present salary of a county superintendent was fixed by the legislature because no steps had been taken to increase it pursuant to section 14, supra, or whether it had been fixed in part by the legislature and in part by the council as might have been done under section 14, supra, the result is the same, namely,—that such superintendents have a salary "fixed by law." If that is true, then the authority to increase it pursuant to the amended section 14 would have to be exercised in conformity with the constitutional provision prohibiting the increasing by the General Assembly or by anyone to whom authority is delegated by the General Assembly of the salary of an officer during the term for which the officer was elected or appointed.

It follows that the answer to your question is in the negative.

PUBLIC INSTRUCTION, DEPARTMENT OF: Attendance officers, county, whether entitled to traveling expenses.

April 18, 1939.

Hon. Floyd I. McMurray,
Superintendent of Public Instruction,
Department of Education,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion interpreting the words "actual expenses" as contained in Burns Indiana Statutes Annotated (1933), section 28-502, especially with reference to whether said words include the traveling expenses of an appointive county attendance officer.

The context in which the words are used is as follows:

"Appointive attendance officers, unless otherwise provided in this Act, shall have their salaries fixed by the appointing board and shall receive from the county treasurer not less than three dollars ($3.00) nor more than five dollars ($5.00) per day for each day of actual service and shall further receive actual expenses necessary to the proper performance of their duties, said salaries and expenses to be paid by the county treasurer upon a warrant signed by the county auditor, and the
county council shall appropriate, and the Board of County Commissioners shall allow, the funds necessary to make such payments.” (Our italics.)

The court in the case of Eagle Township v. Phillippi, 78 Ind. App. 249, had under consideration similar language as applied to the expenses of a township trustee, and while the precise question submitted by you was not material to that decision it is interesting to note the language of the court with reference thereto. The language under consideration in that case is as follows:

“* * * the township advisory board shall annually appropriate the amount of the estimate of the township trustee for the actual expense of the trustee incurred while engaged in the discharge of his official duties, * * *”


The court said further on page 252:

“* * * Actual expenses incurred while engaged in the discharge of his duties must include such expenses as are personal to himself as traveling expenses or in lieu thereof, telegram and telephone tolls. * * *”

It seems to me that the foregoing definition of the term “actual expenses” is sound. It must be quite evident that a county attendance officer would not be of much value if all the work done is required to be done in an office. A certain amount of traveling from place to place would appear to be necessary in order to properly perform the duties of the office, and, in my opinion, any necessary expenses incurred in such travel is an “actual expense” within the meaning of the statute and should be allowed.