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OFFICIAL OPINION NO. 46

December 13, 1967

**OFFICERS, JUDICIAL—JUSTICES OF THE PEACE—Court
as Having Power to Incur Expenses of Jury Trial.**

Opinion Requested by Hon. John Murray Parker, Prosecuting Attorney, 84th Judicial Circuit.

I am in receipt of your request for an opinion as to whether a township trustee and the township advisory board are authorized, or can be required, to pay jurors' fees in a criminal case before a justice of the peace, especially in those cases where the defendant is acquitted.

The township trustee and township advisory board are required to provide court room facilities, supplies and equipment by Acts 1957, ch. 322, § 13, the same being Burns § 5-137, which provides:

“In all townships of the State of Indiana in which there may now be justice of the peace courts or in which such courts may hereafter be created, the township trustee and township advisory board shall make adequate provisions for court room facilities in suitable and convenient place or places for the holding of such courts and the cost of providing such place or places shall be at the expense of the township, and in addition thereto, said township trustee and township advisory board shall make suitable provision for and appropriate sufficient money for the purchase of necessary supplies and equipment to be used in the maintenance of said court rooms and in the conduct of the business of such courts. It is further provided that the circuit judge of the county in which any such

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township lies shall have jurisdiction and supervisory power to enforce the provisions of this section by mandamus.”

Although the statute above both authorizes the payment and provides a method for requiring the payment of certain taxes, it is by its terms limited to the physical facilities necessary for the conduct of a trial. No similar general statute concerning payment for personal services connected with a trial can be found, nor is there any statute specifically concerned with jurors’ fees that authorizes or requires the township trustee and township advisory board to pay such fees.

Nevertheless, such authorization must be implied.

A defendant in a criminal prosecution is given the right to a jury by the Constitution of the State of Indiana which, in Art. 1, § 13, provides in part:

“In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed. . . .”

The Legislature recognized this constitutional right and provided for jury trials in justice of the peace courts by Acts 1905, ch. 169, § 73, the same being Burns § 9-713, which provides:

“If the offense charged be a misdemeanor, and one that the justice of the peace has jurisdiction to furnish [punish] the defendant or the state may demand a jury, which may be impaneled and sworn as in other criminal cases; or he may be tried by the justice.”

Thus, there can be no doubt that the defendant has the right to a jury trial.

Similarly, the jurors have a right to fees for serving as jurors. Article 1, § 21, of the Indiana Constitution provides that “[n]o man’s particular services shall be demanded, without just compensation.” There might be some question

as to whether service as a juror constitutes "particular services" (see *Israel v. State* [1857], 8 Ind. 467), but the Legislature recognizes the spirit of the Constitution in Acts of 1879, ch. 51, § 34, as amended by Acts 1881 (Spec. Sess.), ch. 49, § 1, the same being Burns § 5-807, which provides:

"Fees of . . . jurors shall be. . . . For each day's attendance before a Justice of the Peace, one dollar; for each mile necessarily traveled, five cents."

(Jurors' fees in circuit, superior, criminal, juvenile, probate and municipal courts are \$7.50 per day and 10¢ mileage; in city courts, \$5.00 and 5¢ mileage. See Burns § 4-3319.)

It is a rule of statutory construction that when a statute either grants a right or imposes a duty, it also confers, by implication, every particular power necessary for the exercise of the one or the performance of the other. *Newcomb v. City of Indianapolis*, 141 Ind. 451, 40 N.E. 919 (1895). An instructive precedent in our case is *Conn v. Board of Comm'rs*, 151 Ind. 517, 51 N.E. 1062 (1898). In this case the appellant contractor had been hired by the county engineer to construct a portion of a ditch. A dispute arose over the amount of compensation payable and the contractor sued the Board of County Commissioners, stating that the statute under which the work was done was silent as to the method whereby the contractor could get acceptance of his work and payment therefor. The court stated at pp. 523-525:

"We do not concur in the assertion of appellant's counsel that if his client cannot maintain this action, he is without remedy to enforce the payment of his claim for the work which he has performed under his contract. It is true the statute expressly omits to point out in express terms the method by which a contractor, when his job is completed, may secure an acceptance thereof and payment of the money due him under his contract for the work. The law in this respect is at least open to construction. We concur with the contention of the learned counsel for appellee that the statute, by necessary implication or inference, empowers the engineer appointed by the board

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and charges him with the duty of furnishing the contractor with the necessary instrument by which he may receive his pay, from the county treasurer out of the fund set apart for the purpose intended. . . .

“It is a well affirmed principle that where a power is conferred by a statute, everything necessary to carry out the purpose of the power conferred and make it effectual and complete will be implied. (Citing authorities.) The implication or inference which may arise in the construction of statutes is of something not expressly declared, but arises out of that which is directly or expressly declared in the statute. (Citing authorities). If the intention of the makers of the statute in question, in regard to the remedy or method to be employed to enable a contractor to secure payment, from the county treasurer upon the completion of his job, can be ascertained, it will control, for it is a fundamental rule that a matter or thing within the intention of the makers of the law is the same in effect as if it were within its express letter. . . .”

By analogy we can state that in our case, although no provision has been made for the mechanics whereby a jury can be paid, the township trustee and the township advisory board, who are charged with paying other expenses of the justice of the peace, may likewise pay the jurors. As was said in *Conn v. Board of Comm'rs, supra*, at pp. 525-526:

“. . . In our search to discover this intention [of the Legislature], we may be guided by a well settled canon or construction which permits us to look to kindred statutes or laws upon the same subject, for aid in the exposition of such intention. It is not, generally speaking, as a rule, expected that a statute which has a place in a general system of laws, will be so perfect as to need no support from the rules and provisions of the system of which it forms a part, and hence, when it is a part of a general system of laws upon the same subject, its construction or inter-

pretation may receive support from the rules and provisions of that system. . . .”

There is an additional reason for believing that the township trustee and the township advisory board are authorized to pay jurors’ fees for trials in a justice of the peace court, a reason succinctly stated in *Knox County Council v. State ex rel. McCormick*, 217 Ind. 493, 511, 29 N.E. 2d 405 (1940), thusly:

“It seems to be the universal rule that ‘a court has the inherent power and authority to incur and order paid all such expenses as are necessary for the holding of court and the administration of its duties.’ (Citing authorities.)”

The administration of justice in a justice of the peace court, as established both by the Indiana Constitution and by the Indiana General Assembly, necessitates the use of jurors in a criminal prosecution if either the state or the accused so desire. The justice of the peace thus has the inherent power to incur the expenses of a jury, and the township trustee and the township advisory board have the duty to pay that expense. Should the trustee and the advisory board fail to meet that expense they can be mandated to do so by the circuit court of the county containing the township in the same manner as if they had failed to provide the physical facilities necessary to conduct a trial.