

cated in your question, but I do not desire to commit myself further in the absence of the proposed rule. When such a rule is submitted, I shall be glad to enter upon a further consideration of it and to advise with reference to its legality.

**ACCOUNTS, STATE BOARD OF: County clerks, fee allowed
for admissions of persons to State institutions.**

May 28, 1937.

Hon. W. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 24, in which you submit the following question:

“Chapter 39 of the Acts of 1937, provides in part, as follows:

“(B) For all duties required in connection with the admission of persons into and discharge from any hospital for the insane, the Fort Wayne State School, the Muscatatuck Colony, the Indiana Village for Epileptics, and the James Whitcomb Riley Hospital for Children, the clerk shall be entitled to receive the sum of \$5.00 for each person, which shall be paid for the county treasury and which shall be the personal property of the clerk.’

“Does the above quoted provision entitle the clerks of circuit courts to receive \$5.00 for each person admitted into the institutions mentioned and \$5.00 for each person discharged therefrom, or is the clerk entitled to one \$5.00 fee for each person covering both admission and discharge? If you hold that the \$5.00 fee covers both the admission and discharge, is the clerk entitled to draw the \$5.00 at the time the person is admitted?”

It will be noted that section 22-1219, Burns Indiana Statutes, 1933 Revision, imposes certain duties upon the clerk of the court in the discharge of any patient from a hospital for

the insane. This section provides that the superintendent of such hospital for the insane in discharging any patient shall notify the clerk of the county from which such patient was committed of such discharge. The Act then provides that:

“Upon receipt of such notice, the clerk of the circuit court shall forthwith file and preserve such notice with the other papers relating to such case, and except as hereinafter provided, shall issue his warrant to the county sheriff, informing him that the superintendent of the hospital for insane has directed that such patient be removed from such hospital, and commanding him to remove such patient forthwith, and designating the place to which such patient shall be removed.”

The Act then provides that the sheriff shall make a return on such warrant and further provides that in the discretion of the superintendent of the hospital patients may be discharged to their friends or relatives.

It is apparent from a reading of the above Act that the only duties required by the clerk in the discharge of patients from the hospital is the filing of the report with the papers and in some cases the issuance of a warrant, if the services of the sheriff is required in such removal.

As regards the duties of the clerk in the discharge of patients committed to the Fort Wayne State School, section 22-1734, Burns Indiana Statutes, 1933 Revision, imposes no duties upon the clerk of the court with respect to such discharge. The same is true as to the discharge of patients from the Farm Colony (Section 22-1814, Burns Indiana Statutes, 1933 Revision). Patients committed to the village for epileptics may be discharged at the discretion of the superintendent (Section 22-2018, Burns Indiana Statutes, 1933 Revision), and no duties are imposed upon the clerk of the court in such cases.

It will be noted that the language of the Act provides for *all duties* required in connection with the *admission* of persons into and *discharge* from, the clerk shall be entitled to receive the sum of \$5.00 for each person. It is my opinion that the clerk of the court is entitled to but one fee for the services rendered in dealing with each person, which includes services rendered in obtaining their admission and in some cases requires, additional service with reference to their dis-

charge. As a matter of fact, the services required of the clerk in the discharge of a patient are usually minor and in many instances require nothing except the filing of the superintendent's report, either as to the death of the patient or his release to relatives.

No decision in the State of Indiana has been found dealing with this question. The State of Missouri, however, has a statute which allows to the clerk for filing and entering every demurrer, motion, ruling or order, a fee of twenty cents. The Supreme Court of Missouri has held that this sum of twenty cents is in payment both for filing the motion and entering the order of the court in respect to it.

Buckman v. Mo. K. & T. Railway Company, 98
Southern 820.

The reasoning of this case by which the one fee is allowed for services in entering a demurrer, together with the order of the court subsequently made thereon, rather than two fees for the two entries is based upon the theory that the fee fixed is contemplated as payment for all the services that are required of the clerk with reference to the particular item of business. It is my opinion, therefore, that the clerk is entitled to but one fee of \$5.00 for his services in connection with each person whose admission and discharge occasions such service. Since in many instances no services whatever are required with reference to the discharge of such patients it is my opinion that he is entitled to collect his fee of \$5.00 upon the completion of his services required in gaining admission for such patient.

**ACCOUNTS, STATE BOARD OF: Teachers Tenure Law does
not apply to joint town and township schools.**

June 3, 1937.

Hon. W. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 24, submitting the following question: