

Dear Mr. Jensen:

I have your letter of the 30th in which you request an official opinion upon the following question:

"1. Is the former judge of a court who presided at the trial of a cause, entitled to receive compensation for services rendered in such cause after the expiration of his term in office, in ruling on a motion for a new trial?"

Under rule 1-9 of the Supreme Court of Indiana, effective September 1, 1941, which reads as follows:

> "*Authority of Judges.* The judge who presides at the trial of a cause shall rule on the motion for a new trial, if one is filed, and approve and sign the bill of exceptions, if such is requested.",

it is not only permissible, but it is the duty and obligation of the judge, whether he was a judge pro tem or a regular judge whose term has expired, to rule upon the motion for new trial and approve and sign any bill of exceptions requested. In fact this rule was adopted and promulgated in connection with State ex rel. Hodshire v. Bingham, Judge, 218 Ind. 490 (1940) —a case involving the ruling on a motion for new trial by a judge whose period of appointment had expired. In this case the Supreme Court emphasized the necessity for ruling on the motion for new trial and also for approving the bill of exceptions by the judge who has presided at the trial and is familiar with the evidence.

The proposition that rules of practice and procedure in Indiana as established by rules of the Supreme Court have the force and effect of law can scarcely be controverted in view of the express provisions of Chapter 91 of the Acts of 1937, which provides that the Supreme Court shall have the power to adopt, amend, and rescind rules of Court to govern and control practice and procedure in all courts and that "thereafter all laws in conflict therewith shall be of no further force or effect."

In James C. Curtis and Company v. Emerling, 218 Ind. 172, the Court, in discussing a rule for appellate procedure, adopted under the rules of 1937, states:

> "The rules of this court have the force of statutes and are binding alike on the parties and the court."

That language is quoted with approval in Heckman v. Howard, 36 N. E. 2d 957 (1941). Since rule 1-9, when considered with the reasons for its adoption, imposes the positive obligation on the Judge who heard a given case to rule on the motion or approve the bill, there should be no serious difficulty in providing payment for this activity of the judge whose term has expired although there is no express salary provision.

The most rational legal basis upon which the retired judge can act in such cases is that as a matter of law under the rule of court he becomes a special judge for the purposes therein specified. As a special judge, provision for payment is made by Section 1 of Chapter 200 of the Acts of 1941, which is (2-1416 Burns' Supp. 1933) the fourth amendment to an Act originally passed in 1881 (Sec. 258, Ch. 38, Spec. Sess.). The 1941 Act reads as follows:

> "When a judge or any practicing attorney is called upon to preside in the place of the regular judge, either at a regular or an adjourned term, whether selected from the bench or bar, he shall be allowed the sum of ten dollars ($10.00) per day, for each day or part thereof actually served, and five cents (5c) for each mile necessarily traveled each day in going to and returning from the place where the court is being held, * * * the same shall be paid out of the county treasury for the time being, for which the county shall have credit on settlement with the treasurer of state: *Provided, That* such special judge is called to preside in cases of change of venue, or when such regular judge shall have a pecuniary interest in, be a party to, or be related to any party to said suit by blood or marriage, or may have been of counsel in such cause pending, or may be absent on account of serious illness of himself, or death or serious illness in his family."

A reading of the 1881 Act, with the subsequent amendments culminating in the 1941 Act, impels the conclusion that the Legislature intended to provide for payment of any judge "called upon to preside in the place of the regular judge" in the event the regular judge was disqualified. Further, that payment of the judge, who rules on the motion for new trial or approves the bill of exceptions after his term has expired is one who is called upon to preside in the place of the regular judge and is within the broad terms of the Act.

Concededly the proviso of the 1941 Act casts some doubt upon the proper interpretation of that Act as applied to your question. If it were necessary to justify payment of the retired judge for his services rendered under the proviso clause, I am, notwithstanding, of the opinion that payment

may yet be made for this reason: An investigation of the proviso of the 1941 Act discloses that until the time of this amendment, the proviso really was an exception to a requirement imposing the burden upon the regular judge to pay one-half of the fee due the special judge. Since for a period of sixty years it served as an exception to liability imposed upon the regular judge, I do not believe that, by striking two words, the Legislature intended to change the exception upon liability applying to a regular judge into a limitation upon the right to pay the special judge. I, therefore, am of the opinion that the proviso of the 1941 Act is of no effect as applied to the situation and further, that your question should be answered in the affirmative.

STATE VETERINARIAN: Construction of Chapter 278 of Acts of 1937, as applied to horses which are killed, transported, and ground for dog food.

April 2, 1943.

Hon. J. L. Axby,
State Veterinarian,
State House,
Indianapolis, Indiana.

Dear Mr. Axby:

I am in receipt of your letter of March 29, 1943, requesting my opinion as to the applicability of the provisions of Chapter 278, Acts of 1937, page 1279 being Burns' R. S. Pocket Supplement Section 16-817 to Section 16-837 inclusive, to a state of facts wherein certain individuals are engaged in the business of buying horses, destroying them, and deboning the carcasses of said animals so purchased and destroyed, and transporting the meat over the highways of Indiana by automobile to a place where said meat is ground and sold for dog food without complying with the provisions and requirements of the above mentioned act.

I call your particular attention to Section 12 of said Chapter 278, Acts of 1937, being Burns' R. S. Supplement Section 16-828, which provides in part as follows: