

“Can the Department of Financial Institutions take a change of venue from the judge in the matter of the determination of claims and priorities on the schedule of liabilities filed in liquidations?”

The section of the statute providing for a change of venue is quite broad and provides that,

“When any matter of a civil or equitable nature, not triable by a jury, is pending, the judge before whom said cause is pending shall change the venue thereof upon application of either party.”

Section 2-1402 Burns 1933 Revision.

This statute has been construed in the case of *State ex rel. Wood, v. Carlin*, 197 N. E. 825, in which recent decisions of the Supreme Court are cited and upon the authority of this case and cases cited it is our opinion that the Department of Financial Institutions, or their Liquidating Agent, is entitled to a change of venue in matters touching the administration of his trust over which the court has jurisdiction.

ACCOUNTS, STATE BOARD OF: County commissioners, appropriations to office of prosecuting attorney for purposes in addition to salary for office expense valid.

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

January 26, 1937.

Dear Sir:

Receipt is acknowledged of your request, dated January 19, 1937, for an opinion on the following:

“At the September meeting of the county council in Monroe County, appropriations were made for the office of Prosecuting Attorney, as follows:

Salary of Stenographer	\$900.00
Postage	75.00
Telephone Tolls and Telegrams	150.00
Repairs to Equipment	25.00
Books and Stationery	100.00

"These appropriations were made for the calendar year 1937 and are in addition to the appropriation for salaries of the prosecutor and deputies provided for by law.

"Are such expenditures as would fall under the above headings authorized by law and, if allowed by the Board of Commissioners and paid by the Auditor, would they be legal expenditures from county funds?"

Burns Annotated Statutes, 1933, Sec. 49-2601, is a part act of the legislature (1933-140) wherein the salary both of the prosecutor and his deputies is fixed. It provides, among other things, that all fees paid into his office shall be by him reported and paid into the county treasury.

Sec. 49-2602 provides for the appropriation of these salaries by the county council; the appropriations being based on estimates of deputy hire, etc. The Act further provides, Burns, 1933, Sec. 49-2695, that the compensation provided for the various prosecuting attorneys and their deputies shall be in full for all services required of them.

It is noted from the above references to the statutes that nowhere is reference had to compensation other than salaries of the prosecutor and his deputies.

Your letter and request presents an itemized statement which does not come within the item of salaries of prosecutor and deputies. The Act above referred to says nothing about expenses. Your letter is an itemized statement of expenses which have been appropriated by the county council and were appropriations made for the calendar year 1937.

Your attention is respectfully called to an opinion rendered your office under date of July 19, 1935, by the Attorney General. In that opinion are found citations with which you no doubt have familiarized yourself. The opinion is interesting and pertinent to the question now before us, in that therein are found decisions from the court on the implied authority to incur expense, etc.

The prosecuting attorney in the proper performance of his duties necessarily incurs expenses such as stated in your letter. Nowhere am I able to find direct authority contradicting the right of the Board of County Commissioners to include this itemized statement as a part of its estimate, nor am I able to find direct authority contradicting the right of the council to make the appropriations.

In Burns 1933 Statutes, Secs. 26-516 and 26-517, we find the sections: First, estimate by officers; and second, specifications of estimates. Under Sec. 26-517, subdivisions "Third" and "Fourth," is found specification authority for including items such as set out in your letter and request.

I conclude, first, that the Acts of 1933 pertaining to the salary of the prosecuting attorney and his deputies in no way prohibits the allowance of the estimate. Second, there appears to be no prohibition to the county council to make appropriations for office expense such as outlined in your letter. Hence the conclusion is that there is an implied, if not a specific, right on the part of the county council to make appropriations for the items stated. It is understood, of course, that all of the items as set out are necessary to the proper functioning of the office of prosecuting attorney, and that no part will be expended otherwise; hence if these items be allowed by the Board of Commissioners and be paid by the Auditor they will be regular expenditures from county funds.

PURDUE UNIVERSITY: Right of State Chemist to make rule authorizing the exchange of unused commercial stock food tags.

January 26, 1937.

Hon. H. R. Kraybill,
State Chemist and Seed Commissioner,
Purdue University,
Agricultural Experiment Station,
Lafayette, Indiana.

Dear Sir:

I have before me your request for an official opinion dated January 25, 1937, calling attention to chapter 206 of the Acts of 1907, page 354, as amended in 1909, Acts of 1909, page 106, and as amended in 1933, Acts of 1933, page 904, and submitting the question as to whether you as State Chemist are authorized to issue the following regulation:

"Effective January 1, 1938, during the month of January only of each year, the State Chemist will exchange, for new tags, all unused feeding stuffs tags issued during the preceding calendar year; provided, the registrant pays for the cost of printing and