AUDITOR OF STATE: When exact time governor assumes duties; if retiring governor is entitled to eight and one-half days compensation; if statutory compensation for maintaining governor's residence is paid on same time basis as personal service.

January 9, 1933.

Hon. Floyd E. Williamson,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter as follows:

"I am asking your opinion as to the exact time that the governor of Indiana assumes his official duties, presuming that he has already subscribed to the oath of office as provided for in the Constitution.

"I would like now to be advised if the retiring Governor Harry G. Leslie is entitled to compensation for eight days, his claim having been filed with this office for eight and one-half days. Also kindly advise me if the statutory compensation for maintenance of the governor's residence should be paid on the same time basis as the pay for personal service."

The Constitutional provision in regard to the term of the governor is as follows, section 134, Burns R. S. (1926), being section 1 of article 5, of the Constitution of Indiana:

"The executive powers of the state shall be vested in the governor. He shall hold his office during four years and shall not be eligible more than four years in any period of eight years."

The time of commencement of his term is also fixed by the Constitution by section 142, Burns R. S. (1926), being section 9 of article 5, of the Constitution of Indiana, which is as follows:

"The official term of the governor and lieutenant-governor shall commence on the second Monday of January in the year 1858; and on the same day every four years thereafter."

The question of what shall constitute a day and what shall be the commencement of the day has been passed upon by the
Supreme Court of Indiana in the case of Benson v. Adams et al., reported in 69 Ind. Rep. 353, at page 354:

"A day is a unit of time. It commences at 12 o'clock p.m. and ends at 12 o'clock p.m., running from midnight to midnight. In the division of time throughout the world, we believe this is regarded as the civil day. When the word 'day' is used in a statute or in a contract, it means the twenty-four hours, and not merely the day as popularly understood, from sunrise to sunset, or during the time the light of the sun is visible. The fractions of a day in statutes, or legal proceedings, or in contracts are not generally considered. * * *"

The identical question as to when the term shall begin, even if the oath of office should be administered later in the day, was passed upon by the Supreme Court of Minnesota, in the case of State, ex rel. Farrar v. McIntosh, reported in 122 N. W. Rep. 462, at page 464 as follows:

"The statute, following the Constitution, defines the term of office as follows: 'The term of office of every state and county officer shall begin on the first Monday in January next succeeding his election, unless otherwise provided by law.' Rev. Laws 1905, section 155. The statute does not provide that county commissioners shall hold office until their successors are elected and qualified; but section 546, Rev. Laws 1905, provides that a sheriff shall hold office for two years and until his successor is elected and has qualified. Notwithstanding the constitutional provision that the official year commences, and all terms of office terminate, on the first Monday in January, it seems to have been generally the impression that outgoing officers are entitled to hold over after the first Monday in January and until such time as their successors qualify. Such would no doubt be the rule, in the absence of constitutional restrictions. But, when the Constitution fixes the day upon which the official term shall begin, there is no legislative authority to continue the office beyond that period, even though the successor fails to qualify within the time. State, ex rel. Childs v. O'Leary, 64 Minn. 207, 66 N. W. 264. The day begins at 12 o'clock midnight and the law does not recognize fractions of a
day. State, ex rel. Baxter v. Brown, 22 Minn. 482; note in State v. Michel, 78 Am. St. Rep. 364. It is fair to assume, however, that it was not intended by the framers of the Constitution that the change in office should take place at 12 o'clock midnight. The incoming officers should have a seasonable and reasonable time at the beginning of the business portion of the first official day in which to qualify and assume their duties. Some unforeseen circumstance might delay the opportunity to qualify until the latter part of the day; but that fact could not result in depriving that day of the prestige accorded to it by the Constitution. It is fairly to be inferred from the language of the section that, although the whole of the day belongs to the new official year, yet for convenience, and to prevent an interregnum, the qualification of the new officer may take place at a convenient hour, according to the exigencies of the case."

The provision for the appropriation for the maintenance of the governor's home and household is in the Acts of 1931, page 329, and the Acts of the Special Session of 1932, page 57. These provisions are as follows:

Acts of 1931. "Maintenance for governor's home and household, payable to the governor in twelve equal monthly installments, for the fiscal year, beginning October 1, 1932—ten thousand dollars—$10,000.00". (My italics.)

Acts of Special Session of 1932. "Maintenance for governor's home and household, payable to the governor in twelve equal monthly installments, for the fiscal year, beginning October 1, 1932, eight thousand dollars—$8,000.00". (My italics.)

Inasmuch as all of these decisions seem to indicate that the day begins at midnight and runs until midnight, it is the opinion of this office that the retiring Governor, Harry G. Leslie, is entitled to compensation for eight days and the incoming governor for twenty-three days during the month of January. Inasmuch as the maintenance for the governor's home and household is payable to the governor, the same division of time would apply to that fund.