OFFICIAL OPINION NO. 1

February 21, 1966

COUNTY OFFICERS—SHERIFFS—Fees Allowable as Court Costs for Serving Papers and Writs in Civil and Criminal Cases—Applicability of Law With Regard to Multi-Defendant Lawsuits.

Opinion Requested by Hon. John W. Donaldson, State Representative, and Hon. Glenn R. Slenker, State Representative.

Gentlemen:

This office has received many requests similar to those received from each of you and this Opinion is in response to such requests for an interpretation of Acts 1965, ch. 407, Burns IND. STAT. ANN., §§ 49-1311 and 49-1312, concerning fees to be taxed and charged by county sheriffs as court costs for services in all civil and criminal cases.

The basic question raised by all the inquiries is whether Section 1 (a) and (b) of this Act requires the sheriff to tax as costs, the sum of $6.00 or $10.00 if applicable for each individual paper served. I am of the opinion that the question must be answered in the negative and that the Act fixes the cost at $6.00 or $10.00 per lawsuit or case.

The Act in question, Act 1965, ch. 407, provides:

> "The sheriffs of the various counties of this state shall, on behalf of their respective counties, tax and charge the amounts in this act fixed, which amounts so taxed and charged shall be designated 'sheriff's costs,' but they shall, in no sense, belong to or be the property of the sheriff, but shall belong to and be the property of the county. Each respective sheriff shall tax and charge:

"(a) For serving any writ, order, process, notice or any other paper in all cases, civil or criminal, including but not in limitation of fee bills, executions, decrees and orders of sale, and state employment security warrants _____$6.00

"(b) For the sale of property on execution or decree including making a deed or certificate of sale $10.00"

Section 2 of said Act provides:

"It is the intent that all amounts fixed by this act for official services or involving official authority shall be in full and in lieu of all fees, per diems, penalties, interest, costs, commissions, percentages, allowances, mileage and any and all other charges or costs heretofore taxed and charged by sheriffs other than those received for collections for delinquencies under section 13, as amended, of the Gross Income Tax Act, for which fees, damages and other remuneration and reimbursements are allowable to the sheriff for services performed."

These two sections replace Acts 1895, ch. 145, as amended, which made detailed provision for sheriff's costs including mileage. The old law, which was originally enacted for the purpose of providing compensation for the sheriff, applied separate costs for most of the court activity required of the sheriff, based upon the nature and extent of the services performed. Since the fee system for the sheriff was eliminated, such detail listings are antiquated and serve no useful purpose. The obvious intention of the Act in question is to further modernize and update the laws governing court procedure and to eliminate a long, involved and unnecessary listing with a single fee or charge of $6.00 for service and $10.00 for a sale. The result is uniformity in bookkeeping and accounting for the sheriff and the clerks, and enables the governmental unit to update and further adapt their ancient and respected office to the modern world.

It has been suggested that the Act imposes a $6.00 charge for each paper served. The basis for such contention is the use of the word "any" in the Act. Such an interpretation would result in exorbitant court costs and would defeat the

simplicity and uniformity of this amendatory legislation. By way of illustration, the service of a summons, order to appear, and restraining order in a divorce case would incur a cost of $18.00; if more than one defendant was involved, the costs would become increasingly burdensome. (A recent action for declaratory judgment named 172 individual defendants.)

This contention must be examined in light of Art. 1, sec. 12, of the Constitution of Indiana, which provides:

> "All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay."

The question arises then whether a charge of $6.00 per paper served would deny complainants access to the courts for redress of their grievances by overburdening them with excessive court costs which have no relation whatsoever to the costs of services performed by the public official.

The Appellate Court in *Sellers v. Myers,* 7 Ind. App. 148, 34 N.E. 496 (1893) reversed an order staying proceedings in the trial court until costs were paid in an earlier proceeding which had been dismissed by the plaintiff. The court said at p. 154, p. 498 of 34 N.E.:

> ". . . It is also true that it was appellant's duty to pay the costs occasioned in the justice's courts, but because he was poor and unable to do so should not close the courts against him, unless it be made to appear clearly that his conduct in bringing the second suit is vexatious. . . ."

Dictum in two Supreme Court decisions lend support against exorbitant or excessive fees that deny access to the courts. In *State ex rel. Bd. of Comm'rs v. Laramore,* 175 Ind. 478, 94 N.E. 761 (1911), the court said at p. 485, p. 763 of 94 N.E.:

> ". . . And it might be, that were costs and fees imposed on those who resort to the courts for justice so burdensome as to result in a practical denial of justice to a

> large number of our people, the Constitution in that part under consideration would be violated. . . ."

Likewise, in *Square D. Co. v. O'Neal,* 225 Ind. 49, 56, 72 N.E. 2d 654, 657 (1947), the court said that "any regulation which would virtually deny our citizens the right to resort to this court would necessarily be unreasonable."

When the Act under consideration is viewed in light of these decisions under Art. 1, sec. 12, of the Constitution, an interpretation of such Act imposing a fee of $6.00 for each paper served could not stand.

An Act which would have the effect of denying a segment of the populace free access to the courts is clearly violative of Art. 1, sec. 12. The premise underlying the determination of sheriff's fees was originally just compensation for a service performed by the officer and a reasonable allowance to cover his cost in travelling to and from the place of service. As stated above, since our sheriffs are no longer on a fee compensation basis, the necessity of such a complicated system is no longer necessary and a uniform and simplified system can be substituted. Fees should never have the effect of excluding the near indigent from the courts. The doors of justice must always be open to the poor as well as the rich, for an accessible and impartial judicial system is the bulwark of democratic government. An inaccessible judiciary is the cornerstone of anarchy. A primary function of law is to instill and preserve order. Where a segment of the populace is forced to seek means of settling their differences outside the framework of that recognized by law, anarchy exists in a clear and unmistakable form, less responsive than even primitive law. The expense of litigation must never be a bar to redress of civil wrong. Inadequate remedy for the civil wrong may have an impact equal to the wrongful deprivation of liberty. Therefore, the doors to our courts should always be open regardless of economic position. This is the real import of Art. 1, sec. 12, of the Indiana Constitution, which embodies these concepts of jurisprudence.

It logically follows that a charge of $6.00 per paper served may contravene the Indiana Constitution. There is, however, no necessity in this case for reaching such a conclusion, for

the word "any" as used in Acts 1965, ch. 407, § 2a, does not mean each, but all. We are imposed with a duty to seek out that interpretation which avoids conflict with the Constitution. *State ex rel. Spencer v. Baker,* 212 Ind. 44, 7 N.E. 2d 984 (1937).

While Burns IND. STAT. ANN., § 1-201 requires that language in the acts of the Legislature be interpreted according to the common usage, the courts have also said that the intention of the Legislature must be gathered from a reading of the entire act, *Ross v. State,* 9 Ind. App. 35, 36 N.E. 167 (1893); *Department of Treasury v. Reinking,* 109 Ind. App. 63, 32 N.E. 2d 741 (1941); *State ex rel. Rogers v. Davis,* 230 Ind. 479, 104 N.E. 2d 352 (1952), in order to effectuate the intent of the Legislature, *Haynes Automobile Co. v. City of Kokomo,* 186 Ind. 9, 114 N.E. 758 (1917), even though the strict letter of the statute may not be followed in effectuating that intent. *Pennsylvania Co. v. Masher,* 47 Ind. App. 556, 94 N.E. 1033 (1911).

