It will be noted from the above quoted language that any person who is a resident of the State of Indiana and is the owner of real estate liable for taxation within the State of Indiana upon which there is a mortgage indebtedness may claim the benefits of the statute. Estates held by husband and wife by the entireties constitute a somewhat peculiar legal situation. The estate thereby created is as already indicated by the entireties, one of the distinguishing features of which is that each party owns the entire estate subject to the limitation that, in disposing of it both parties must act jointly and that neither party may encumber it without the consent of the other. However, in my opinion, this limitation is not sufficient to deprive the wife of her right to claim a mortgage exemption upon the property so held, for in point of fact she is as much the owner of the property as the husband is the owner of the property. If the husband may deprive her of claiming an exemption by himself taking a full exemption upon his own privately owned real estate, it would seem to me that the purpose of the statute is defeated since to do so would be to deprive an owner of real estate encumbered by mortgage of the right to claim such exemption.

Under the circumstances set out in your letter, it is my opinion that your question should be answered in the affirmative.

STATE BOARD OF ACCOUNTS: Whether special judges of the Marion County Municipal Court may be paid without appropriation.

January 29, 1942.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to the provisions of Section 4-2516 of Burns' Indiana Statutes Annotated 1933, which provides as follows:

"The judges of said municipal court may interchange and hold court for each other and perform each
other's duties when requested so to do. No change of
venue (from the county) shall be taken from such
court, but any defendant may take a change of venue
from any judge thereof and a special judge may be
appointed as provided by law relating to changes of
venue from the judges of the circuit court. Such a
special judge, if he be not a judge of the municipal
court or other court, shall receive the same pay for his
services as special judges appointed in circuit courts
receive and shall be paid by the county. Each judge
shall be entitled to a vacation of one (1) month each
year, and, during such time, a judge pro tempore may
be appointed by such municipal judge, and he shall be
paid by the county at the same rate as the municipal
judge. Judges pro tempore may be appointed also for
the same cause as such appointments are made in the
circuit courts and shall receive the same compensation
as now provided by law for special judges in the cir-
cuit court.”

This Section is a part of the Municipal Court Act applying
only to Marion County.

You submit the following question:

“Is the auditor authorized to issue a warrant in pay-
ment of an allowance for service as special judge of
the municipal court without a sufficient appropriation
being available for such purpose:

(a) If such special judge is selected by agreement
of the parties or nominated by the court;

(b) If such special judge is selected from nomina-
tions made by the Clerk of the Supreme Court?”

Section 26-518 of Burns' Indiana Statutes Annotated 1933
sets out the different items to be covered in the estimates
required to be filed by the clerk of every court of a given
county of the amount of money required to operate the court
for the ensuing year, as follows:

“First. Salary of the judge, or so much thereof as
is payable by authority of law out of the county
treasury.
Second. Salary of probate commissioner, if any; expenses of probate commissioner, if any, itemizing the same.

Third. The estimated amount required for bailiff hire.

Fourth. The estimated amount of jury fees.

Fifth. The estimated amount of witness fees that by law may be paid out of the county treasury.

Sixth. The estimated amount required for pay of special judges.

Seventh. The estimated amount of all other expenses of the court itemized and specified with the greatest particularity practicable.” (Our italics.)

As I understand from your letter an estimate followed by an appropriation was made for the pay of judges pro tempore of said municipal court but that there was no estimate filed and no appropriation made covering the cost of special judges authorized to be appointed under the provisions of Section 4-2516, supra. This gives rise to your question as already copied herein and which, it seems to me, will have to be answered in the negative.

Section 26-522 of Burns’ Indiana Statutes Annotated 1933 sets out specifically the items for which warrants may be issued by the county auditor without an appropriation, and in express language provides that in all other instances no warrant shall be drawn upon, or money paid out of, the county treasury unless an appropriation by the county council therefore has been made for the calendar year in which the payment is made, and which appropriation remains unexhausted. The item of compensation for special judges of the municipal court is not in the list for which warrants may be drawn without an appropriation and, therefore, it seems to me that the section above referred to is strictly applicable. There is no doubt, however, that the statute providing for the compensation of special judges in the municipal court operates to create a liability of the county for such compensation and the correct method, in my judgment, is to first have the appropriation made. Your question is, therefore, answered in the negative.
I do not think that a special judge selected from nominations made by the clerk of the Supreme Court would be in any other or different class. The rule would apply to both classes.

INDIANA STATE FAIR BOARD: Who has control of the operation of the Indiana State Fair?

January 29, 1942.

Mr. J. B. Cummins,
President, Indiana State Fair Board,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of a certain resolution passed by your Board on January 8, 1942, which resolution, by its own terms, constitutes a formal request for an official opinion of the Attorney General. Without setting the resolution out in full, the substance may be summarized as follows:

In view of certain enactments of the 82nd General Assembly (1941) and of the decision of the Supreme Court of Indiana in the case of Tucker et al. v. State et al., — Ind. —, 35 N. E. (2d) 270, what is the present legal status and what are the present powers and duties of the Indiana State Fair Board and other state officers with respect to their relations to the State Fair grounds and agriculture?

In view of the fact that the Indiana State Fair Board, under laws of 1921 and 1923, became responsible for the management of the property known as the State Fair Grounds and from time to time since then, has issued bonds to erect buildings and make improvements without violating the constitutional provision that the State may not (Article 10, Sections 5 and 6) incur a debt, what is the present legal status of the Board in the light of certain Acts of 1933 and 1941 which have abridged the erstwhile powers of the Board and have attempted to confer certain rights, powers and duties upon the Lieutenant Governor and/or the Commissioner of Agriculture?