AUDITOR OF STATE: Special Judges—Per diem of same.

September 24, 1941.

Mr. Richard T. James,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of September 22, 1941, requests my opinion on the following question:

"In your official opinion, is it legal for the Auditor of State to allow counties reporting special judges appointed by the Governor of the State of Indiana to take credit for a per diem of twenty-five ($25.00) dollars per day in their settlement for the State of Indiana in all cases?"

The Acts of 1903 provide that a special judge be appointed within five (5) days after change of venue is applied for; that if any special judge should fail to qualify within twenty (20) days, then the regular judge should appoint another special judge within five (5) days thereafter; that upon failure to appoint a second special judge the clerk, upon the request of either party, shall certify the facts to the Governor, and the Governor shall appoint another special judge. There is no provision for compensation in this Act. Burns' Statutes of 1933, Sec. 2-1411 and 2-1412.

The acts of 1881 provided for the payment of five dollars ($5.00) per day for every special judge, so that under the Acts of 1903 when passed such a special judge when appointed by the Governor received five dollars ($5.00) per day. In 1921 this was raised to ten dollars ($10.00), and in 1941 mileage was added. Burns' Supp. 2-1416.

The Acts of 1911 provided for a certification by the regular judge to the Governor, and such act provided for compensation of twenty-five dollars ($25.00) per day, and made no provision for mileage. Burns' Statutes 1933, Sec. 2-1415.

The Acts of 1937 provided in certain cases for the nomination of special judges by the Clerk of the Supreme and Appellate Courts, and upon failure of any such judge to qualify within twenty (20) days, then the clerk should certify the facts to the Governor, and the Governor should make the appointment. Burns' Supp. 2-1424 to 2-1428.
The Legislature passed an additional act in 1937 which provided for nomination by the Clerk of the Supreme and Appellate Courts of special judges. Upon failure to qualify and upon certification by the clerk of the trial court that such special judge failed to qualify then the Clerk of the Supreme and Appellate Courts nominated additional judges. Burns 2-1430.

It is my opinion that a special judge should be allowed twenty-five dollars ($25.00) per day in those cases where the regular judge certifies to the Governor request for appointment of a special judge as provided by Acts of 1911, Ch. 159, P. 1, p. 418; amended by Acts of 1919, Ch. 70, P. 1, p. 430; Burns' Statutes 1933, Sec. 2-1415.

Where the Governor appoints a special judge upon certificate by the clerk pursuant to the Acts of 1903, Ch. 195, then such judge should receive ten dollars ($10.00) per day and mileage as provided in the Acts of 1941, Ch. 200, P. 1, p. 617; Burns' Supp., Sec. 2-1416.

It is my opinion that in all other cases within the statutes above described that the compensation of the special judges is ten dollars ($10.00) per day.

SOIL CONSERVATION: Whether State Highway Commission may make contributions under Soil Conservation District Act.

STATE HIGHWAY COMMISSION: Whether Commission may make contributions under Soil Conservation District Act.

September 24, 1941.

Mr. John Wolfe, Chairman,
Board of Supervisors,
Knox County Soil Conservation District,
Vincennes, Indiana.

Dear Sir:

I have your letter outlining plans of your board for a drainage project within your district which plans call for construction of a ditch to be paid for by owners of the land affected. You state that all landowners concerned, including the State Highway Commission, through its district engineer, agree that the amount which each is called upon to pay is fair and that all except the highway commission have placed the amount of