OFFICIAL OPINION NO. 17

June 20, 1967

STATE OFFICERS—Clerk of Supreme and Appellate Courts—What Constitutes Filing for Purposes of Charging and Collecting Fee.

Opinion Requested by Hon. Kendal E. Mathews, Clerk, Indiana Supreme and Appellate Courts.

I am in receipt of your recent request for my opinion covering the collection of fees for filing cases, which request reads as follows:

> "I respectfully request your Official Opinion in regard to the following excerpts from Indiana Acts 1907, Chapter 66, Section 2, page 92; and Indiana Acts of 1957, Chapter 145, Section 1, page 312. Burns Indiana Statute 49-2302.
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> " 'Fees to be taxed. — The Clerk of the Supreme Court shall tax and charge in each cause, filed in either the Supreme or Appellate Court, the following fees and amounts:
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> " 'For filing each case in either the Supreme or Appellate Court, a fee of $25.00.'
>
> "Is it mandatory or required that the Clerk of the Supreme and Appellate Court collect the fee at the time of entering the cause on the Issue Docket?"

Your question is, in actuality, two separate questions which must be answered individually:

1. Does the entering of the cause on the Issue Docket constitute "filing"?

2. Are you required to collect, and is appellant required to submit, the filing fee at the time of filing?

1. Definitions of the words "filing," "filed," or "to file" in connection with legal matters invariably relate to the filing of a paper or papers. The third edition of Bouvier's Law Dictionary, published in 1914, contains an elaborate definition:

> "FILE (Lat. Filum). A thread, string, or wire upon which writs and other exhibits in courts and offices are fastened or filed for the more safe-keeping and ready turning to the same. Spelman, Gloss.; Cowell; Tomlin, Law Dict. Papers put together and tied in bundles. A paper is said also to be filed when it is delivered to the proper officer, and by him received to be kept on file. 13 Viner, Abr. 211; 1 Littleton 113; 1 Hawk. Pl. Cr. 7, 207. See where filed by a wife as agent; Reed v. Inhabitants of Acton, 120 Mass. 130.
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> "The origin of the term indicates very clearly that the filing of a paper can only be effected by bringing it to the notice of the officer, who anciently put it upon the string or wire; Phillips v. Beene's Adm'r, 38 Ala. 248.
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> "Filing a paper, in modern usage, consists in placing it in the custody of the proper official by the party charged with the duty, and the making of the proper endorsement by the officer. Stone v. Crow, 2 S. Dak. 525, 51 N.W. 335. In the sense of a statute requiring the filing of a paper or document, it is filed when delivered to and received by the proper officer to be kept on file. The word carries with it the idea of permanent preservation of the thing so delivered and received; that it may become a part of the public record. It is not synonymous with deposited; People v. Peck, 67 Hun 560, 22 N.Y. Supp. 576. The 'file' in a cause includes original subpoenas and all papers belonging thereto. Jackson v. Mobley, 157 Ala. 408, 47 South 590."

The process through which a document becomes a part of an official record is usually described as "filing" as though that process consisted of one act. Actually, the process consists of

two separate acts, one by the party submitting the document and one by the clerk accepting the document, and each separate act is a "filing." Black's Law Dictionary, 4th Ed., p. 755, states it thusly:

> " 'To file' a paper on the part of a party is to place it in the official custody of the clerk. 'To file,' on the part of the clerk, is to indorse upon the paper the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern. Holman v. Chevaillier, 14 Tex. 339."

Thus, in relation to any document, there is no question as to what acts on your part constitute "filing."

