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has been omitted by the compiler of Burns' Replacement, Volume 4, 1942, with a notation that the same has probably been superseded by the enactment of the Uniform Criminal Extradition Act of 1935.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 extradition 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 extradition warrant and hearing or insisted upon his legal rights that an extradition 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
March 10, 1943, and became a law immediately by virtue of Section 4 of the Act which declared "whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage." You submit the following questions:

"1. Does the allowance for prosecuting attorneys, provided by Chapter 255 of the Acts of 1943, constitute such an increase in the salaries of incumbent officers as to come within the prohibition of the constitution of the State of Indiana?

"2. If the incumbent prosecuting attorneys are entitled to the allowance provided by Chapter 255 of the Acts of 1943, from what date should the per annum allowance be computed?"

This Act is brief, containing only four short sections, which, in the consideration of your questions, I think it is appropriate to set out in full. Section 1, after the enacting clause provides as follows:

"That for expenses incurred by the prosecuting attorneys of the several judicial circuits of the State of Indiana by reason of additional duties imposed on such officials by statutes enacted subsequent to the enactment of chapter 140 of the Acts of 1933, the duly elected and qualified prosecuting attorney of each judicial circuit of the state having a population less than seventy thousand according to the last preceding United States census, shall be paid the sum of four hundred dollars per annum. The necessary funds therefor shall be appropriated by the county councils of the respective judicial circuits, and in judicial circuits containing two or more counties, the amount shall be pro rated in the same proportion as the said counties are paying the salaries of such prosecuting attorneys."

Section 2 provides that:

"On and after April 1, 1943, such prosecuting attorneys shall be paid for such expenses in the same manner as they are paid for salaries, excepting that the
amounts shall be due quarterly following the months of March, June, September and December of each year."

Section 3 provides that:

"This act shall expire by limitation at midnight on December 31, 1944."

Section 4, as already stated, states the existence of an emergency for the immediate taking effect of the Act by reason of which it is provided the same shall be in full force and effect from and after its passage.

Acts of 1943, page ——.

The constitutional provision referred to by you is Section 2 of Article 15, which provides as follows:

"When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the general assembly shall not create any office, the tenure of which shall be longer than four (4) years, nor shall the term of office or salary of any officer fixed by this constitution or by law be increased during the term for which such officer was elected or appointed." (Our emphasis.)

I have already had under consideration the provision of Section 29 of Article 4 of the constitution of Indiana which provides that:

"The members of the general assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. * * *"

In a letter, dated January 13, 1943, and addressed to the Hon. Hobart Creighton, Speaker of the House of Representatives, I held that a reasonable reimbursement item for necessary maintenance for members of the General Assembly while on
duty could be effectual and available for the present membership, and in connection with that opinion I called attention to the fact that "official expenses" are not comprehended within the term "compensation" which the Legislature could not increase so as to take effect during the session to which the increase was made. The language of the Constitution, Section 2 of Article 15, supra, is even less general than Section 29 of Article 4. That is, while in Section 29 of Article 4, the general term "compensation" is used, the prohibition in Section 2 of Article 15 applies only to "salaries" as distinguished from "expenses".

Opinions of the Attorney General, 1943, page ——.

I think, by analogy, the above opinion is sufficient to justify and require a negative answer to your question 1.

See, also, Opinions of the Attorney General, 1943, page ——, where, in an opinion rendered to a member of the State Senate, I pointed out the distinction between the terms "fees", "wages", and "salaries". These distinctions were clearly pointed out by the Court in the cases of Cowdin v. Huff, 10 Ind. 83 and Seiler v. State ex rel., 160 Ind. 605, wherein the difference between salaries, fees, and expenses is discussed. The above cases make it very clear that the term "salary" does not include "expense reimbursement", nor, for that matter, does it include fees for particular services. It would therefore seem to follow that additional allowances for expenses are not embraced within the prohibitions of Section 2 of Article 15, supra. This conclusion is supported by many other cases to some of which I will refer.

First, note the case of McCoy v. Handlin (Supreme Court of South Dakota), 153 N. W., beginning at page 361. The provision of the law under consideration in this case was, in effect, as follows: That whenever a judge of the Supreme Court, not legally resident at the state capital, shall have changed his actual residence to the capital, there shall be paid to such judge, in consideration of his increased expenses the fixed sum of $50 a month, payable on the certified vouchers of the judge filed in the office of the state auditor. The constitutional provision involved was Section 2 of Article 21 of the constitution of South Dakota, which provided, after fixing the salaries of numerous officers, as follows:
“They shall receive no fees or perquisites whatever for the performance of any duties connected with their offices. It shall not be competent for the Legislature to increase the salaries of the officers named in this Article except as herein provided.”

This case is important because of the reasoning of the court, a part of which I desire to quote. The Court said, on page 372:

“It must be conceded by all that our Constitution forbids any increase in the salary of any officer named in the sections quoted, through the granting to him of ‘any compensation, perquisite or emoluments for or on account of his office’; but it must be presumed that our Constitution was drafted with the utmost care and precision in the use of language, and with a full understanding of the accepted meaning of every word used therein. With this thought in mind it might be sufficient, for the purposes of this decision, to note that an allowance for ‘expenses’ is not forbidden by any section of the Constitution. The distinction between the term ‘expenses’ and the phrases ‘compensation, perquisite or emoluments for or on account of an office,’ or, ‘for the performance of duties connected with an office,’ is so broad and clear that it cannot be presumed that the framers of the Constitution overlooked the same. The Constitution nowhere forbids the allowance, to any public officer, of expenses incident to the performance of his official duties.”

To the same effect is the case of State ex rel. Weldon v. Thomason (Supreme Court of Tenn.), 221 S. W. 491. In that case the controversy grew out of an allowance of $150 to the members of the Legislature for their expenses in that office. The Section of the Constitution which applied was Section 23 of Article 2 which provided as follows:

“The sum of $4 per day and $4 for every twenty-five miles going to and returning from the seat of government shall be paid the Legislators as a compensation for their services.”
I call your attention to the language of the Court on page 494 where the Court said:

“That the expenses of public officers incurred in the performance of their official duties are distinct from and not included in the compensation allowed them, unless authoritatively so declared, is well established upon reason and authority, and the apparently uniform consensus of opinion in those cases wherein the question has been considered is to the effect that constitutional prohibitions against change in the compensation fixed for public officers are not intended to be construed as limitations upon legislative authority to provide for the expenses of such officials.”

See, also the case of Kirkwood v. Soto, (Supreme Court of Cal.) 25 Pac. 488.

The case of State ex rel. Payne v. Reeves, State Auditor, (Supreme Court of South Dakota) reported in 184 N. W. at page 993, follows the case of McCoy v. Handlin, already referred to. I desire to quote from page 998:

“We hold that the decision in McCoy v. Handlin has settled the law in this state on all the questions which it decided, not under the doctrine of stare decisis, but because the reasoning of the court in that decision is unanswerable.

“The questions now before this court, as constituted for the purposes of this proceeding, are the same as those before the court in McCoy v. Handlin, except that in this proceeding the amount of the allowance to each of the judges is $150 per month instead of $50. Does this fact require, or does it justify, a different decision? Applying the principles that are well settled in deciding constitutional questions, we are convinced that it does not. The Supreme Court of Tennessee, in State v. Thomason, 142 Tenn. 527, 221 S. W. 491, where an expense allowance in a lump sum was attacked on the ground that it was unconstitutional, said:

"It is urged that to sustain the power of the Legislature to make appropriations of the character here questioned will authorize or result in similar ones of
larger amount. It may likewise be plausibly argued that in its control of the public finances the Legislature may authorize unwise and extravagant expenditures, but these insistences address themselves to the discretion of the Legislature in the proper exercise of its representative power, and are not pertinent to the judicial determination of the existence of that power. The exclusive control of the expenditure of the public moneys is vested in the legislative branch of the government, and is the subject of limitation by the courts only so far as provided by the Constitution.

"Each member of the Legislature is required to take the same oath of office as is taken by each of the judges of this court, which is to support the Constitution of the United States and of the state of South Dakota. We cannot, at least in a doubtful case, presume that the members of the Legislature have intentionally violated their oaths of office.

"Whether the expense allowance of $150 per month to each judge of the Supreme Court is or is not excessive is a question depending to some extent upon the standard of living of the judges of the Supreme Court. Those judges are entitled under the Constitution to the salaries fixed by the Constitution, and they are entitled to such allowance for expenses as will enable them to live in a manner becoming the judges of the Supreme Court of a great state. The legislators may well have thought it the part of wisdom to make provision for the expenses of the judges in such an amount that it would not be necessary for them to take from their inadequate salaries the money necessary to pay such expenses. This court will not presume that the matter of the amount and the necessity for these expenses was not made the subject of proper investigation by the Legislature, and its determination as to the facts cannot, under any principle of constitutional law, be disturbed by this court unless the amount allowed is so plainly and palpably in excess of any amount of expenses which could possibly be incurred by the judges in the discharge of their official duties as to show without evidence or argument, beyond all reasonable doubt,
that the Legislature intended to increase the salary of the judges and not to provide for the payment of expenses incident to the discharge of official duties. The question is not what this court might conclude would be a reasonable amount to allow the judges for expenses incurred in the discharge of their official duties, if it were authorized to fix such allowance, but whether the amount fixed by the Legislature is plainly and palpably in excess of any amount which the judges could possibly incur.

To the effect the Court will not sit in judgment on the motives of the Legislature, attention is called to the case of Parker, Clerk, et al. v. State, ex rel. Powell, 132 Ind. 419, at page 422, where the Court said:

"The court can, in a proper case, determine whether a given statute is constitutional or unconstitutional, but it can not sit in judgment upon the motives of the Legislature in its enactment. Cooley on Constitutional Limitations, 222."

