fixed upon a per diem basis it is my opinion that the constitutional inhibitions above quoted do not apply and that the legislature has the right to increase the per diem amount which may be paid to any such public officer.

Cowdin v. Huff, 10 Ind. 83;
Seiler v. State ex rel., 160 Ind. 605-618;
Benedict v. U. S., 176 U. S. 357;
Lobrano v. Police, etc., 150 La. 14, 90 So. 423.

In conclusion, it is my opinion that the increase in salary provided for in Chapter 305 of the Acts of 1943 is only valid and constitutional as applied to county surveyors who will assume office January 1, 1945, except as above stated.

STATE BOARD OF TAX COMMISSIONERS: Intangibles tax, whether tax board has authority to order refunds of intangibles taxes.

August 23, 1943.

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated August 12, 1943, which reads as follows:

"We would appreciate an official opinion from you determining the following questions:

"1. Does the State Board of Tax Commissioners have the power or right to approve claims for the refund of intangibles tax that has been paid under the provisions of Chapter 81, of the Acts of 1933, usually designated as ‘The Intangibles Tax Act’?

"2. If it does have such power and right, what are the limitations, if any, upon the exercise of such power, or in other words, during what period of time after the payment of such tax does the power exist to approve a claim for refund?"
"3. If the power and right to approve claims for the refund of intangibles tax exists, upon what legal ground or grounds should the right be exercised?

"4. Where intangibles tax has been paid by a charitable organization that is domiciled in the State of Indiana, without protest, and such tax has been distributed, would such charitable organization be entitled to a refund of the tax upon the ground that as the owner of intangibles, it is not subject to the payment of intangibles tax?

"We would appreciate your official opinion at your earliest convenience."

It is firmly established in Indiana that the State Board of Tax Commissioners is a board created by statute and possesses only such powers as are expressly conferred upon it by statute and are necessarily incident to such granted power.

State Board, etc. v. McDaniel, 199 Ind. 708-716;
State Board, etc. v. Belt, etc., 191 Ind. 282-285;
Chicago, etc. v. Public Service Com., — Ind. —,
49 N. E. (2d) 341.

A careful examination of the Intangible Tax Act, Chapter 81, Acts 1933, as amended by Chapter 294, Acts 1935, and Chapter 134, Acts 1943, being Burns' R. S. Sections 64-901 to 64-940, inclusive, fails to disclose any section, or provision, in the Act which authorizes, or empowers the State Board of Tax Commissioners to grant, or approve claims for the refund of intangible taxes, which have been paid under, and pursuant to, the provisions of the Act, except the authority granted in Sections 6 and 7 of the Act (Burns' R. S. Section 64-905, 64-906 and 64-907).

Section 64-905, Burns' 1943 Supplement (Sec. 5, Chapter 81, Acts 1933, as amended by Sec. 2, Chapter 294, Acts 1935) provides that:

"Before the time the tax for any period is due under the terms of this act, and before the payment of such tax, the owner of any intangible who shall desire or who shall be required by the terms of this act to have the actual value thereof determined or redetermined for the purpose of computing and/or measuring the
tax imposed in respect thereof, may apply to the commission or to the county assessor of the county in this state where such owner resides or is domiciled for such valuation. * * *.*

Section 64-906, Burns' 1943 Supplement (Sec. 6, Chapter 81, Acts 1933, as amended by Sec. 3, Chapter 294, Acts 1935) provides the procedure to be followed in making the valuation authorized by the preceding section.

Section 64-907 (Sec. 7, Chapter 81, Acts 1933) provides:

"Any person aggrieved by any order, judgment or determination of the commission, after paying the tax, may, within thirty (30) days from the entry of such order, judgment or determination, appeal therefrom to the circuit court of the county in which such person resides. Such cause shall be tried de novo by the court without a jury on petition filed in such court by the taxpayer so appealing and summons shall issue on such petition to and be served on the commission as in other civil actions. Either party to such suit may appeal to the Appellate or Supreme Court of the state of Indiana in the same manner as appeals are taken in civil actions. Upon the final determination of such suit, the court may enter judgment for the refund of any tax paid in excess of that properly required by law, or he may render judgment against the petitioner for any deficiency in tax found due."

As heretofore stated, this is the only provision contained in the Intangibles Tax Act which authorizes a refund of any intangible taxes which have been paid. In order to authorize a refund under this section of the Act the procedure prescribed in the two preceding sections must have been strictly followed and a judgment duly rendered by a court of competent jurisdiction ordering such refund.

The State Board of Tax Commissioners possesses no other power or authority to order, grant or allow a claim for refund of intangible tax which has been paid, except as above set forth.

The foregoing fully answers questions 1, 2 and 3, stated in your letter.
Answering your fourth and final question, I call your attention to the well settled principle of law to the effect that where taxes are voluntarily paid they cannot be recovered except as provided by some statute.

Board, etc. v. Ruckman, 57 Ind. 96;
Spring, etc. v. State, 198 Ind. 620;
Culbertson v. Board, etc., 208 Ind. 22;
City of Indianapolis, etc. v. Morris, 25 Ind. App. 409;
Cincinnati, etc. v. Wayne Twp., 55 Ind. App. 533.

Your letter states that a charitable organization domiciled in Indiana has voluntarily and without protest paid an intangible tax, which tax has been distributed as provided by the Intangible Tax Act. Under such a state of facts and the law as declared by the foregoing authorities, it is my opinion that such tax cannot be refunded even though the taxpayer was exempt from the payment of intangible taxes, for the reason that there is no statute authorizing such a refund. Therefore, the proper answer to your last question is in the negative. To afford relief in such cases the legislature should provide the necessary relief.

STATE BOARD OF TAX COMMISSIONERS: Tax limitation Act of 1937; power of County Board of Tax Adjustment and State Board of Tax Commissioners.

August 24, 1943.

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated August 3, 1943, which reads as follows:

"We would appreciate the receipt of an official opinion concerning the following legal question.

"The Tax Limitation Act (Ch. 119 of Acts of 1937, Secs. 64-307 to 64-318, Supp. to Burns' R. S. 1933) limits the total tax rate for all purposes in incorporated