Unfortunately, however, a "case" is not a tangible object which can be endorsed and fastened to a thread, string, or wire, or placed in a cardboard folder or jacket, or put into the drawer of a cabinet for safe-keeping. A "case" is defined in 6 Words and Phrases 360 thusly:

> "A case is a contested question before a court of justice; a suit or action; a cause. It is defined by Webster to be a state of facts involving a question for discusion or decision—especially a cause or a suit in court. Smith v. City of Waterbury, 7 A. 17, 19, 54 Conn. 174; Southwick v. Southwick, 49 N.Y. 510, 517, Ex parte Towles, 48 Tex. 413, 433; Slaven v. Wheeler, 58 Tex. 23, 25; Home Ins. Co. v. Northwestern Packet Co., 32 Iowa, 223, 236, 7 Am. Rep. 183."

Despite the intangibility of a "case," every lawyer and court clerk knows what is meant by the expression "filing a case in court" when used in connection with original actions, whether in a trial court or in the Supreme Court. Black's Law Dictionary, 4th Ed. p. 756 says: " 'Filing a bill' in equity is an equivalent expression to 'commencing a suit'." And in common parlance, filing a complaint and praecipe for summons in a circuit court is "filing a lawsuit," or "filing a case." And the filing of a petition for a writ of prohibition is often spoken of as "filing a case in the Supreme Court."

I believe that most lawyers would agree that, with respect to original actions, the attorney who says, "I filed a case" or "I saw John Doe 'filing a case'," means that he or John Doe filed with the clerk of a court a paper or papers which constitutes the first step in bringing a controversy before the court for adjudication. While he speaks of having filed "a case," his precise meaning is that a paper was filed which commenced a case.

In the case of *Furnia v. Grays Harbor County,* 158 Wash. 619, 291 Pac. 1111, 1112, 1114 (1930), the Supreme Court of Washington had before it the question of whether a justice of the peace was entitled to a $2.00 fee for the filing of each complaint for a search warrant. The statute in question provided that "[w]hen each case is filed the sum of $2.00 shall be paid by the plaintiff. . . ." The court said ". . . it seems clear that the filing of a complaint for the purpose of securing a search warrant is, under section 1864, supra, the filing of a case. . . ." No authority is cited and no definition of a "case" is quoted or formulated. The only principle applicable to your question to be gleaned from that opinion is that the filing of a case is the filing of a paper.

If any meaning at all is to be ascribed to the words "filing each case," it must be assumed that the 90th General Assembly used them to mean what lawyers would thereby commonly understand: "filing the paper or papers which commence each case."

What, then, is the paper, the filing of which commences a case in the Supreme or Appellate Courts of Indiana? Acts 1881 (Spec. Sess.), ch. 38, § 55, p. 240, Burns § 2-802 succintly answers that question as to the commencement of civil actions in trial courts by stating: "A civil action shall be commenced by filing in the office of the clerk a complaint, and causing a summons to issue thereon. . . ."

The commencement of cases originating in the Supreme Court can also be readily determined. Rule 2-35 of the Rules of the Supreme and Appellate Courts of Indiana, by prescribing requirements (such as verification) for petitions for writs of mandamus and prohibition out of the Supreme Court and Appellate Court obviously recognizes that such an original case

is commenced in those courts by the filing of such a petition with the clerk of those courts. In such cases it is quite clear that the time such a petition is filed is the time the clerk should "tax and charge" the $25.00 fee "[f]or filing . . . [such] case. . . ." It is also obvious that the clerk will enter the cause on the Issue Docket at that time and has no occasion for "entering the cause on the Issue Docket" at any earlier time. Only an occasional precisionist among lawyers would have any difficulty in referring to the filing of a petition for a writ of mandamus as "filing a case."

I assume your question relates primarily to appeals and undoubtedly stems from the fact that in a sense, the appeal has been commenced before any paper is filed in your office. Rule 2-3 of the Rules of the Supreme Court says *inter alias:* "An appeal shall be initiated by filing in the office of the clerk below a praecipe designating what is to be embraced in the transcript." Early statutory procedure was somewhat different.

