
State Board of Tax Commissioners of Indiana v. Jackson, (1931) 283 U. S. 527.

Since the Store License Tax Law is an expression of the state’s sovereign taxing power and makes no attempt to regulate the stores licensed thereunder, it follows that the enactment of this revenue raising measure did not repeal, either specifically nor by implication, the power granted to the cities to regulate auctions and auctioneers under the police power. The suggestion “that by enactment of the Store License Tax Law the state assumed full regulation of the conduct of stores so that the cities no longer are possessed of the power to enforce ordinances relating to auctions” is unsound for the simple reason that the Store License Tax Act does not “regulate” stores, but is an expression of the revenue raising power of the state.

I am therefore of the opinion that the provisions of the Store License Tax Act do not supersede the provisions of clause 35 of section 53, Acts of 1905. The passage of the Store License Tax Act did not modify the power delegated to the several municipalities to regulate sales in stores as an expression of the police power of the state.

ACCOUNTS, STATE BOARD OF: Special Judges. Appropriations, whether per diem of Special Judges may be paid without appropriation.

March 19, 1938.

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

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following question:

“Can the per diem for special judges or compensation of judges pro tem be paid by the county auditor
without appropriation having been made by the county council?"

Section 2-1416 of Burns’ Indiana Statutes Annotated 1933 provides as follows:

"When a judge or any practicing attorney is called upon to preside in the place of the regular judge, either at a regular or an adjourned term, whether selected from the bench or bar, he shall be allowed the sum of ten dollars ($10.00) per day for the time actually served, to be paid as follows: On the presentation of an order made by the court for the allowance, specifying the time of service, supported by an affidavit of the special judge, that he actually served such time; and an affidavit of the regular judge, if any, stating the reason for the services of such special judge, the same shall be paid out of the county treasury for the time being, for which the county shall have credit on settlement with the treasurer of state; Provided, That in all cases where a special judge shall be called, one-half the compensation paid, as herein provided, shall be deducted by the auditor of state from the pay of such regular judge, except when such special judge is called to preside in cases of change of venue, or when such regular judge shall have a pecuniary interest in, be a party to, or be related to any party to said suit by blood or marriage, or may have been of counsel in any such cause pending, or may be absent on account of serious illness of himself or family."

It will be noted that the compensation above provided for is to be “paid out of the county treasury for the time being,” but the county is to receive credit on account thereof on settlement with the Treasurer of State. The obligation, after all, is an obligation of the state and, in the final analysis, is paid by the state. The statute is very clear as to the amount to be paid and furnishes specific directions for the payment of the amount so fixed.

It seems to me that, under the above circumstances, no appropriation by the common council is necessary.