hundred thousand (200,000), as shown by the last preceding United States census, or in any township where the assessed valuation, as shown by the last preceding assessment, amounts to thirty million dollars ($30,000,000) of taxables or more, shall receive for the time he is necessarily engaged in the discharge of his official duties, the annual salary of three thousand dollars ($3,000), and such payment shall be deemed payment in full for all services of whatever kind he shall perform as such assessor, he being required to keep his office open every working day in the year.”

In view of the fact that Washington Township has a population of 42,978 and a valuation in excess of $93,000,000.00, the township assessor of Washington Township clearly comes within the provisions of the above quoted statute and it is my opinion that his salary is governed by this statute.

I have carefully read and considered Burns' R. S. Pocket Supplement, Section 64-1005, which is Section 1 of Chapter 215, Acts 1935, and I am unable to find any language in this statute which would govern the salary of the assessor of Washington Township, Marion County, Indiana. In conclusion, it is my opinion that the salary of the assessor of Washington Township, Marion County, Indiana, is controlled by the provisions of Section 64,1003, supra.

STATE BOARD OF ACCOUNTS: Change of venue, fees in change of venue cases.

October 5, 1943.

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

Dear Mr. Jensen:

This will acknowledge receipt of your letter dated July 16, 1943, relative to the taxation of costs in change of venue cases, which reads as follows:
"Section 2-1417 Burns’ R. S. 1933, provides that, in all cases, civil or criminal where there has been or shall be a change of venue from one county to another, the county from which such change of venue has been or shall be taken shall pay to the county to which such change of venue has been or shall be taken all expenses as has been or shall be incurred by the county to which said change of venue has been or shall be taken, including in criminal cases the expense of keeping the prisoner, if any, and, in all cases, the fees paid by such county to the jury trying the cause and any of the regular panel of jurors not engaged in such trial, allowances to bailiffs and all other expenses necessarily incurred by such county in consequence of such change of venue and the trial of such cause.

"In former years court bailiffs and court reporters were paid for their services upon a per diem basis; however, at the present time in most counties these court employees are paid on a salary basis. Prior to the enactment of the salary law of 1933 the clerk and the sheriff were allowed and paid a per diem for attendance upon courts. The Attorney General, in an opinion under date of January 17, 1938, (Opinions 1938, page 21), held that the clerk is entitled to collect a per diem for attending court in change of venue cases.

"In addition to the payment of the salaries of officers and employees of the court, the county incurs expense in the operation of its courts on account of heat, light and janitor service.

"In the various counties of the state there is a decided lack of uniformity in the items of expense included in claims for expenses on account of the expense incurred in cases pending on change of venue and, in order to secure a more uniform practice, we would like to have your interpretation of the statute as to the items of expense to be included in the claim, with particular reference to the kind of expenses as hereinbefore noted.

"It will be observed that said Section 2-1417 Burns’ R. S., 1933, contains the provision that—'the county
from which such change of venue has been or shall be taken, shall pay to the county to which such change of venue has been or shall be taken, the expenses incurred on account thereof, and later, in the section, requires the county auditor to transmit the duplicate of the allowance and claim for expenses to the county from which such expenses are due. The section of the statute does not seem to contemplate the possibility of a second change of venue in the same case.

"We would like to have your opinion on whether the claim of a county for expenses of a case pending on a second change of venue should be made against the county from which the case immediately came on change of venue, or against the county where the case was originally filed and from which a change of venue was first taken."

Burns' Pocket Supp. 1943, Section 2-1417, reads as follows:

"In all cases, civil or criminal, where there has been or shall be a change of venue from one county to another, the county from which such change of venue has been or shall be taken shall pay to the county to which such change of venue has been or shall be taken all such expenses as have been or shall be incurred by the county to which said change of venue has been or shall be taken, including in criminal cases the expense of keeping the prisoner, if any, and in all cases the fees paid by such county to the jury trying the cause and any of the regular panel of jurors not engaged in such trial, allowances to bailiffs and all other expenses necessarily incurred by such county in consequence of such change of venue and the trial of such cause; such expenses shall be audited and allowed by the court to which such cases have been or shall be venued and such allowance shall be by such court certified in duplicate to the auditor of said county, who shall retain one of said certificates of allowance in his office and shall transmit by registered mail the duplicate thereof to the auditor of the county from which such expenses are due, and such duplicate certificate of allowance shall be by the auditor of said debtor
county entered as a claim against such county on the claim docket in his office for allowance by the board of commissioners of said county at their next regular or special session. The regular judge of the court trying any cause on a change of venue shall be allowed the sum of five dollars ($5.00) per day or any part of a day for the time actually served in trying such cause, which shall be paid by the county from which such change of venue was originally taken the same as the other expenses of such trial are paid; such per diem shall be paid to the judge of the court so trying said cause and shall be in addition to the regular salary paid to said judge, provided, however, that the provisions of this act shall not apply to any regular judge, receiving a salary greater than the statutory salary of forty (forty) two hundred dollars ($4,200), paid by the state. Such certificate of allowance shall be prima facie evidence of the correctness of such claim, and no item nor items (items) of expense therein certified to be correct shall be by such board of commissioners disallowed in whole or in part unless the correctness thereof be challenged by the verified statement of any taxpayer of the county liable for the payment thereof and such item or items of expense be proved incorrect, and in the event such claim is by said board of commissioners disallowed, in whole or in part, it shall be the duty of the auditor of said county to immediately notify the auditor of the creditor county of such action, whose duty it shall be to take such action as may in his discretion be necessary to safeguard the interest of his county in said matter."