I think, from a consideration of the foregoing cases, it must be evident that provisions for the payment of official expenses of officers do not violate constitutional provisions limiting salary increases. The only remaining question, it seems to me, is the question as to whether that allowance for expenses can be made in a lump sum. On that subject, the Court in the above case of McCoy v. Handlin had this to say:

"This brings us to a discussion of what we deem the only question upon the real merits of this case—the allowance of a lump sum instead of an appropriation to reimburse for actual moneys expended and itemized. The Constitution of this state, as well as the Constitutions of nearly all the other states, contains no provision requiring the judges of the appellate court to reside at the capital. In many states the judges do not reside at the capital; in one at least they are required to reside in the district from which selected. The territorial Supreme Court of Dakota territory was composed of the several district judges who held stated terms of appellate court at the capital, and were en-
gaged at other times in the trial of cases in the several
districts. The framers of our Constitution knew of
these facts and undoubtedly intentionally so worded
the Constitution as to allow the judges of this court to
retain their actual, as they expressly allowed them to
retain their legal, residences at their former homes.

* * * If the judges of this court continued to reside
at the places of their legal residence, no question, under
any authority, could be raised as to the constitution-
ality of a law which appropriated money to reimburse
them for the actual expenses incident to their travel to
and from, and for their hotel bills while at the capital.
Such an allowance would leave to the judges clear, as
compensation for their official services, the salary pro-
vided by law, and no one could, and we apprehend no
one would, say that they received perquisites or emolu-
ments. In view of the number of trips that would have
to be made to the capital and the number of days that
would have to be spent there, it is clear that the aggre-
gate of such expenses would be in excess of $600 per
year for each judge so living away from the capital.
Let us suppose that the several judges of this court
were living at the places of their legal residence, and
the Legislature were asked to enact legislation to re-
imburse them for their actual expenses incurred in
going to and remaining at the capital, which expenses
could, from their nature, be itemized. Is it possible
that such Legislature could not say to the judges of
this court:

"We believe that, owing to the fact that the duties
of your office require your presence at the capital a
considerable portion of the time, you can better dis-
charge the duties of such office if you will reside at
the capital; hence in the furtherance of a sound public
policy, we ask you to make your actual residence at
the capital, and, in order that you may do so without
financial loss to you, we will, in place of paying your
expenses of traveling to and boarding at the capital,
while living at your places of legal residence, allow
you such a sum as will cover the extra expense incident
to your moving to and living at the capital."
"Would not the allowance in the one case be as much an allowance for expenses, and in no sense a perquisite or emolument, as in the other? Certainly it would; the only difference being that in the one case the law could provide for the expenses to be itemized and the exact amount paid, while in the other, from the very nature of things, it would be necessary for the Legislature to estimate the reasonable and probable amount of such expenses and appropriate a lump sum therefor. * * * The one allowance is just as clearly for expenses as would be the other, and is therefore as clearly permissible under the Constitution as the other. The Legislature had the right, if deemed best as a matter of public policy, to enact the law which it did enact, provided it did not make the allowance greater than the expenses it was designated to cover; and it was for such Legislature to determine a reasonable and proper amount." (Our emphasis.)

See, also, Bowman v. County Commissioners of Harford County (Maryland), 171 Atl. 48.

It seems to me that the reasoning of the several courts in the above cases is sound and that there is no constitutional objection to making an allowance for expenses in a lump sum. The only possible objection that there could be to such a provision would be where it could be shown that there is no reasonable relation to the actual expenses in the amount allowed. After all, as pointed out earlier in this opinion, the question primarily is for the Legislature whose motives ordinarily will not be inquired into by the Courts. The presumption is that the Legislature has considered the probabilities of the case and has found the amounts allowed to be reasonable and just. In my opinion, your question numbered 1 should be answered in the negative.

In answer to your second question, while Chapter 255 contained an emergency clause requiring the immediate taking effect of the Act upon its passage, which was March 10, 1943, I think the restrictive language of Section 2 is such as to show that the allowance provided by Chapter 255 of the Acts of 1943 should be computed from April 1, 1943. Note the language of Section 2 as follows:
"On and after April 1, 1943, such prosecuting attorneys shall be paid for such expenses in the same manner as they are paid for salaries, excepting that the amounts shall be due quarterly following the months of March, June, September and December of each year."

STATE SOLDIERS' AND SAILORS' MONUMENT BOARD:
Whether the budget of Soldiers' and Sailors' Monument Board is under control of Adjutant General; whether the Board has authority to authorize one certain member to sign vouchers.

April 26, 1943.

Mr. Wilson C. Oren,
Secretary and Treasurer of Board,
Soldiers and Sailors Monument,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter concerning the legal status of the Board of Control of the State Soldiers' and Sailors' Monument. You submit the following questions:

"1. What are the duties and responsibilities of the members of the Board?

"2. Is the budget of the Soldiers and Sailors Monument under the jurisdiction and control of the Adjutant General of the State of Indiana, or the Board of Control of said Soldiers and Sailors Monument?

"3. Must all vouchers for payment be approved by the Board, before payment can be made?

"4. Has the Board the authority to authorize one certain member of the Board to sign all vouchers, or does the law give this authority to the superintendent?

"5. Must the books and records be kept at the Monument or at the office of the Adjutant General?

"6. What jurisdiction, if any has the Adjutant General over the property known as the Soldiers and Sailors Monument, Indianapolis, Indiana?"