(b) For each additional day two dollars and fifty cents ($2.50).

(c) Such coroner shall have power to employ a clerk, at a rate of pay not exceeding two dollars ($2.00) per day, to take down the evidence of any inquisition.

It is my opinion that a coroner in the absence of a salary statute is entitled to a fee for each additional day at the rate of two dollars and fifty cents ($2.50), the same being a separate per diem fee for services performed in each case upon which he holds an inquest on the same calendar day.

INSURANCE COMMISSIONER: Insurance, premium tax—Whether premiums collected by company under order of court on outstanding policies of an insolvent company should be included in the measure of the tax against said company.

October 30, 1941.

Honorable John Cramer,
Deputy Insurance Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Mr. Cramer:

I have before me your request that an official opinion issue in response to the following inquiry:

"Is the Indiana privilege premium tax to be charged against the Washington National Insurance Company—(an Illinois corporation), to include in its measure premiums paid under an order of a court on outstanding policies of the insolvent National Life Insurance Company of the United States of America (an Illinois corporation), where the Washington National is obligated to pay such monies into a court fund?"

You have submitted other papers and dates which reflect the details of the premium collection arrangement under order of court to which reference has been made.
It appears from the papers furnished that prior to October 17, 1933, the National Life Insurance Company (an Illinois corporation), had been authorized to, and did engage in business within Indiana. On the date specified a court of the State of Illinois issued an order appointing a receiver for the National Life Insurance Company with authority to liquidate the assets of the said company. On February 8, 1934, the receiver entered into a written contract with the Hercules Life Insurance Company, an Illinois corporation. This was approved by the Illinois court having jurisdiction of the cause. Under this contract the Hercules Life Insurance Company became a managing agent for a period of not to exceed fifteen years for the purpose of liquidating the business and affairs of the insolvent National Life Insurance Company. All premiums due under the National Life Insurance policies were due and payable to the Hercules Life Insurance Company, which acted as an agent of the court, and was required to pay such monies into the court fund in the said cause.

On May 31, 1938, the Hercules Life Insurance Company merged with the Washington National Life Insurance Company. Under the merger agreement, the Washington National assumed all of the duties and obligations of the Hercules. Thus the Washington National became the managing agent under the direction of the court for the purpose of liquidating the business of the National Life Insurance Company for the unexpired period of fifteen years to which reference has been made. The Washington National Insurance Company is not the owner of the premiums paid through it by the policyholders of the insolvent National Life Insurance Company. Such premiums are paid into the court fund pursuant to the court order.

The data furnished indicates that the Washington National Insurance Company qualified to do business in Indiana on December 4, 1923, and has since that time been conducting an insurance business within this state.

The question is: In arriving at the fee to be paid by the Washington National Insurance Company are the premiums collected on the existing premiums of the National Life Insurance Company to be included in the measure of the privilege?

The pertinent statutory enactment reads:

“(a) Every insurance company not organized under the laws of this state and doing business within this state shall, on or before the first day of March of each year,
report to the department, under the oath of the president and secretary, the gross amount of all premiums received by it on policies of insurance covering risks within this state, or in the case of marine or transportation risks, on policies made, written or renewed within this state during the twelve months' (12) period ending on the thirty-first day of December of the preceding calendar year. From the amount of gross premiums, shown as above provided, shall be deducted (1) losses actually paid within this state, (2) considerations received for reinsurance of risks within this state from companies authorized to transact an insurance business in this state, (3) the amount of dividends paid or credited to resident insureds, or used to reduce current premiums of resident insureds, (4) the amount of premiums actually returned to residents on account of applications not accepted or on account of policies not delivered and (5) the amount of unearned premiums returned on account of the cancellation of policies covering risks within the state. At the time of making the report required above every such insurance company shall pay into the treasury of this state for the privilege of doing business in this state, an amount equal to three (3) per cent of the excess, if any, of the gross premiums over the deductions allowed herein.

“(b) Any insurance company failing or refusing, for more than thirty (30) days, to render an accurate account of its premium receipts as above provided and pay the tax due thereon, shall be subject to a penalty of one hundred dollars ($100) for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana on the relation of the department of insurance, in any court of competent jurisdiction, and it shall be the duty of the department to revoke all authority of such defaulting company to do business within this state, or suspend such authority during the period of such default, in the discretion of the department.”

Sec. 235, Chap. 162, Indiana Acts 1935, p. 588, at pp. 770, 771;
8 Burns’ Indiana Statutes Annotated (1940 Replacement) 39-4802.
The fact that the foregoing provision is made a part of the Indiana Insurance Code, the title of the Act, the language relating to its enforcement, and its contents clearly indicate that the State in enacting the law was acting under its police power and not under its revenue raising authority. Further, the deductions from gross premiums for which provision was made demonstrate that the General Assembly contemplated that this was to be an exaction applying only to insurance companies doing business within the state at the time that the payment of the fee was to be required. The license then is based on the privilege of doing business for the current year and nothing else. The gross premiums are the measure of the exercise of the privilege. To be valid, the license must be for a privilege exercised during the year against a company doing business within the state at that time.

Provident Savings Life Assurance Society, 239 U. S. 103, 111, 60 L. Ed. 167.

The continuance of insurance contracts on the lines of residents of the state previously written by the company does not depend upon the consent of the state nor does the state possess power to treat the mere continuance of the obligations of such existing contracts as transactions of such a local nature as to be the basis of levying a privilege license in the absence of actual conduct of business in the state. To do otherwise would be violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Provident Savings Life Assurance Society, 239 U. S. 103, 104.

The Hercules Life Insurance Company merely held the naked legal title to the insolvent company's assets for the purpose of administering them under the order of the court. Such assets are in custodia legis while being so administered.


I must respond to your inquiry in the negative. The performance of the service of collecting premiums under an order of a court and paying them into a court fund is not the doing of an insurance business within the contemplation of the statute. It
should be noted that the Washington National Life Insurance Company does not own the business represented by the outstanding insolvent National Life Insurance Company policies, and that its actions with respect to the premiums on such policies are the acts of an agent of the Illinois court. The gross premiums collected as such agency of the Illinois court should not be included in the measure of the privilege license tax to be assessed against the Washington National Insurance Company.

SECURITIES COMMISSION: Whether an issuer of securities which are exempt under Section 4 of the Indiana Securities Law may issue same without complying with the provisions of Section 11 of said Act.

October 31, 1941.

Mr. Maurice G. Robinson,
Securities Commissioner of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of October 30th, requesting my official opinion on the following question, to-wit:

"Is it unlawful for an issuer of securities, such securities being of the class entitled to exemption under Section 4 of the Indiana Securities Law (Chapter 120, Acts of 1937; approved March 8, 1937; as amended by Chapter 30, Acts of 1941; in effect February 20, 1941), to sell (as defined in said Act) said securities in the State of Indiana without complying with the provisions of Section 11 of said law relative to the registration of a dealer (as defined in said Act)?"

The answer to your question involves the construction to be put upon the governing statute which is, as your letter points out, the Act of 1937, entitled:

"An act defining securities, and supervising and regulating the disposition, sale, offer for sale, public offering, promotion, reorganization, purchase or solicitation of an offer to purchase, negotiations or exchange thereof in the State of Indiana, providing penalties for the vio-