On several occasions Indiana courts have interpreted the word "any" to mean "all" or "every." The Appellate Court in *Klotz v. First Nat'l Bank,* 78 Ind. App. 679, 134 N.E. 220 (1922) held that bank stockholders may be sued collectively where the statutory language provided for individual liability for "any debt." The court interpreted "any" to mean "all" or "every," saying on p. 683 (134 N.E. at 222) that:

> ". . . A different construction has been urged, based on the use of the word 'any,' in the section of the statute under consideration, in connection with the words 'debt or liability.' The use of that word in such connection does not require that said section be given a meaning different from what we have indicated, as it is a well-recognized fact that the word 'any' often used in the sense of 'every' or 'all,' and will be given that meaning when the fair import of the context requires it."

The Supreme Court had previously reached a similar construction in *Ludwig v. Cory,* 158 Ind. 582, 64 N.E. 14 (1902). In *Ludwig* the court upheld the validity of a power of attorney giving grantees of the power the right to remonstrate for the

voters against "any applicant" for a liquor license. The court rejected the contention that the power of attorney gave the grantees a discretion in remonstrating because of the use of the language "any applicant." The court interpreted "any" to mean "all." A similar interpretation was reached in *Indiana & Chicago Coal Co. v. Neal,* 166 Ind. 458, 77 N.E. 850 (1906) and *White v. Furgeson,* 29 Ind. App. 144, 64 N.E. 49 (1902).

Chicago & Calumet Dist. Transit Co. v. Mueller, 213 Ind. 530, 12 N.E. 2d 247 (1938), reaches a different interpretation, but that case is distinguishable from the situation here under consideration. The statute in the *Mueller* case permitted buses operating in the corporate limits of "any city or town" to pay only 1/10th of the registration fee required. Plaintiffs had sought the exemption because their buses operated in the contiguous towns and cities in the Calumet region. The court held that "any" as used there meant "one" or "each," in order to comport with the general scheme of the statute. The court reasoned that the Legislature had used the language "cities and towns contiguous thereto" in another part of the act and had they meant "any" to mean all or every town or city joining, they would have used the "contiguous" phrase. They did not. Therefore, the court reasoned that "any" meant "an indeterminate one of a given category and the ordinary and usual meaning of a word must be followed unless it clearly appears that the Legislature intended it to have a different meaning." 213 Ind. at 534, 12 N.E. 2d at 249. A different meaning was obviously intended in the Act under consideration here.

Acts 1965, ch. 407, § 2a, must be read in conjunction with sec. 3 which enunciates the Legislative intent of the Act. Sec. 3 states that the fees fixed in § 2a shall be "in full and in lieu of all fees, per diems, penalties, interest, costs, commissions, percentages, allowances, mileage and any and all other charges or costs heretofore taxed and charged by sheriffs." Each of the aforementioned were given individual classification in the old law for the historical reasons hereinbefore set out. It is patently obvious that the Legislature intended to replace these obsolete individual charges with one flat fee of $6.00 for serving papers in each lawsuit or case. By setting forth in sec. 3 the various charges heretofore levied, the Leg-

islature clearly intended the word "any" as used in § 2a to mean "all" or "every" and not each individual paper and defendant.

When section 2a is stripped of its exemplary language so as to read "for serving any . . . paper in all cases. . . .," the meaning is even more obvious that it refers to $6.00 per case or lawsuit. In other words, the maximum sheriff's costs in any lawsuit is $6.00 regardless of the number of trips, papers, or litigants.

THEREFORE, it is my opinion that Acts 1965, ch. 407, sec. 2a set sheriff's costs as described therein at a maximum rate of $6.00 per case or lawsuit and sec. 2b sets sheriff's costs as described therein at a rate of $10.00 per case or lawsuit.

OFFICIAL OPINION NO. 2

March 21, 1966

INDIANA PORT COMMISSION—Accounting Relationship with Auditor of State. Auditor as Sole Authority to Issue Warrants.

Opinion Requested by Hon. Mark L. France, Auditor of State.

Your letter was received requesting an Official Opinion specifically in regard to the accounting relationship of the Auditor of State with respect to the Indiana Port Commission. Your letter states in part, as follows:

> ". . . the question is raised in my mind as to the intent of the Legislature with respect to the manner in which the Auditor of State is to service this account.