It will be noted that the above language expressly provides that the county from which the change of venue has been taken, in either a civil or criminal cause, shall pay all such expenses as are incurred by the county to which the change of venue is taken, including, in criminal cases, (1) the expense of keeping the prisoner, if any; (2) in all cases, the fees paid by such county to the jury trying the cause and any of the regular panel of jurors not engaged in such trial; (3) allowances to bailiffs; (4) all other expenses necessarily incurred
by such county in consequence of such change of venue and
the trial of such cause; and (5) the sum of $5.00 per day,
or any part thereof, allowance to the regular judge for the
time actually served in trying such cause. The statute then
proceeds to detail how the expenses shall be audited, allowed
and certified by the trial court to the auditor of the county
from which the change of venue was taken and paid by such
county.

Since the enactment of Section 2-1417 (Chapter 210, Acts
1913) the Legislature has enacted Burns' 1933, Section 4-3107
(Chapter 146, Acts 1921) authorizing the judge of the Cir-
cuit, Superior, Criminal, Probate and Juvenile Courts in the
state of Indiana, to appoint a bailiff and riding bailiff for his
court, whose per diem shall be fixed by the court, and paid
out of the county treasury, and Section 4-3507 (Chapter 80,
Acts 1921) providing that the salary of all official court re-
porters shall be fixed by the judges of the respective courts,
with the approval of the board of county commissioners, and
payable monthly on the last day of each calendar month out
of the county treasury.

As stated in your letter, in most counties of the state the
bailiffs and court reporters are now allowed and paid a
monthly salary pursuant to the provisions of Sections 4-3107
and 4-3507, supra, whereas, at the time of the enactment of
Section 2-1417, supra, such court employees were paid only
for services actually rendered by them and upon a per diem
basis.

In all counties wherein the court bailiff and court reporter
are employed, allowed and paid a salary upon a monthly
basis it is my opinion that no part of their salaries or per
diem are proper items to be included in the costs to be charged
against the county from which a change of venue has been
taken in either a civil or criminal cause. In counties wherein
the bailiff is still employed, and paid upon a per diem basis,
only for services actually rendered, it is my opinion that
such per diem allowance to the bailiff is a proper item to be
included in the costs to be charged against the county from
which the change of venue was taken, for the day, or days,
actually occupied in the trial of said cause.

In this connection I call your attention to the language of
the Supreme Court of Indiana in the case of Monroe v. State
(1901), 157 Ind. 45, wherein the court was considering the right of a juror to receive pay for night service in a case where the jury had been kept together under the order of court pending the trial. On page 48 of 157 Ind. the court says:

"When the statute says that the fees of jurors shall be $2 per day, while in actual attendance, it contemplates a calendar day of twenty-four hours, if continuous attendance and service are required, extending from the opening of the court on one day until its opening on the next. If the juror serves but ten minutes of the day, he is nevertheless entitled to his $2. * * * There is absolutely no authority for splitting the calendar day into parts, as was done here, and counting each part, thus arbitrarily created, as an entire judicial day. * * * The statute intends nothing of the sort."

Again, in the case of Board etc. v. Board etc. (1901), 27 Ind. App. 378, the Appellate Court of Indiana was construing Burns' R. S. 1901, Sec. 418, which was the predecessor statute of Sec. 2-1417, now under consideration. In this case, the trial court had taxed and charged against the county from which the change of venue had been taken, a per diem allowance to the bailiff for his attendance and waiting upon the jury while deliberating of their verdict in their room from 6:00 P. M., March 2, to 6:00 A. M., March 3, as one day. On page 406 of 27 Ind. App. the court says:

"* * * This allowance was wholly unauthorized. The bailiff was allowed for his attendance on March 2nd and on March 3rd, in another conclusion which we have approved. The statute limiting the allowance to the bailiff to $2.08 per day contemplates calendar days, each of which is twenty-four hours long. For any and all service performed during a calendar day he can be allowed no more than the per diem compensation so provided. * * *"

A court bailiff is required to be present on all days when court is in session in order to perform the duties and services for which he is employed, and during trial, especially a jury trial, the entire time of the bailiff is occupied performing his duties attending to the jury. During the pendency of a
cause upon change of venue, and during the period the issues in such cause are formed, other local business is transacted in such court on the same days, and upon such days, and because of his attendance in court on the same days, the bailiff is entitled to his per diem allowance, irrespective of any change of venue business transacted in the same court, and applying the rule declared in the above authorities, it is my opinion that any item of allowance for the per diem of a court bailiff would only be proper for the days actually consumed in the trial and not otherwise.

