ACCOUNTS, STATE BOARD OF: Salaries of sheriffs under Ch. 113 of Acts of 1937. 

June 16, 1937.

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

Dear Sir:

I have before me your letter referring to chapter 113 of the Acts of 1937, Acts of 1937, page 516, and submitting certain questions arising out of its provisions. This Act is an amendment of section 8 of chapter 21 of the Acts of 1933, Acts of 1933, page 88. Section 1 of the amended Act is as follows:

"The salaries herein provided for sheriffs shall be in full for all services required of the sheriffs by statute, including the attendance upon all courts and boards, except as herein otherwise provided. The sheriffs' fees accruing on process issued by courts outside of the county shall be the property of the respective sheriffs. Sheriffs shall be paid as now provided by law for transporting persons to penal and benevolent institutions, and for going for and returning fugitives from justice, which allowance shall inure to the benefit of the sheriff. In service of any writ or process required to be served by the sheriff where conveyance is furnished and maintained by the sheriff he shall receive mileage at the rate of six cents per mile for each mile necessarily traveled in continuous trips by such conveyance(s), which said mileage shall be the property of the sheriff: Provided, however, That where a county-owned conveyance maintained by the county is used by the sheriff in any service, no mileage charges shall be payable by the county: Provided, further, That in all counties having a population of thirty thousand or less according to the last preceding United States census, and where the sheriff of any such county furnishes and maintains the conveyances used in the discharge of his official duties, the sum of four hundred ($400.00) dollars per annum shall be
paid to such sheriff by the county in quarterly install-ments on the 1st day of January, April, July and Octo-ber of each year, as an allowance to cover the cost of all gasoline, oil, tires and repairs necessary to operate such vehicles while used in the discharge of any of the official duties of such sheriff. Before any mileage is paid to the sheriff, as above stipulated, he shall file an itemized and verified claim with the Board of County Commissioners showing the trips made and the miles per trip. Nothing herein contained shall be so construed as to repeal, alter, change or amend any of the provisions of chapter 124 of the Acts of the General Assembly of 1919, or amendments thereto as set forth in chapter 183 of the Acts of the General Assembly of 1921 and any amendatory Acts thereto, or any of the provisions of chapter 73 of the Acts of the General Assembly of 1935.”


Note: The italic is ours and is made for the purpose of indicating the new matter in the amended section. The words “in any part” after the word “conveyance” in the first proviso as it appeared in the 1933 Act is omitted from the 1937 Act.

All of sections 2 and 3 of the 1937 Act are new. They are not involved in your questions, however, and, for that reason, are omitted.

Referring to the annual allowance of $400.00 as set out in the second proviso supra, you submit the following questions:

“Is this allowance in addition to:

“(a) The sheriff’s fees accruing on process issued by courts outside of the county?

“(b) Mileage now provided by law for transporting persons to penal and benevolent institutions?

“(c) Allowance now provided by law for going for and returning fugitives from justice?

“(d) Allowance of six cents per mile for any writ or process required to be served by the sheriff where his own conveyance is used?
"Does the provision for the quarterly payments on the 1st day of January, April, July and October authorize advance payments or is the payment to be for the quarter just ended? When will the first payment be due, on July 1, 1937, which would be a payment in advance, or on October 1, 1937, which would be payment after one quarter's service had been rendered?"

The courts, in the interpretation of statutes, have been called upon frequently to determine the office and purpose of provisos in legislation. The typical proviso has for its purpose the making of an exception to the general rule as stated in the language immediately preceding it.

State v. Barrett, 172 Ind. 169 at p. 175;
Stiers v. Munday, 174 Ind. 651 at p. 656;

In the case first above cited, the court said on page 175:

"We are required as a primary rule of construction to put ourselves in the position of the legislature in the enactment of statutes, and endeavor to arrive at its intention. Provisos and exceptions are similar. They are intended to restrain the enacting clause, to except something which would otherwise be within it, something engrafted upon a preceding enactment, intended to take special cases out of a general class, and the general intent and purpose of an enacting clause will be controlled by the particular intent subsequently expressed."