Acts 1881 (Spec. Sess.) ch. 38, § 640, required that appeals "must be taken within one year from the time the Judgment was rendered." This was held to mean that the appeal must be "perfected" within that time, which is to say, the transcript and assignment of errors must be filed in the Supreme or Appellate Court within that time. There was no statute or rule which provided for any extension of time, but the Supreme Court possessed an inherent power to grant a late appeal where fraud or excusable mistake had prevented the appeal within the statutory time. *Smythe v. Boswell,* 117 Ind. 365, 20 N.E. 263 (1888). But relief of this type was rarely granted and apparently was never requested until the transcript and assignment of errors was belatedly tendered to the Clerk of the Supreme Court for filing. *Brady v. Garrison,* 178 Ind. 459, 99 N.E. 758 (1912). By Acts 1913, ch. 36, § 2, the time was shortened to 180 days, which still was apparently adequate and no provision was made for the Supreme or Appellate Court to extend the time.

There was another limitation on the time of taking a "term time appeal": It required the transcript to be filed in the office of the Clerk of the Supreme Court within 60 days of the date of filing the appeal bond in the court below. Acts

1881 (Spec. Sess.), ch. 38, § 632. By Acts 1917, ch. 30, § 1, the trial court judge was given power to grant a reasonable extension of that time. Burns § 2-3204. The trial judge was also empowered to grant an extension of time for presenting the bill of exceptions. Acts 1911, ch. 114, § 1, Burns § 2-3107.

Thus, in the last part of the nineteenth and early part of the twentieth centuries the Clerk of the Supreme and Appellate Courts rarely, if ever, had occasion to enter an appeal on the issue docket before the transcript (with or without the assignment of errors) was filed. Even a supersedeas in a vacation appeal could not be granted by the Supreme Court, or a judge thereof, until a transcript had been filed. Acts 1881 (Spec. Sess.), ch. 38, § 642, Burns § 2-3208. At that time, had the $25.00 fee been in effect, there would probably have been no occasion to ask when an appeal case was "filed."

The Supreme Court, exercising its rule-making power, did, however, adopt several rules in 1940 which significantly altered the procedure for taking appeals. Rule 2-2 shortened the time for filing the assignment of errors and transcript of the record and further provided that:

> ". . . If within the time for filing the assignment of errors and transcript, as above provided, it is made to appear by affidavit to the court to which an appeal or review is sought . . . that . . . it has been and will be impossible to procure a bill of exceptions or transcript to permit the filing of the transcript within the time allowed, the court to which the appeal or review is sought may, in its discretion, grant a reasonable extension of time within which to file such transcript and assignment of errors. . . ."

The rule above changes the earlier situation so that now it is possible for either the Supreme or Appellate Court, and you as Clerk of those Courts, to act in relation to an appeal prior to the filing of the transcript and assignment of errors. You have advised me that the names of the parties to the appeal are entered on the issue docket and a cause number assigned either upon receipt of the transcript and assignment of error or upon receipt of a petition for an extension of time

to file the transcript and assignment of error, whichever occurs first.

In those appeals in which there is no petition for extension preceding the filing of the transcript and assignment of errors, there can be no question but that the case is filed by you (for the purpose of taxing and charging the $25.00 fee for your service in filing it) when, and only when, the transcript is filed. The question, then, is whether the prior filing of a petition for extension of time constitutes "filing each case."

Acts 1881 (Spec. Sess.), ch. 38, § 647 (which it would appear from *Price v. Baker,* 41 Ind. 570 (1873), is but a reenactment of an 1852 statute and has been repealed by Acts 1963, ch. 29, § 18) reads as follows:

> "No pleading shall be required in the Supreme Court upon an appeal, but a specific assignment of all errors relied upon, to be entered in the transcript in matters of law only, which shall be assigned on or before the first day of the term at which the cause stands for trial; and the appellee shall file his answer thereto."

In *Price v. Baker, supra,* it was held that the assignment of errors could be filed after the transcript and that notice issued by the clerk after the filing of the transcript, but before the filing of the assignment of errors, was valid and effective.