With reference to items for janitor service, light and heat, it is my opinion that such items are not proper charges to be included in the costs charged against the county from which the cause was venued. The court room is a necessary and component part of the court house, which is a public building, and it is the duty of the county commissioners of the county to provide and furnish light, heat and janitor service for the court at all times. Therefore, such items would be furnished and provided regardless of any cause pending on change of venue, and for this reason I do not believe such items are proper items to be included in the costs charged against the county from which a cause has been venued.

Burns' R. S. 1933, Section 49-1302, providing for the taxation and collection of fees by clerks of the circuit courts, provides in part as follows:

"For attending court, in regular, special, or adjourned term, or in chambers, in person or by deputy, per day, to be paid from the county treasurer, two dollars ($2.00)."

Burns' R. S. 1943 Pocket Supplement, Section 49-1007, provides in part as follows:

"The salary herein provided for clerks of the circuit courts shall be in full for all services as clerks of the circuit courts and as ex officio clerks of all other courts in which said clerks are required by law to officiate, including services attending such courts, except as herein otherwise provided. * * * All fees for preparing the transcript upon change of venue from the county shall accrue to and be retained by the clerk of
the county from which the change of venue is taken, and all other clerks’ fees taxed on such change of venue shall accrue to the clerk of the circuit court of the county to which such change of venue is taken and shall there be taxed and retained by the clerk of such circuit court."

Under the express provisions of the above quoted statutes the per diem fees required to be taxed by the clerk for his attendance upon the court during the trial, are proper items of cost to be charged against the county from which said cause was venued. (See Opinions of the Attorney General, 1938, p. 21.)

In addition to the items above mentioned, I call your attention to the case of Knox County Council v. State ex rel. McCormick, 217 Ind. 493, wherein the Supreme Court of Indiana held that in a criminal case the court to which said cause is found and tried has a right, and it is its duty, to appoint counsel for a defendant who is a pauper, and such court also has the right to make an allowance to such counsel for his services and certify such allowance to the county from which said cause was venued, and it is the duty of such county to pay the same.

I also call your attention to the provisions of the statute relative to special venires, Burns’ R. S. 1933, Section 4-3309, which may be ordered by the court upon its own motion, or upon the motion of either party, to serve as jurors, or to fill the regular jury panel for the trial of any cause. Burns’ R. S., Section 4-3305, requires the jury commissioner of opposite politics from that of the clerk to be present at each and every time the box containing the names of the persons selected for jury service is to be opened. Therefore, whenever a special venire is ordered for the trial of any case pending on the change of venue the services of a jury commissioner are required.

Burns’ R. S. 1933, Section 4-3303, provides that each jury commissioner shall be allowed by the court the sum of $3.00 per day for the time actually employed in the performance of his duties as jury commissioner. It is my opinion, that if the services of a jury commissioner have been required in the selection of a jury for the trial of a case pending upon
change of venue the fees, if any, of such jury commissioner so required and allowed by the court in such case, are a proper item of expense to be taxed and charged against the county from which said cause was venued.

Burns' R. S. 1933, Section 49-1311, and Burns' Pocket Supp., Section 49-1008, provide for the taxation of certain fees for the sheriff in summoning jurors and mileage fees when the sheriff furnishes his own automobile in such instances; and such specific items of fees and costs are proper items of costs to be taxed by the clerk against the county from which said cause has been venued.

In addition to the particular items above mentioned there may be other items of fees or costs which a particular section of a statute expressly authorizes to be taxed as costs, and in the case of any such specific item which may not be mentioned in this opinion, where the statute requires the same to be taxed as an item of cost, then and in such event, any such item should also be included in the costs to be charged against the county from which the cause was venued.

Answering your last question, it is my opinion that in cases where a second change of venue has been taken in a cause, the court in which the cause is tried and disposed of should certify the claim for expense contemplated by Section 2-1417, direct to the county in which the cause originated, and from which the change of venue was first taken, and not to the intermediate county to which the cause was venued and from which the second change of venue was taken to the trial county.

SECRETARY OF STATE: Corporations, fee chargeable to a foreign agricultural cooperative corporation for increase in proportion of its capital stock.

Mr. Warren Day,
Chief Corporation Counsel,
Office of Secretary of State,
Indianapolis, Indiana.

Dear Mr. Day:

I have your letter of the 24th in which you request an official opinion upon the following question: