

latter phrase is extended in meaning by the inclusion of other institutions set out in this section. And it is true that among such included institutions or duties is "the operation of all agencies and institutions caring for * * aged adults, * *". Although the section is ambiguous, it might be asserted that the last above quoted phrase, standing alone, gives some ground for holding that the State Board has supervisory control over institutions for the care of the aged. However, it is necessary to construe Section 3(b) and 3(d) together. The latter section draws a dividing line between institutions supported in whole or in part by public funds and those privately owned and operated. In the first instance, the State Department may "*supervise*". In the second case, the State Department may "*inspect* or have inspected". The State Board in making such inspections, may make recommendations and report facts to the prosecuting attorney for investigation but it is clear that the State Board has no supervisory control over privately owned agencies.

In the face of the clear language used in Section 3(d), sound rules of construction require that any ambiguous language in Section 3(b) be construed in such a way as not to contradict or conflict with the meaning of Section 3(d). In view of what I have said about the lack of supervisory power in the State Board, it is unnecessary to answer your questions seriatim.

STATE BOARD OF ACCOUNTS: State Examiner: Special judges—whether special judges on a change of venue from the regular judge is entitled to more than one per diem for actions in two cases on the same day; whether the same rule applies where the services are in two different courts of the same county but on the same date.

May 1, 1942.

Mr. Otto K. Jensen,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein you refer to Section 2-1416, Burns' Ind. St. Ann. Supp. 1941, Acts 1941, Chap. 200, Section

1, p. 617 which provides the manner in which a special judge shall be paid, and ask the following question:

“Is a person, who serves as special judge by appointment on a change of venue from the regular judge in two or more cases on the same calendar day, entitled to a separate per diem for each case?”

The statute referred to 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, to be paid as follows: On the presentation of an order made by the court for the allowance, specifying the days of service and the number of miles necessarily traveled each day of service, supported by the affidavit of the special judge that he actually served such days and necessarily traveled such number of miles each day; and an affidavit of the regular judge stating the reason for the services of such special judge, 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.”

Sec. 2-1416, *supra*.

The question raised was before the Supreme Court of Indiana in the case of *City of Columbus v. Rynerson* (1925), 195 Ind. 620 involving a statute substantially similar to Section 2-1416, *supra*, except that the amount allowed was five dollars per day instead of ten dollars. In that case a complaint

had been filed against one who had served as special judge to recover money which had been paid to him for his services. It was alleged that on one day he acted in two cases for which he claimed and drew \$10; that on another day he acted in three cases, for which he claimed and drew \$15 and that on still another day he acted in five cases for which he drew \$25. It was alleged that he had been overpaid the sum of \$35. A demurrer for want of facts was sustained, in the memoranda to which demurrer it was urged that appellee was entitled to the named pay of \$5 per day for services in each particular case in which he was appointed. The appeal challenged this ruling. The Supreme Court considered the statutes involved and said of the act which fixed his compensation:

“The signification of the statute is that the compensation to be allowed special judges is limited, the limit being the sum of five dollars per day for the time actually served, and in going and returning.”

City of Columbus v. Rynerson, *supra*, p. 629.

The judgment of the trial court was reversed by the Supreme Court. This case has not been overruled and its reasoning and the result reached are applicable to the situation about which you inquire, except that the rate of compensation is \$10 per day.

Your first question is answered in the negative.

You also ask if the same answer would be given if the services as special judge were rendered in different courts within the county.

It will be noted that the statute makes provision for ultimate payment of the compensation of the person acting as special judge out of the State treasury, if his services are required in a court because of the reasons named in the statute. It provides that payment shall be made out of the county treasury “for the time being,” and credit therefor given the county in making settlement with the treasurer of state. In allowing the county credit for amounts paid to a special judge, the General Assembly intended to authorize a county to obtain credit for one payment to one person for a single day’s service in the court in which he may have sat as special judge. The statute contemplates that one who serves as special judge in a court of the county, for the reasons

named, shall have a day's pay for his services even though his services are required for only a part of the day. The Court's interpretation of the similar statutory provision considered in *City of Columbus v. Rynerson*, *supra*, indicates that payment is to be made on the basis of days served in a court as special judge and not according to the number of cases heard.

But there is nothing in Section 2-1416, in the statute involved in the case of *City of Columbus v. Rynerson*, or in the Supreme Court's interpretation of that statute which indicates that one who serves as special judge in two or more courts on a single day shall not be paid for a day's service in each court. That the General Assembly has the authority to so limit the compensation cannot be denied, but it cannot be said that the General Assembly has so exercised that authority. The failure to so limit the compensation cannot be said to be unreasonable or inconsistent when considered in connection with the fact that specific provision is made, and upheld by judicial decision, for the payment of compensation for serving as a special judge to a duly elected or appointed judge of another court who is receiving the regularly authorized salary incident to the office which he holds.

James V. Cammack, 139 Ky. 223, 129 S. W. 582;
In re Judges' Compensation, 4 Pa. Co. 596.

Your second question is answered in the negative.