The opinion of Judge Byron K. Elliott in *Bacon v. Withrow,* 110 Ind. 94, 10 N.E. 624 (1887), is both pertinent and short enough to be reproduced in its entirety, as follows:

> "ELLIOTT, C. J. — The final judgment in this case was rendered on the 10th day of July, 1885, and the record was filed in this court on the 21st day of December of that year, but no assignment of errors was filed until the 7th day of December, 1886. The appellees press a motion to dismiss the appeal, on the ground that the appeal was not brought within one year from the time the final judgment in the trial court was entered.
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> "The motion of the appellees must prevail. The assignment of errors is the appellant's complaint, and without it there is no case before the court. *Hollings-*

worth v. State, ex rel., 8 Ind. 257; *Henderson v. Halliday*, 10 Ind. 24.

"In the last case it was said: 'There is no assignment of errors. Hence, we have no jurisdiction of the case.' Judge Buskirk thus states the rule: 'Until such assignment is made, a case is not in the Supreme Court for any purpose whatever.' Buskirk Pr. 111.

"In view of the decision in *Price v. Baker*, 41 Ind. 570, this statement, perhaps, requires modification, for, under the rule there declared, a case may be in this court for the purpose of obtaining process before the assignment of errors is filed. But when a year is allowed to elapse without filing an assignment of errors, it is quite clear that the case can not be regarded as properly in this court. *Breeding v. Shinn*, 11 Ind. 547; *State ex rel., v. Delano*, 34 Ind. 52; *Thoma v. State*, 86 Ind. 182; *Estate of Thomas v. Service*, 90 Ind. 128.

"Appeal dismissed."

The rationale of *Bacon* has been consistently followed even though that decision has not been specifically cited since the 1935 case of *In re Wiles*, 208 Ind. 271, 195 N.E. 572, 573.

In *Davis v. Pelley*, 230 Ind. 248, 251, 102 N.E. 2d 910, 911 (1952), the Court, noting that the assignment of errors was not properly signed either by the appellant or his attorney and thus was not a valid pleading, said:

"The assignment of errors constitute appellant's complaint in this court, *Second Nat. Bank of Robinson, Ill. v. Scudder* (1937), 212 Ind. 283, 286, 6 N.E. 2d 955; *Chilcote v. Jordan* (1936), 210 Ind. 587, 588, 4 N.E. 2d 186; *In re Wiles* (1935), 208 Ind. 271, 275, 195 N.E. 572; it is a requisite to an appeal, and without a proper assignment of errors no jurisdiction is conferred upon this court. In re *Wiles, supra*; *Magill v. Cox* (1859), 12 Ind. 634; *Harris v. Davis* (1937), 103 Ind. App. 214, 215, 6 N.E. 2d 722; *Gary State Bank v. Gary State Bank Admr.* (1936), 102 Ind. App. 342, 346, 2 N.E. 2d 814; *Gedney and Sons, Inc. v. Tinner* (1933), 95 Ind. App. 544, 546, 183 N.E. 886; *Debs v. Dalton* (1893), 7

> Ind. App. 84, 88, 34 N.E. 236; Rule 2-6, Sup. Ct. of Ind., 1949 Revision. . . .
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> "Since the paper filed herein purporting to be an assignment of errors cannot be considered as such, it follows that no assignment of errors has been filed. Hence no complaint is on file in this court; and no jurisdiction has been conferred and nothing presented for our consideration.
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> "This attempted appeal must, therefore, be dismissed for want of jurisdiction, and it is so ordered."

It is thus apparent that until the filing of the assignment of error there is not, in the terminology of the definition of "case" quoted *supra* from 6 Words and Phrases 360, a "con tested question before a court," nor is there "a state of facts involving a question for discussion or decision." Therefore, the filing of the assignment of error, the document that gives the court jurisdiction to decide whether the trial court did commit error, is the filing of a case.

