It is well established by the decisions of the courts of last resort that the legislature has the right to provide compensation for the various officers either upon an annual salary basis or upon a per diem basis and that there is a well defined legal distinction between a salary and a per diem compensation for additional services rendered.


Applying the above rule to the specific language contained in Chapter 157, Acts of 1943, it is my opinion that township trustees performing the duties of township assessors in townships of five thousand population or less, who are in office on the effective date of Chapter 157, Acts of 1943, are entitled to receive the compensation as therein provided during their present term of office. It is further my opinion that such allowances upon a per diem basis for the services rendered in performing the duties of township assessors in such townships does not violate the provisions of Section 2 of Article 15 of the Constitution of Indiana.

STATE BOARD OF ACCOUNTS: Sheriff,—Compensation to which sheriff is entitled for removing a prisoner from one county to another.

SHERIFF: Compensation to which sheriff is entitled for returning a fugitive from another state.

SHERIFF: Compensation payable to sheriff when the prisoner waives the issuance of an extradition warrant.

April 21, 1943.

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

Dear Mr. Jensen:

I am in receipt of your letter of April 15, 1943, requesting my opinion as to the compensation which a sheriff is entitled
to receive when transferring a prisoner from one county to another in the State of Indiana and for returning a fugitive from another state. Your specific questions are as follows:

1. What compensation is a sheriff entitled to receive for removing a prisoner from one county to another within the state?

2. What compensation is a sheriff entitled to receive for returning a fugitive from another state?

3. Would the compensation be different if the prisoner waived the issuance of an extradition warrant?

The following statutes are applicable to your questions: Burns' R. S. Replacement 1942, Section 9-401 reads in part as follows:

"And the officer who shall convey such fugitive from the county where he was first arrested to the county in which the offense was committed shall receive the same fees for such services as are by law allowed to sheriffs for a like service, and subject to the same rules and conditions."

Section 49-1311, Burns' R. S. 1933 provides that the sheriff shall be paid and receive the following fees, to-wit:

"For taking a prisoner to another county on any warrant issued by the clerk, the same compensation as allowed for taking a prisoner to the state prison, to be paid by the county requiring the service, to be allowed by the court. * * *

"In all cases where the sheriff shall perform any service for the county required by law to be performed by him, and there is no provision for its payment, the board of county commissioners shall allow and pay such sheriff the same compensation as is allowed by law for similar services; * * *"

Again, Burns' R. S. 1933, Section 49-1315, which is Section 1 of Chapter 26 of the Acts of the Special Session in 1932 provides that the sheriff shall be paid and receive mileage and other expenses for transporting prisoners and other persons in custody to the state institutions, as follows:
“1. If such persons be transported by a common carrier, the actual cost of transportation for the sheriff, for each person in custody and for each attendant allowed by law who may actually accompany such sheriff, together with any other expenses necessarily incurred. “2. If such persons be transported by a conveyance furnished by the sheriff, the sum of eight cents (8c) per mile for each mile necessarily traveled, by each such conveyance, but not more than one (1) mileage shall be charged for any one (1) conveyance, although transporting more than one (1) person.”

Construing all of the above statutes together it is my opinion that the proper answer to question No. 1 is that a sheriff is entitled to receive the same compensation for removing a prisoner from one county to another within the state as he is entitled to receive under the provisions of Section 49-1315, supra, for removing a prisoner to a state institution.

In answering your second question I call your attention to the fact that the Uniform Criminal Extradition Act of 1935, being Sections 9-419 to 9-448, Burns’ Replacement Volume 1942, and especially Section 9-442, provides as follows:

“The expenses shall be paid out of the general fund of the county treasury of the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, as now provided by law, for all necessary travel in returning such prisoner.”

In order to determine what fees shall be paid “as now provided by law” it is necessary to refer to the statute in force at the time of the adoption of the Uniform Criminal Extradition Act of 1935, which defined such fees and expenses. The answer to this question is found in Burns’ R. S. 1933, Section 9-418 which is Section 1 of Chapter 192 of the Acts of 1923 and reads as follows:

“* * * The agent shall return the criminal by the shortest possible route and shall receive the following mileage. Eight cents (8c) for each mile of the first two hundred (200) miles traveled; seven cents (7c)
for each mile of the next three hundred (300) miles traveled, six cents (6c) for each mile of the next five hundred (500) miles and over traveled, and five cents (5c) per mile for each mile traveled by the prisoner while in the custody of the agent. The said agent shall be reimbursed for all money legally expended to obtain possession of said criminal, upon presentation of receipts covering the same, together with a sworn statement by him that such items of expenditure are true and correct.

In support of my interpretation of the above quoted statutes I refer to Lewis' Sutherland Statutory Construction (2d) Vol. II, page 789, wherein the rule is stated as follows:

"There is another form of adoption wherein the reference is, not to any particular statute or part of a statute, but to the law generally which governs a particular subject. The reference in such case means the law as it exists from time to time or at the time the exigency arises to which the law is to be applied." Citing authorities.

Therefore, it is my opinion that Section 9-418, supra, was not repealed by the enactment of the Uniform Criminal Extradition Act of 1935, for the reason that said Act did not attempt to define or specify the specific amount of fees or expenses which should be paid to the officers engaged in returning the fugitive from another state to the county in the State of Indiana where the offense was committed, but on the contrary expressly stated that the fees and expenses should be those authorized "as now provided by law." For this reason there was no conflict between the provisions of the Uniform Criminal Extradition Act and the provisions of Section 9-418, supra, and by construing the statutes in pari materia we have a complete statute upon the question of extradition, including the fees and expenses to be paid to the officer who returns the fugitive.

In this connection I call your attention to the fact that the language contained in Section 9-418, supra, expressly limits the applicability of said section to felony cases, and does not apply to misdemeanors. Therefore, it is necessary
to refer to another statute to determine the fees and expenses to be paid in returning fugitives from another state, who are charged with committing a misdemeanor in the State of Indiana. Under the rule of law above quoted the fees in such cases would be included in the second paragraph of Section 49-1311 above quoted, and by reference this paragraph again brings us to Section 9-418, supra, and under such construction and interpretation the sheriff would be entitled to the same fees and expenses in both felony and misdemeanor cases.

For the reasons above stated it is my opinion that Burns' R. S. 1933, Section 9-418 is still in full force and effect insofar as it applies to fugitives who have fled to another state, notwithstanding the fact that it has been omitted by the compiler of Burns' Replacement, Volume 4, 1942, with a notation that the same has probably been superseded by the enactment of the Uniform Criminal Extradition Act of 1935.

Assuming in answering your third question, that it refers only to the waiver of the issuance of an extraditional warrant by the governor of the state in which the prisoner has been arrested, it is my opinion that the sheriff would be entitled to the same compensation for returning a fugitive from another state, regardless of whether the fugitive waived the issuance of an extraditional warrant and hearing or insisted upon his legal rights that an extraditional warrant be issued by the governor of the state in which he is apprehended and a hearing held upon such warrant.


April 23, 1943.

Hon. Otto K. Jensen,
State Examiner,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I have before me your letter calling attention to Chapter 255 of the Acts of 1943, which was approved by the Governor on