AUDITOR OF STATE: Salary of special judge appointed by Governor.

Hon. Laurence F. Sullivan,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion as to the salary payable to a special judge appointed by the governor pursuant to section 2-1415 of Burns' Indiana Statutes Annotated (1913) in a case where the service on the bench was for a period of 10 days and where no additional days were required for travel.

The provision of the statute upon the subject reads as follows:

"Said special judge shall be paid as compensation for his services the sum of twenty-five dollars ($25.00) per day and, in computing the time for which he is entitled to compensation, the time necessarily required for travel from his home to the place of holding court and return shall be included with the time of actual service on the bench; said compensation shall be paid as follows: On 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 service 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 of the treasurer with the state."

It seems clear that the legal allowance for ten days service is $250.00. While your letter specifically states that no additional days were required for travel and upon that basis I could rest my conclusion without further comment, in order to make my position clearer I desire to say further that the statute in providing that the time necessarily required for travel to and from the place of holding court shall be included in computing the time for which the special judge is entitled to compensation does not contemplate the accumulation of the
time prior to the convening of court and after its adjournment used for purposes of travel in any given day and the allowance of compensation therefore on the basis of a certain number of hours constituting a day. As said by the court in the case of Benson v. Adams, et al., 69 Ind. at page 354:

“A day is the unit of time. It commences at 12:00 o’clock P. M. and ends at 12:00 o’clock, P. M., running from mid-night to mid-night. In the division of time throughout the world, we believe this is regarded as the civil day. When the word “day” is used in a statute or in a contract, it means the twenty-four hours, and not merely the day as popularly understood, from sunrise to sunset, or during the time the light of the sun is visible. The fractions of a day in statutes, or legal proceedings, or in contracts, are not generally considered; but when the rights of parties depend upon the precedence of time in the same day, or upon a given hour or fraction of a day, it may be alleged or proved, as any other fact. 2 Bl. Com. 141; Sadler v. Leigh, 4 Campb. 195; Thomas v. Desanges, 2 B. & Ald. 686; Brainard v. Bushnell, 11 Conn. 16; Hinton v. Locke, 5 Hill, 437; Bouvier Dict., tit. Day. But, unless the meaning of the word is in some way restricted, it will be held to include the twenty-four hours.”

See also: Cheek v. Preston, 34 Ind. App. 343 at P. 345.

I recognize that under certain circumstances fractions of a day may be taken into consideration, but ordinarily the rule is as above stated. The statute under consideration does not limit the term “per day” to any particular number of hours, doubtless leaving that matter somewhat to the discretion of the court, but I do not think it is contemplated that a special judge in the same case may receive compensation for more than one day’s service during any particular calendar day.

In my opinion under the conditions set out in your letter the legal allowance is $250.00.