ACCOUNTS, STATE BOARD OF: Clerks of Circuit Court
goods to per diem fee and transcript fees on change of
venue.

January 17, 1938.

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

Dear Sir:

This will acknowledge receipt of your request for an opinion
as to the proper manner of charging and paying the per diem
fee to the clerks of circuit courts for services in attending
court and also as to the right of the clerk to charge and retain
for himself a service fee of fifty cents ($ .50) for his certificate
to transcripts on change of venue.

In reply to your first question, your attention is directed to
the provisions of chapter 131 of the Acts of the Indiana Gen-
eral Assembly of 1927, which reads as follows:

"Clerks of the circuit courts, * * * are authorized
to tax, charge and collect the following fees, * * *
"For attending court, in regular, special, or ad-
journed term, or in chambers, in person or by deputy,
per day, to be paid from the county treasury, $2.00."

Section 7, chapter 21 of the Acts of the Indiana General
Assembly of 1933 provides that,

"Sec. 7. The salary herein provided for clerks of
the circuit courts shall be in full for all services as
clerks of the circuit courts and as ex officio clerks of
all other courts in which said clerks are required by
law to officiate, including services attending such courts,
except as herein otherwise provided. * * * All fees for
preparing the transcript upon change of venue from the
county shall accrue to and be retained by the clerk of
the circuit court of the county from which the change
of venue is taken, and all other clerk's fees taxed on
such change of venue shall accrue to the clerk of the
circuit court of the county to which such change of
venue is taken and shall there be taxed and retained
by the clerk of such circuit court."
It is apparent from a reading of the last sentence above quoted that the clerk is entitled to his per diem fee which is properly taxed in change of venue cases. A question, therefore, arises as to whether or not he is entitled to more than one per diem in the event more than one item of business is done in any particular day in cases pending in his particular court on change of venue to his county. Our Supreme Court in passing upon similar questions has repeatedly held that there can be but one per diem charged by a public officer for a calendar day.

"When the statute says that the fees of jurors shall be $2 per day, while in actual attendance, it contemplates a calendar day of twenty-four hours, if continuous attendance and service are required, extending from the opening of the court on one day until its opening on the next. If the juror serves but ten minutes of the day, he is nevertheless entitled to his $2. If he is kept with his fellow jurors for twenty-four hours, he gets no more. There is absolutely no authority for splitting the calendar day into parts, as was done here, and counting each part, thus arbitrarily created, as an entire judicial day. If this could be done in the case of jurors, why not as to witnesses, clerks, and special judges, if the business of the trial court required their presence at night sessions? The statute intends nothing of the sort."

Monroe v. State, ex. rel., 157 Ind. 45, 48, 49.

This same question was before the Appellate Court of Indiana in regard to the manner of charging this per diem to counties in which the cause of action originated. In discussing this question, the Appellate Court of Indiana said:

"During the whole days and during the definite parts of a day's session, while the cause from Randolph County was occupying the time of the court of Henry County, the latter county was at the expense of $2 per day for the attendance of its sheriff upon the court. To the extent to which that expense was attributable to the cause in question, it was an expense for which Henry County was entitled to reimbursement from Randolph County."

Board, etc. v. Board, etc., 27 Ind. App. 378, 405.
In the case last above quoted, the court had allowed the bailiff an additional fee of two dollars ($2.00) for staying out all night in attendance upon a jury. The Appellate Court refused to allow such additional fee and on this point spoke as follows:

"This allowance was wholly unauthorized. The bailiff was allowed for his attendance on March 2 and on March 3, in another conclusion which we have approved. The statute limiting the allowance to the bailiff to $2 per day contemplates calendar days, each of which is twenty-four hours long. For any and all service performed during a calendar day he can be allowed no more than the _per diem_ compensation so provided. A like question was decided in an appeal from the court from which the case at bar comes, Monroe v. State, _ex rel.,_ 157 Ind. 45."

Board, etc. v. Board, etc., 27 Ind. App. 378, 406.

It is my opinion, therefore, that the clerk is entitled to but one per diem for his services in attending court in any particular calendar day. If the time of the court during that day is occupied with business sent to it on change of venue from another county, the clerk is entitled to charge to that county his per diem for attending court under the rules above announced and entitled to retain such fee as his own.

As to whether or not the clerk of the circuit court is entitled to retain as his own a fee of fifty cents ($.50) for the certificate which is attached to transcripts on changes of venue, your attention is directed again to the last sentence of section 7, chapter 21 of the Acts of the Indiana General Assembly of 1935 above quoted, which provides that,

"_All fees_ for preparing a transcript upon change of venue from the county shall accrue to and be retained by the clerk of the circuit court of the county from which the change of venue is taken."

A transcript is defined to be a copy of the original record, an official copy.

State, _ex. rel. v._ Carey, 44 Ind. App. 659.

It will be noted that chapter 131 of the Acts of the Indiana General Assembly of 1927 contained this provision:
"Provided, That where such copies are certified by
the clerk, a fee for certificate, otherwise provided
herein, shall be charged in addition to the fees for such
copying, which certificate fee when collected shall be-
long to and be the property of the county, and not the
property of the clerk: * * *.”

Since the term transcript, therefore, requires an official
copy of a record, it is apparent that the clerk’s certificate
thereon is necessarily a part of such transcript. Since, there-
fore, the law recognizes the necessity of the clerk’s certificate
to transcripts and since the last expression of the legislature
provides that all fees for preparing the transcript shall be re-
tained by the clerk, it is my opinion that the clerk is entitled to
this fee as his own.

It is my further opinion that the clerk is entitled to charge
and retain as his own fees for transcripts on appeal in cases
venued to his county under the provisions of the last sentence
of section 7 above quoted and under the former opinion of the
Attorney General issued to you under date of January 27,
1934.

LABOR, DIVISION OF: Labor Board has no jurisdiction
over Government employees; employees of Government
not under jurisdiction of Labor Board:

January 17, 1938.

Hon. Thomas R. Hutson,
Commissioner of Labor,
Indianapolis, Ind.

Dear Mr. Hutson:

I have before me your letter as follows:

“It is requested that you give this department an
official opinion as to whether or not the Division of
Labor has jurisdiction in attempting to conciliate al-
leged disputes between the St. Joseph County Indiana
Employees, Local Union No. 135 of the American
Federation of State, County and Municipal Employees
and the St. Joseph County Commissioners of St. Joseph
County, Indiana.”