

“So far as the public and third persons are concerned, there is no difference between an officer de facto and an officer de jure, the official acts of one being as valid and binding as those of the other.”

I want to call your attention also to the fact that this board is composed of seven members and under the list attached, at least five of the members were regularly and legally appointed so that the majority of the board had legal capacity to act even though the other two might have been disqualified.

It is, therefore, the opinion of this office that the board, as appointed by Governor Leslie, had authority to contract for the adjutant general's office of the State of Indiana, as a majority of the board were sufficient to act and that in any event, the other members of the board were de facto members.

HIGHWAY COMMISSION: Regarding costs chargeable against the state highway fund in condemnation proceedings.

January 19, 1933.

Hon. Hugh A. Barnhart,
Director, Indiana State Highway Commission,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your request of January 16, 1933, for an opinion as to the costs chargeable against the state highway fund in condemnation proceedings.

Under date of July 2, 1925, Arthur L. Gilliom, the then attorney general rendered an opinion upon this matter which I wish to quote and approve as follows:

“The state highway act authorizes the commission under certain conditions to proceed in the NAME OF THE STATE OF INDIANA to condemn land for highway purposes. The commission, therefore, in my opinion, occupies, the position of the state and is liable only to the extent of the liability of the state. In the case of ex parte Fitzpatrick, 171 Ind. 557, the supreme court held that ‘the policy of the law and the express provision of the statute are against the taxation of costs to the state.’

“It is my opinion, therefore, that the ordinary court costs, such as the fees of the clerk and the sheriff, are not properly taxable against the state in condemnation cases. But the specific charges referred to in your letter—the appraisers’ fees and the printing charges—are not ‘costs,’ within the strict meaning of the term, but are amounts due for services rendered by parties who are not obligated to render services as officers of the court as are the officers above mentioned, and such charges, in my opinion, are properly taxable against the state and payable out of the state highway fund.”

We wish to concur in and approve the above opinion as given by Attorney General Gilliom and affirm that it correctly states our opinion as to the costs in condemnation proceedings.

ACCOUNTS, BOARD OF: Whether gasoline license fees and motor vehicle registration fees must be appropriated by county council.

January 24, 1933.

Hon. Lawrence F. Orr,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter submitting the following questions:

“Do the gasoline license fees and motor vehicle registration fees distributed to the counties under authority of chapter 12 and chapter 11, respectively, of the Acts of 1932, have to be appropriated by the county council?

“If not, on what authority would the county auditor draw warrants on these funds?”

In my opinion, your first question should be answered in the affirmative. Section 5876 of Burns Annotated Indiana Statutes of 1926, provides in part that:

“The power of making appropriations of money to be paid out of the county treasury shall be vested exclusively in such council, and, except as in this act otherwise expressly provided, no money shall be drawn from such treasury but in pursuance of appropriations so made.”