highway commission in the construction of this bridge across the Whitewater Canal, that you should now, under the provisions of section 3 of said act, certify a statement of the cost of such bridge to the canal company or to the one holding the fee simple title to the canal property at the point of crossing.

Should there be any failure on the part of the owner of the canal property at the point of crossing to pay the costs of the bridge under the provisions of the act, it would be your duty to certify the same to the auditor of state, who in turn would assess the penalty provided in the act and refer the matter to this department for legal proceedings necessary to recover the amount of the expenditure made by the highway department in the construction of the bridge.

GOVERNOR: Whether governor is required to look further than to contents of certificate of clerk of court upon application for appointment of special judge.

February 2, 1933.

Hon. Paul V. McNutt,
Governor of Indiana,
Indianapolis, Indiana.

My dear Governor:

In the matter of the appointment of a special judge in cause No. 8192 In the Delaware Superior Court.

I have before me the original of a certification by the clerk of the Delaware Superior Court with reference to the appointment of a special judge in the above entitled cause.

Section 449 of Burns Annotated Indiana Statutes of 1926, provides that:

"In all civil actions, where a change of venue is taken from the regular judge of any circuit or superior court of this state, it shall be the duty of said regular judge, within five days after such change of venue is APPLIED FOR, to appoint a special judge to hear and try such action." (Our italics and capitals.)

The certificate above referred to, is issued pursuant to the provisions of section 451, Burns Annotated Indiana Statutes of 1926, which provides among other things that:
“In the event such appointment” (that is, appointment of a special judge upon the filing of a motion for change from judge) “is not made within five (5) days by said regular judge, the clerk of the court in which said action is pending shall forthwith, upon the request of either party, certify the facts to the governor, and thereupon the governor shall appoint another special judge who shall have like jurisdiction.”

The clerk in this particular case certifies as to certain proceedings in the above entitled cause set out by her, that the “foregoing is a true, correct and complete record of the filing of all motions for change of judge in the above entitled cause and the ruling of the court thereon,” and continues as follows:

“I further certify that the filing of the motion for a change of judge, on the 23rd day of January, 1933, was the last record made in said cause; that the Honorable William A. Pickens, as special judge, has made no ruling, either sustaining or overruling said motion.”

I think section 449, supra, in cases where an application for a change of judge is filed, makes it the duty of the regular judge to appoint a special judge to hear and try the case within five days after the change is “applied for;” and that section 451, supra, which is section 2 of the same act, authorizes the governor to appoint a special judge after the lapse of five days upon the certificate of the clerk of the court made upon request of either party, that the judge of the court has failed to appoint within said five days.

The certificate in this case, which bears date of February 1, 1933, is to the effect that a motion for change of judge was filed on January 23, 1933, and that the record of its filing is the last record made in the cause. The clerk certifies further that no ruling was made upon the motion. But the statute, in my opinion, requires that an appointment be made within five days after the change is applied for, and upon failure to do so, and the matter being certified to the governor upon the request of either party, the governor may then appoint.

I do not think the statute contemplates that the governor is required to look further than to the contents of the certificate, and, in my opinion, the certificate in this case fully complies with the language of the statute authorizing you to appoint.