In 1940, well after the decision of *Price v. Baker, supra,* permitting separate filing of the transcript and assignment of error, the Supreme Court also adopted Rule 2-6, which provides, *inter alia*: "There shall be attached to the front of the transcript, immediately following the index, a specific assignment of the errors relied upon by the appellant in which each specification of error shall be complete and separately numbered." This provision, together with the references in Rule 2-2 to "the assignment of errors and transcript of the record" probably now requires that the two be filed at the same time as parts of the same bundle of papers. *Board of Medical Registration & Examiners v. Bowman,* 238 Ind. 532, 534, 150 N.E. 2d 883, 884 (1958), states: "By virtue of the rule [Rule 2-6] the assignment of errors becomes a part of the transcript and record on appeal."

Thus, Acts 1907, ch. 66, § 2, as amended by Acts 1957, ch. 145, § 1, the same being Burns § 49-2302, should be interpreted as authorizing the Clerk of the Supreme and Appellate Courts to "tax and charge" a fee of $25.00 in an appeal case only upon the filing of the transcript and assignment of error.

2. The time for taxing and charging the $25.00 fee having been determined, consideration may now be given to the time and manner of its collection. The language used in *Seiler v. State ex rel. Bd. of Comm'rs,* 160 Ind. 605, 617, 65 N.E. 922, 927 (1903), may prove helpful in analyzing the problem and pointing the way to its solution:

> ". . . The prime object in construing statutes is to ascertain and carry out the true intent of the legislature . . . Words and phrases employed in the law must be considered in their literal and ordinary signification, and where technical words and phrases are used which have a peculiar and appropriate meaning, these must be understood according to their technical import, unless in so doing the intent of the legislature will be defeated. § 240 Burns 1901 [2 R.S. 1852, ch. 17, § 1, p. 339, Burns § 1-201] § 240 Horner 1901; *Mayor, etc. v. Weems,* 5 Ind. 547; *Storms v. Stevens,* 104 Ind. 46; *Stout v. Board, etc.,* 107 Ind. 343; *Massey v. Dunlap,* 146 Ind. 350; *Hockemeyer v. Thompson,* 150 Ind. 176. ". . . We must assume that the legislature advisedly and understandingly employed the words 'tax' and 'fee' or 'fees' in their usual sense, or in accordance with the appropriate and legal meaning of these terms; hence, in the interpretation thereof, we must be guided by and observe the rule to which we have hereinabove referred. The word 'tax,' as a verb, when used in respect to fees or costs, is defined to mean 'To assess, fix, or determine judicially, the amount of; as to tax the cost of an action in court.' Webster's Int. Dictionary. Anderson's Law Dictionary defines the words to mean, 'To assess, adjust, fix, determine; as, to tax the items and the amount of costs in a case.'
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> "When the auditor has taxed and charged the fees upon the books of his office as prescribed in § 115 of the salary act, he may be said to have assessed and determined the amount of the fees allowed by law in the particular matter in which he has rendered official services. . . . The amount of such fees . . . when collected by fee bill or otherwise, must be reported and paid over to the county treasurer as exacted by § 124.

> This latter section does not profess to require him to report and pay over to the county treasurer money accruing otherwise than from the fees of his office. The word 'fee,' as used in the statute, had at the time of the passage thereof a well defined meaning and import, and to this we must adhere, under the rule previously asserted, unless by so doing the intent of the legislature will be defeated. . . .
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> ". . . Fees are compensations for particular acts or services; as the fees of clerks, sheriffs, lawyers, physicians etc. . . ."

No reason is apparent for believing that the intent of the Legislature will be defeated by giving the words "tax and charge," "collect," and "fees" the same meaning, in answering your question, as was given those words in *Seiler v. State ex rel. Bd. of Commrs., supra.* The statute you quote does not use the word "collect." It requires, only, that "[t]he Clerk . . . shall tax and charge in each cause . . . [f]or filing each case . . . a fee of $25.00. . . ."

