GROSS INCOME TAX DIVISION: Clerks' and sheriffs' fees for tax collection, right to retain.

September 14, 1939.

Mr. Clarence A. Jackson, Director,
Gross Income Tax Division,
Department of Treasury,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue with respect to whether or not the fees and mileage charges paid to the county clerk and sheriff pursuant to section 13 (a) of chapter 117 of the Acts of 1937, are to be considered the property of the clerk and sheriff.

The pertinent provisions of section 13 (a) of chapter 117 of the Acts of 1937 (p. 604, at pp. 628-629) are:

"* * * Such officers shall be entitled to the same fees, to be collected in the same manner, as is now provided by law for like services. The sheriff shall also be entitled to retain for his services the amount of damages set forth in the warrant and as prescribed herein, but only when the full amount of the tax and penalty set forth in the warrant have been collected by him and transmitted to the department. * * *"

It should be noted that this matter was the subject of an official opinion rendered by the Attorney General on July 30, 1938, and that your request merely asks for a clarification of that opinion. It must be considered as established in Indiana that:

"Whenever the General Assembly authorizes by new legislation the imposition and collection by a public officer of new and additional fees for the discharge of new and additional duties, * * * such fees, * * * when imposed and collected, belong to and are the property of such public officer, unless the law-making power has clearly indicated, in such legislation, that such fees shall be applied in a different way, or to a different purpose."

Henderson v. The State, ex rel., Baldwin, Attorney General, 96 Ind. 437, at 441.
Since the fees provided for by section 13 (a) of chapter 117 of the Acts of 1937 are for specific additional services required by the Gross Income Tax Act and rendered, I am of the opinion that the respective officers are entitled to retain the prescribed fees personally.

See:
Official Opinions of the Attorney General, 1938, 303-309;
Official Opinions of the Attorney General, 1894-1896, pp. 4-5.

HISTORICAL BUREAU: Public records, whether printed tariffs and rate schedules received by Public Service Commission constitute.

September 20, 1939.

Hon. Christopher B. Coleman,
Director of Historical Bureau,
State Library,
140 N. Senate Avenue,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request of September 18, 1939, which reads as follows:

"An opinion is requested as to whether printed tariffs or rate schedules received by the Public Service Commission from the railroads, interurbans, et cetera, should be considered public records under the definition in section 9 of the Act approved March, 1935 (Acts 1935) chapter 219, p. 1037."

Section 9 is as follows:

"The term 'public records' as used in this Act means any written or printed book or paper or document or map or drawing which is the property of the State, not including any county, city, town, school corporation, or political subdivision thereof, and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the State has received or is required to receive for filing."