CONSERVATION, DEPARTMENT OF: Clerks of Circuit Courts, authority to assess fee for issuing female resident fishing licenses.

May 22, 1939.

Hon. V. M. Simmons, Commissioner,
Department of Conservation,
Indianapolis, Indiana.

Dear Mr. Simmons:

I have your letter of May 16, 1939, in which you state:

"Your official opinion is respectfully requested on the question of whether or not clerks of the circuit courts of the various counties have authority to charge a fee for issuing the female, resident, yearly license to fish. If it is lawful for them to charge and collect a fee what fee may they charge and collect—ten cents, twenty-five cents, or fifty cents?"

Section 12 of chapter 21 of the Acts of 1937 provides:

"The director, his duly authorized agents, and clerks of the circuit courts of the respective counties in this State are hereby authorized to issue the following licenses to hunt, trap, or fish in this State, under such regulations or restrictions in this Act provided or as may hereafter be provided by law, upon the payment of the following respective license fees for the same.

(a) A resident yearly license to hunt, trap, and fish, $1.50, except that the fee of any resident yearly licensed to hunt, trap, and fish issued during the calendar year of 1937 shall be $1.00.
(b) A non-resident yearly license to hunt, trap, and fish, $15.50.
(c) A non-resident license to fish only for ten consecutive days only, $1.00.
(d) A non-resident yearly license to fish only $2.25."

Section 13 of said Act provides:

"(a) Each and every clerk and agent duly authorized to issue licenses under the provisions of this Act shall retain out of the license monies collected for the sale of such license issued by him the following fees.

For each non-resident yearly fishing license issued, the sum of twenty-five cents, (25c);
For each resident yearly hunting, trapping, and fishing license issued, the sum of ten cents, (10c); For each non-resident ten consecutive days fishing license issued ten cents, (10c). For each non-resident yearly hunting, trapping, and fishing license issued, fifty cents, (50c)."

Section 12 of the Acts of 1937 was amended by House Bill No. 135 by the legislature of 1939. Subsection (e) was added to the original section which provides as follows:

"A female resident yearly license to fish only, fifty cents, (50c)."

Section 13 of the Act of 1937 was not amended but stands as it was originally enacted and therefore there is nothing in said section authorizing the clerks of the various counties to charge or retain any money for the issuing "A female resident a yearly license to fish only."

In view of this situation the question is, have the clerks of the various counties a legal right to charge a fee for the issuance of such a license? In my judgment they have not any such right. It has been the law of this State for many years that an officer is entitled only to the fees allowed by statute, and that before he is entitled to any allowance for work done he must point out the particular statute authorizing the allowance.

Lagler v. Paine, 147 Ind. 181;
Board v. Lewis, 81 Ind. App. 601.

It has further been declared to be the law that a public officer takes and holds his office cum onere; that he undertakes to perform the duties of the office for the compensation stipulated, whether those duties be increased or diminished, and that compensation for any kind of service must be by virtue of statutory warrant.

Board v. Lieutenant, 21 Ind. App. 178.

One of the earliest cases decided by the Supreme Court of Indiana is entitled Turpen v. Board of Commissioners, 7 Ind. 172. This case has been cited in many of the decisions of the Supreme Court of this State since said opinion was rendered. The following language is used in the opinion:
"That the legislature may attach additional duties to an office, without increasing compensation, or, which is equivalent, change the rate of compensation for official services when they please will not be doubted. * * * It is clearly competent for the legislature to require more official labor for the same compensation or reduce the compensation for the same labor."

It was further said in said case:

"If by the operation of the Act, the services of the clerk are not adequately compensated, he can at any time relieve himself of the burden of office by resigning."

In the case of Truelove v. City of Washington, 169 Ind. 291, the court said:

"In the exercise of sound judgment the General Assembly, in creating a public office, and in defining the duties of the officer may arbitrarily determine the fees and compensation to be allowed for the service rendered of such officer, whether by a system of fees and allowances or specific items, or by a lump salary for all; and anyone accepting such office takes it cum onere, and impliedly undertakes to perform all the official acts there prescribed and that may be subsequently prescribed and imposed upon it by the legislature, without any compensation other than that granted by the statute."

It is generally held in this State that public officers are not entitled to any other compensation than that fixed by the legislature itself, or by some officer or body to whom authority to fix the compensation has been delegated, and that compensation for any kind of service must be by virtue of statutory warrant.

As the legislature, by the Act of 1939, provided for the issuance of "A female resident yearly license to fish only" and failed to provide for any fee or compensation to the clerk for the issuance thereof, I am of the opinion that the clerks of the various counties are not permitted to make any charge whatever for the issuance thereof. It was evidently the thought of the legislature that the clerks of the various counties received sufficient compensation in salaries and other fees to issue the particular license without charge, but whatever the
intent of the legislature was, it had the undoubted power to require the clerks to issue the license without charge.

FIRE MARSHAL, STATE: Permits issuable under theatre law for schools, whether applicable to individuals and private organizations.

May 29, 1939.

Hon. Clem Smith,  
State Fire Marshal,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of inquiry of May 23, 1939, which reads:

"We wish that you would review the so-called Theatre Law, chapter 83, Acts of the General Assembly 1937, in particular section 4 (c) and (d) which deals with the issuance of Class C permits.

"The following are some of the questions which confront the department at this time:

"1. Can a Class C permit issued to a school corporation for the holding of school activities and extracurricular activity also be used by individuals, service clubs and church organizations when an admission fee is charged and the proceeds are not entirely for charity, due to the fact that producing companies are under contract to put on said motion picture shows, stage attractions, radio shows, etc?

"2. Would the department be within its rights to issue a Class B permit, for which a fee of ten dollars is charged, to such organizations as service clubs, American Legion, church organizations and the like?

"3. If a Class B permit can be issued, is it to be in the name of the sponsors of the show, the producing company, or the name of the building wherein the show is being held?"

It is called to your attention, as you no doubt know, that I rendered an opinion to you on August 5, 1937, which furnished a rather complete discussion of the provisions of the so-termed