

It is apparent from the above provisions of the law that the Governor has authority to remit fines and forfeitures upon application, where such application is approved by a majority of the four county officials above named.

Our Supreme Court has held that this power to remit does not include costs which are charged in criminal cases. In the case of *Ryan v. State*, 176 Ind. 281, the Supreme Court uses the following language,

“It is evident that the words ‘fines and forfeitures’ used in the Constitution, and in the statute passed thereunder, do not include cost, and that the governor of this State has no power to remit the costs due to the State or county in a criminal case.”

It is my opinion, therefore, that the Governor has authority, upon receipt of applications properly approved by the majority of the county officials named, to remit fines and forfeitures. This authority, however, does not include the costs assessed against the defendant growing out of the charges under which he was convicted.

---

**ACCOUNTS, STATE BOARD OF: “Actual expense” appropriation for township trustee, whether same includes telephone rental; also whether same includes cost of telephone tolls and telegrams.**

June 14, 1937.

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

Dear Mr. Cosgrove:

I have before me your letter calling attention to section 65-204, Burns Indiana Statutes, Annotated, 1933, and particularly to that part of the section which provides as follows:

“In all townships of the state, the township advisory board shall annually appropriate the amount of the estimate of the township trustee for the actual expense of the trustee incurred while engaged in the discharge of his official duties: Provided, That the amount so appropriated and allowed for expense shall not exceed,

in townships of the first class, seven hundred dollars (\$700); in townships of the second class, five hundred dollars (\$500); in townships of the third class, four hundred dollars (\$400); in townships of the fourth class, three hundred dollars (\$300); in townships of the fifth class, two hundred fifty dollars (\$250); in townships of the sixth class, two hundred dollars (\$200); in townships of the seventh class, one hundred fifty dollars (\$150); in townships of the eighth class, one hundred fifty dollars (\$150); in townships of the ninth class, one hundred twenty-five dollars (\$125); and in townships of the tenth class, one hundred dollars (\$100), in any one year."

You submit the following questions:

"1. Is the charge for monthly rental of a telephone in the office of the trustee a part of his 'actual expense' to come within the appropriation?

"2. Are bills for telephone tolls and the cost of telegraph service charged against the trustee for communications in connection with official business of the township, a part of his 'actual expense' to come within this appropriation?"

In the case of *Eagle Township v. Phillippi*, 78 Ind. App. 249, the court held that:

"Actual expenses incurred while engaged in the discharge of his duties" (referring to the duties of the township trustee) "must include such expenses as are personal to himself as traveling expenses or in lieu thereof, telegram and telephone tolls."

*Eagle Township v. Phillippi*, 78 Ind. App. 249 at p. 252.

Upon the basis of this decision, your second question is answered in the affirmative.

In the above case the court enters into a discussion of the subject in more detail than is indicated by the above quotation. It is apparently the thought of the court that the term "actual expenses" referred to in the above quoted statute refers to the *personal* expenses of the *trustee* as distinguished from the expenses of the *township*. Upon that basis the court was of the opinion that such expenses as stationery,

printing and records would not be an actual expense of the *trustee* within the meaning of the language quoted but would be an expense of the *township*.

I think that the monthly rental of a telephone in the office of the trustee could be paid if supported by sufficient appropriation, but following the reasoning of the court in the above case of *Eagle Township v. Phillippi*, I think it is doubtful whether it is one of the class of expenses which falls within the language of the Act above quoted. In other words, in my opinion, the rental of a telephone in the office of the trustee is not an item which should be considered as chargeable against the specifically limited appropriations as provided in section 65-204 *supra* for actual expenses and your first question is therefore answered in the negative.

Such an item of expense on behalf of the township, however, I think may be a legitimate subject for the consideration of the appropriating body of the township and if properly included in and supported by such appropriation, such appropriation may be properly expended for that purpose.

---

**MILK CONTROL BOARD, STATE: Whether distributing broker's license is sufficient to authorize the operations of a "distributor" and a "produce distributor"; Milk Control Law of 1937.**

June 14, 1937.

Hon. Charles G. Dailey,  
Attorney, Milk Control Board of Indiana,  
Room 332, State House,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you request an opinion as to whether under the Milk Control Law of 1937, chapter 215 of the Acts of 1937, a single license as a "distributing broker" is sufficient to entitle the holder to engage in all of the activities included under the titles "distributor," "producer-distributor" and "distributing broker."

Section 2 of chapter 215 of the Acts of 1937, which is an amendment of section 2 of the 1935 Milk Control Act defines the term "distributor" to mean and include "all persons who purchase, accept or receive milk for the purpose of putting