ACCOUNTS, BOARD OF: Whether board of commissioners has power to change order for an addition to annual salary of county judges.  

February 15, 1933.

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

Dear Sir:

I have before me your letter requesting an official opinion as to whether a board of commissioners acting pursuant to the authority vested in such board by sections 1802.7 and 1802.8 of Burns 1929 Supplement to Burns Annotated Indiana Statutes of 1926, having entered an order allowing the sum of $1,800.00 as an addition to the annual salary of the former judge of the circuit court of such county, whether said board has any power now to change this order by which said amount may be reduced as to the newly elected judge, who qualified and assumed the duties of his office on January 1, 1933.

Section 1802.7, supra, sets out the procedure involved in entering such an order as is referred to above, and section 1802.8, supra, thereupon provides as follows:

"Upon such additional allowance or allowances being made by such board or boards of commissioners, as provided for in section 1 of this act, the sum so allowed shall be payable monthly upon warrants drawn by the auditor of such county upon the treasurer thereof, and from and after the date of such allowance by such board, the same shall be held as an addition to the annual salary of such judge, as otherwise fixed and provided by law, and shall not be diminished during the term of office of such judge; and any such allowance, and the proceedings of any board of commissioners in relation thereto, if in compliance with the provisions of this act, shall be final and conclusive." (Our italics.)

Section 13 of Article 7 of the Constitution of Indiana provides that "the judges of the supreme court and circuit courts shall, at stated times, receive a compensation which shall not be diminished during their continuance in office." Burns Annotated Indiana Statutes of 1926, section 180.
It appears, therefore, that the italicized portion of the above quoted section of the statute adds nothing, so far as a circuit judge is concerned, to the express provisions of the Constitution on the subject of the diminishing of the salary of such judges during their continuance in office. If, then, the $1,800.00 as provided in the above order, became a part of the salary of the circuit judge who took office on January 1, 1933, I think it is clear that such salary can not now be diminished during his present term by act of the board of commissioners, or otherwise, except as such salary is affected by chapter 70 of the Acts of 1932.

It is at once apparent, therefore, that your question requires a consideration of the meaning and effect of said order. I am advised that the order, as entered, specifically named the preceding judge, and, although I do not think the statute contemplates that the order shall name any particular judge, the fact that such was done is, at least, some evidence of the intention of the board that its order should extend for no longer period than during such term. I think it is undoubtedly true that the board in such case, could make an order under the foregoing provisions of the statutes which would expire at the end of the term of any circuit judge without violating either the Constitution or the statute. I do not think the new circuit judge can legally claim any right under such order which specifically names another, unless by construction, it shall be held that the insertion of the name of the previous judge in the order must be disregarded. This, however, would be in direct violation of the express terms of the order as the same is stated in your letter. On the other hand, if the order be literally construed, it would not have any effect beyond the term of the judge named therein, and at the expiration of such term, it would be of no effect. In my opinion, upon the basis of the statements of your letter assumed herein, the latter construction of the order is the correct construction and, upon that theory, it is my further opinion, that said board may fix said additional salary at a less sum than $1,800.00 without violating either said statutes or the provision of the Constitution referred to herein.