It is quite clear from the quoted portions of the opinion in *Seiler* that "tax and charge" and "collect" are not synonymous terms, nor does "tax and charge" include "collect." To paraphrase the first sentence of the first paragraph on page 618 of 160 Ind.: "When the auditor [clerk] has taxed and charged the fees upon the books of his office as prescribed by § 115 of the salary act [Burns § 49-2302], he may be said to have assessed and determined the amount of the fees allowed by law in the particular matter in which he has rendered official services."

Further, a number of cases have held that unless the statute establishing the fee provides that payment of the fee is a prerequisite to the performance of the service, then the officer concerned must perform the service prior to collection of the fee. For instance, in *McFarlan v. State,* 149 Ind. 149, 48 N.E. 625 (1897), the Sheriff of Rush County was held in contempt of the Delaware Circuit Court for refusing to serve a summons directed to him by that court unless his fees were first paid. In affirming the judgment the Supreme Court said, at 149 Ind. 151, 152:

> "It is clear that unless there is a statute authorizing a sheriff to collect his fees in advance, he is bound to execute every legal process delivered to him before he is entitled to demand and receive the fees therefor. It is well settled in this State that an officer is only entitled to such fees as the statute provides, and that he has no right to tax and collect any fee for services unless he can produce a statute which authorizes him to do so. *Eley v. Miller,* 7 Ind. App. 529, 534, and cases cited; *Wood v. Board, etc.,* 125 Ind. 270; *Noble v. Board, etc.,* 101 Ind. 127; *Legler v. Paine,* 147 Ind. 181, 182; *Stiffler v. Board, etc.,* 1 Ind. App. 368. . . .
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> "As the fees of sheriffs and all other officers are regulated by statute, and in many of the states officers are authorized by statute to demand and receive their fees for official services before such services are performed, the decisions in other jurisdictions are not entitled to consideration in this case, unless it is shown that they were made under statutes substantially the same as our own."

See also *Coats v. State ex rel. Marion Window Glass Co.,* 133 Ind. 36, 32 N.E. 737 (1892); *Adams Express Co. v. Welborn,* 59 Ind. App. 330, 108 N.E. 163 (1915).

Several statutes relating to the fee for filing a case (that is, for filing the paper or papers that bring the case before the court) in other courts clearly provide that the fee must be paid at that time. For instance, Acts 1949, ch. 128, § 1, Burns § 49-1305a, provides, in part:

> "Upon the institution of any civil action or proceeding, whether by original process, removal or otherwise in any circuit, superior or probate court, there shall be paid by the party or parties so instituting such action or proceeding the sum of ten dollars. . . . Judges of the circuit, superior and probate courts are hereby authorized and directed to require by court order the advance payment of other court costs."

Also, Acts 1925, ch. 194, § 19, a part of the act establishing municipal courts in counties having a city of over 300,000

population was rewritten by Acts 1955, ch. 313, § 1, Burns § 4-2519, to read, in part:

> "(a) 1. The costs in all civil cases . . . shall consist of a county docket fee in the amount of ten dollars, payable to the county. . . . The said county docket fee shall be in lieu of any docket fee or clerk service fee required by law to be taxed by clerks of circuit courts in civil actions and shall be paid upon the institution of each civil case."

It must be noted that both of these filing fee statutes antedates the $25.00 Supreme and Appellate Court filing fee provisions which was first provided by Acts 1957, ch. 145, § 1, two years after the municipal court filing fee was made law and eight years after the circuit, superior and probate court filing fee came into existence. Both of these trial court filing fee statutes illustrate that the General Assembly knew quite well how to make it unmistakably clear that the filing fee must be paid in advance. If the 1957 General Assembly had intended to require payment at the time of filing when it created a clerk's fee of $25.00 for filing each case in either the Supreme or Appellate Court, there is no reason to believe it would not have said so in as clear and plain terms as the 1949 and 1955 Legislatures used for trial court filing fees. Instead, it used the same "tax and charge" language which was already in the 1907 Act for all other clerk's fees.

