

of Public Printing as established in 1921 and has created in its stead a Bureau of Public Printing under the Acts of 1939.

Since Section 1, Chapter 109 of the Acts of 1939, creating the new Bureau of Public Printing, is not governed in any way by any prior statute and since the act provides for a specified annual salary for the director of printing purchases who is to act as the secretary of said Board of Public Printing, and since such officer is also to act *ex officio* as Clerk of the State Board of Election Commissioners, I am of the opinion that said officer, the Clerk of the Bureau of Public Printing, cannot receive compensation for his services as Clerk *ex officio* of the State Board of Election Commissioners. I am forced to this conclusion for the reason that in the absence of any legislative direction for the payment of further compensation in the Printing Law or in the Election Law, and in the absence of any other controlling law, there is simply no provision made and, consequently, no authority for the payment of extra compensation and said officer must, therefore, be placed in the general category of public officers who receive only the statutory compensation for their duties even though they may combine in such duties one or more offices not incompatible with each other.

CONSERVATION, DEPARTMENT OF: Where several violations are alleged in separate counts of single affidavit, offender is liable for \$5 penalty on each count.

May 6, 1940.

Mr. Kenneth M. Kunkel, Director,
 Division of Fish and Game,
 Conservation Department,
 Indianapolis, Indiana.

Dear Sir:

I have before me your letter of April 30, 1940, wherein you request an official opinion upon the following question:

“Where a defendant is charged with violation of the fish and game laws on several counts in the same affidavit, shall a fee be taxed for each count in the affidavit, or shall only one fee be taxed in the affidavit

for the charge of conviction? In other words, is each count construed a violation or are they considered collectively as one charge of violation of the fish and game laws?"

An answer to this question requires an examination of some of the provisions of the 1937 Fish and Game Act. Sec. 152 of Ch. 21, Acts of 1937, also Burns' Ind. Ann. St. 1933, Poc. Supp., Sec. 11-1804 reads as follows:

"In all cases of conviction, or pleas of guilty of violating any of the provisions of this act, or any act in relation to or for the propagation or protection of fish, game, fur-bearing animals, or wild birds, mussels, or frogs there shall be taxed against each defendant so convicted, in favor of the division of fish and game of the conservation department a fee of five dollars (\$5.00) as part of the costs. Said fee shall be promptly paid by the justice or other officer collecting the same to the director of the division of fish and game of the conservation department who shall pay such fees into the state treasury and there such fees shall become a part of the fish and game protection and propagation fund."

It will be noted that the plain import of the language of this section requires the payment of a five dollar (\$5.00) fee to the fish and game department in "all cases of conviction, or pleas of guilty of violation of any of the provisions" of the act. The word "case" as used in the statute is not used in a technical sense, but refers to a condition or state of affairs, *i. e.*, in this instance, a conviction of or plea of guilty to a violation of any of the provisions of the act. The word "case" does not refer to a legal "cause" or case, but requires the fee to be paid in every instance where there is a conviction of or a plea of guilty to any violation of the fish and game act.

In view of the foregoing, it is my opinion that it was the legislature's intent to impose a five dollar (\$5.00) penalty fee for any violation.

The provisions of Section 157, ch. 21, Acts of 1937; Sec. 11-1809, Burns' Ind. Stat. 1933, Poc. Supp. 1939, provide for the joining of several offenses under the fish and game laws in one affidavit or indictment, said section being as follows:

“Any person violating any provisions of this act for which no specific penalty is hereinbefore provided shall be deemed guilty of a misdemeanor and upon conviction shall be punished, for the first offense, by a fine in any sum not less than ten dollars (\$10.00) or more than one hundred dollars (\$100.00), to which may be added imprisonment in the county jail not to exceed sixty (60) days, and for any subsequent violation of any provision of this act for which no specific penalty is hereinbefore provided such person shall be deemed guilty of a misdemeanor and shall upon conviction be fined not less than twenty-five dollars (\$25.00) or (nor) more than two hundred and fifty dollars (\$250.00), to which may be added imprisonment in the county jail not to exceed sixty (60) days. The taking, catching, killing, possession, sale, barter, purchase or offer to purchase, or transportation of each bird, animal, or fish, frog, mussel or part thereof, or the possession of each fishing, hunting or trapping apparatus, appliance, or device in violation of any provision of this act shall constitute a separate and distinct offense. Each day’s possession of any wild bird, wild animal, or fish, frog, mussel, or each day’s possession of any fishing, hunting, or trapping apparatus, appliance, or device, the possession of which is prohibited by this act, shall constitute a separate and distinct offense. Two or more offenses may be joined in the same affidavit or indictment, and the person so offending, if convicted, shall be fined and punished for each offense as provided by this act.”

Looking to the above section, and also the act as a whole, it seems apparent that the legislature intended to provide that offenses against the fish and game laws could be presented in one affidavit; and the defendant, if convicted of each offense charged, would be fined, punished and taxed with costs in the same manner as if the offenses of which he was charged in separate counts had been charged in separate affidavits or indictments.

Therefore, it is my opinion that the five dollar (\$5.00) fee provided for in Sec. 11-1804 Burns’, *supra*, should be taxed

upon conviction of or guilty plea to each offense charged by a separate count in an affidavit or indictment.

Since the language permitting the joining of several offenses in one affidavit is permissive, the taxing of the five dollar (\$5.00) fee must be governed by the form of the affidavit.

If the separate offenses are charged in separate counts, then the fee should be assessed and collected in each instance where the judgment of the court finds the offender guilty of an offense charged by any single count of the affidavit or indictment. On the other hand, since the statute states the offenses disjunctively and provides the same penalty for each offense, it is possible that more than one offense may be charged conjunctively in one count. In such instances only one five dollar (\$5.00) fee should be assessed upon a conviction or guilty plea to such conjunctive count.

TAX COMMISSIONERS, STATE BOARD OF: Chapter 119 of the Acts of 1937 repeals Chapter 206 of the Acts of 1933 in providing for petition by fifty or more freeholders before bonds can be issued.

May 8, 1940.

Hon. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter asking for an official opinion in answer to the following questions:

“1. Is Chapter 206 of the Acts of 1933 repealed by the Act of 1937, insofar as providing that fifty or more freeholders must petition for a bond issue before such can be issued?

“2. Does the expression ‘incorporated town’ as used in Chapter 206, *supra*, of the Acts of 1933, limit the provision of the law to a township having an incorporated town and does not include an incorporated city?”