In the last case above cited, the court said on page 249:

"The office of a provisó is not to enlarge or extend an Act, or the section of which it is a part, but rather to put a limitation upon and to qualify the language which the lawmaker has employed."

Ordinarily also, I think provisos should be strictly construed. As said by the court in the case of McHale v. Board of Commissioners of the County of Cass, et al., 180 Ind. 390 at page 395:

"As the enacting clause of the statute is, of course, its principal part, and as its terms are to be presumed
to have embodied the main object of the Act, the proviso should be strictly construed and limited to objects fully within its terms.”

As I view the particular statute under consideration, its purpose is to make clear and certain first, that, except as therein otherwise provided, the salaries for sheriffs fixed by the Act which it amends are to be in full for all services rendered by them, and, second, to make clear the exceptions by indicating the additional compensation which sheriffs may receive.

It is the additional compensation with which I am concerned in this opinion which, in general terms without giving effect to the proviso is put into three distinct items.

First, “The sheriff’s fees accruing on process issued by courts outside of the county shall be the property of the respective sheriffs.”

Second, “Sheriffs shall be paid as now provided by law for transporting persons to penal and benevolent institutions, and for going for and returning fugitives from justice, which allowance shall inure to the benefit of the sheriff.”

Third, “In service of any writ or process required to be served by the sheriff where conveyance is furnished and maintained by the sheriff he shall receive mileage at the rate of six cents per mile for each mile necessarily traveled in continuous trips by such conveyances, which said mileage shall be the property of the sheriff.”


Immediately following the last quoted language, supra, are two provisos, the first of which was in the 1933 Act and the second of which is the one now under consideration. The first proviso is undoubtedly a typical proviso intended to take out of the general provisions with respect to mileage payable to a sheriff, the case of a sheriff who does not furnish his own conveyance.

The second proviso is somewhat more difficult of classification. It provides,

“That in all counties having a population of thirty thousand or less according to the last preceding United States census, and where the sheriff of any such county
furnishes and maintains the conveyances used in the
discharge of his official duties, the sum of four hun-
dred ($400.00) dollars per annum shall be paid to such
sheriff by the county in quarterly installments on the
1st day of January, April, July and October of each
year, as an allowance to cover the cost of all gasoline,
oil, tires and repairs necessary to operate such vehicles
while used in the discharge of any of the official duties
of such sheriff.” (Our italics.)

“The cost of all gasoline, oil, tires and repairs” is essentially
the justification for a mileage charge and in the absence of a
statement that the allowance is additional, that is in addition
to the mileage otherwise provided for, a statement which could
easily have been made, it is difficult to come to any conclusion
other than the conclusion that it was intended to be in lieu
of the mileage allowance as stated in the language immedi-
ately preceding it. In other words, the purpose was to take
such counties out of the general class and to allow a certain
lump sum to be paid to sheriffs therein rather than a mileage
fee at a fixed amount per mile traveled.

Following the rule of strict construction of provisos and
limiting their application to the language immediately pre-
ceding them, however, I doubt whether this proviso should
be construed as limiting the amounts allowed to sheriffs for
serving out-of-county process and for transporting persons
to penal and benevolent institutions and for going for and
returning fugitives from justice. In the first place the appli-
cable rule of construction would not necessarily require that
the proviso be considered as limiting the allowances in such
cases, and, in addition, it is obvious that the service is of a
special character and for which a special basis of allowance
is otherwise made by statute. In other words, the specific
provision as to service of out-of-county process is that the
sheriff shall be entitled to such fees and as to the allowance
for the transporting of prisoners and going for and returning
fugitives that the sheriffs shall be paid as now provided by
law.

Upon the basis of the foregoing I think your questions (a),
(b) and (c) should be answered in the affirmative and your
question (d) in the negative. As to when the first quarterly
payment will become due, I think it will be due on October
1, 1937. In other words, the amount is not to be advanced but
to be paid after the service is rendered.