Finally, several statutes of long standing provide a legal procedure for the collection of unpaid fees, if necessary, after the services have been rendered. Acts 1875 (Spec. Sess.), ch. 8, § 38, Burns § 49-1422, reads in part:

> ". . . and all clerks shall, in a book to be kept for that purpose, enter all fees as the services are rendered; and the clerk of the Supreme Court, or of any inferior court of record, shall have power, while he is in office, to issue fee-bills from the books aforesaid, and the records and papers on file in his office, for services rendered by himself or for services rendered by any other person in said court, at any time after such services are rendered."

And Section 42 of the same act, Burns § 49-1425, reads in part:

> ". . . each officer may, at the foot of any of his fee-bills, make out a mandate to the proper officer, commanding him to collect the same as required by law, and make due return thereof, and shall sign the same; and from the time such fee-bill shall come into the hands of such collecting officer, it shall have the force and effect of an execution from the circuit court, and shall be treated as such, and shall operate as a lien upon the real and personal estate of the debtor. . . ."

See also Acts 1855, ch. 50, §§ 1 and 2, Burns §§ 49-1429 and 49-1430, concerning the collection of fees in those instances where an appeal bond has been executed.

The full answer to your question then is this:

It is not mandatory or required that the Clerk of the Supreme and Appellate Courts collect the $25.00 fee for filing cases at the time of entering the cause on the Issue Docket. The fee must be taxed and charged only at the time the case is filed, which, in my opinion, is at the time the transcript of the record and assignment of errors are filed, in cases of appeal and review, and at the time the petition for relief is filed in all other cases. The filing of a petition for extension of time in which to file the transcript and assignment of errors is not, in my opinion, the filing of a case.

The payment of the $25.00 fee for filing a case in the Supreme or Appellate Court cannot be demanded in advance, nor can the fee be taxed until the service has been rendered. Once a case has been filed and the $25.00 fee taxed and charged on the books, it becomes the clerk's duty to collect it. He is then at liberty to request payment from the filing party or his attorney, or both, and, at any time before it is paid, to issue a fee bill to the Sheriff of the Supreme Court.

I have not been asked, and would not presume to suggest, what might be the effect of a duly adopted rule of the Supreme Court requiring advance payment of the filing fee.

The law (Acts 1889, ch. 71, § 8, as amended by Acts 1959, ch. 230, § 1, Burns § 49-1908) requires me to advise any state officer on the law concerning the duties of his office and I am

happy to answer every such request. However, I should point out that the Clerk and Reporter of the Supreme and Appellate Courts apparently have available to them a more authoritative source of legal advice. In both *Ex parte Brown,* 166 Ind. 593, 78 N.E. 553 (1906) and *Ex parte Fitzpatrick,* 171 Ind. 557, 86 N.E. 964 (1909), the Clerk of the Supreme and Appellate Courts successfully petitioned the court for advice concerning fees. In *Ex parte Sweeney,* 126 Ind. 583, 27 N.E. 127 (1891) the clerk was advised on what cases to transfer to the Appellate Court and in *Ex parte Sweeney,* 131 Ind. 81, 30 N.E. 884 (1892) on whether a bond was essential to the effectiveness of a term-time appeal. In *Ex parte Griffiths,* 118 Ind. 83, 20 N.E. 513 (1889) the court advised the Reporter that a statute requiring the judges to write a syllabus for each opinion was unconstitutional. *Ex parte France,* 176 Ind. 72, 78, 95 N.E. 515 (1911) advised the Clerk as to the validity of a statute concerning the Appellate Court.

OFFICIAL OPINION NO. 18

July 10, 1967

SCHOOLS AND SCHOOL CORPORATIONS—ZONING—Applicability of Zoning Master Plan to School Building Construction.

Opinion Requested by Hon. Richard D. Wells, Superintendent of Public Instruction.

This is in reply to a request of your predecessor for an Official Opinion, which request reads as follows:

> "Wayne County is in the process of preparing a Master Plan, pursuant to Chapter 174, Acts of 1947.