that the Congressional districts created as a result of Ind. Acts of 1965, ch. 205, are presently in effect.

OFFICIAL OPINION NO. 35

August 30, 1965

Hon. John P. Daley
Prosecutor
703 Michigan Avenue
LaPorte, Indiana 46350

Dear Mr. Daley:

This is in response to your recent letter requesting an interpretation of the word "counties" as used in Ind. Acts of 1959, ch. 277, § 18a, as added by Ind. Acts of 1965, ch. 270, § 14, which may be found in Burns IND. STAT. ANN., § 49-2618a (1965 Supp.). The first paragraph of this section reads as follows:

"The minimum annual salary as provided in sections 6 through 18 of this act is hereby increased in the amount of seven hundred fifty dollars [$750] in judicial circuits of less than seventy-five thousand [75,000] inhabitants, according to the last preceding United States census, which adjoins one [1] or more counties of more than one hundred sixty thousand [160,000] inhabitants, according to the last preceding United States census." (Emphasis added.)

According to your letter, the Auditor of the State of Indiana has interpreted the word "counties" in this section to mean only counties in the State of Indiana, and has therefore excluded from the salary increase prosecuting attorneys in those Indiana judicial circuits of less than seventy-five thousand inhabitants which adjoin counties in other states having more than one hundred sixty thousand inhabitants, according to the last preceding United States census, but do not adjoin any such populous Indiana counties. Among the circuits included in the latter category, are Dearborn-Ohio and Franklin-Union, which adjoin the metropolitan counties of Hamilton and Butler, respectively, in Ohio. Also included
are Floyd, Crawford-Harrison, and Clark Circuits, which adjoin the Louisville metropolitan area, Jefferson County in Kentucky.

Whether the word "county" in a statute relates only to Indiana counties, or to out-of-state counties as well, depends upon the intention and purpose of the Legislature, which is determined by construing the statute, *State v. Price*, 206 Ind. 498, 190 N.E. 174 (1934).

The purpose of ch. 277, of Ind. Acts of 1959, as amended, Burns INDIAN STATUTES ANN., §§ 49-2601—49-2619, is to establish minimum salaries to be paid by the State of Indiana to prosecuting attorneys elected to serve judicial circuits. These judicial circuits are divided for salary purposes into thirteen classes. The salary class for each circuit is determined by two classification factors: the population and the "gross assessed valuation" of the circuit, Ind. Acts of 1959, ch. 277, § 4, Burns INDIAN STATUTES ANN., § 49-2604. Article 4, § 22, of the Constitution of the State of Indiana permits the General Assembly to grade salaries of officers "in proportion to the population and the necessary services required." The direct relationship of population and assessed property valuation to the "necessary services required" of county officers cannot be doubted, *Crowe v. Board of Commissioners*, 210 Ind. 404, 414, 3 N.E.2d 76 (1936). The court indicated that other factors may be considered by the Legislature, 210 Ind. at 416, 417.

By the passage of the 1965 amendment, the General Assembly has necessarily determined that geographical proximity to a large county increases the "necessary services" to be furnished by prosecutors in lightly populated circuits. The legislative purpose obviously was to compensate such prosecutors for those services required by them which are not required of prosecutors in more isolated circuits which have the same low population.

Two means of construing the statute are available. First, it must be determined whether necessary services of a prosecutor in a lightly populated Indiana county are increased by its proximity to an out-of-state metropolitan county as well as by proximity to a metropolitan Indiana county. Second, the terms of the statute itself must be considered to determine
the legislative intention. Changes of venue are often taken from larger Indiana circuits to the surrounding Indiana circuits. In addition, it is well known that crime is no respecter of boundaries. The crime of a metropolitan area often spills over into surrounding areas. Criminals not only lack respect for state lines, but may find it advantageous to live in one jurisdiction and commit crimes in another. That this is universally recognized by law enforcement officers is shown by the fact that in J. Edgar Hoover's "Crime in the United States" (1965 ed.), six of the counties adjoining Marion County are included in the Indianapolis metropolitan area as a "standard metropolitan statistical area" for the purpose of crime reporting. The standard metropolitan statistical areas for both Cincinnati, Ohio, and Louisville, Kentucky, include Indiana counties.

Therefore, a prosecutor in a lightly populated circuit adjoining an out-of-state metropolitan county will find it necessary to perform far more services than a prosecutor in a circuit with the same population surrounded by other non-metropolitan counties.

In considering the terms of the statute, it should first be noted that Indiana prosecuting attorneys are elected to serve judicial circuits, not counties. Their salary act, Ind. Acts of 1959, ch. 277, as amended and supplemented, Burns IND. STAT. ANN., §§ 49-2601—46-2619, including § 18a, Burns § 49-2618a (1965 Supp.), classifies their salaries and duties only by judicial circuit. The word "county" is used in the statute, except in § 18a, supra, only to refer to the county boards or officers who appropriate or pay money to the prosecuting attorneys. Such reference is necessitated by the fact that judicial circuits have no statutory taxing or appropriating power, and the officers of each circuit and their employees must be compensated for their expenses and, in some instances, salaries, by the county or counties comprising the circuit. Special provision is made for the division of expenses between counties in the same circuit, e.g., § 1 of the act, Burns IND. STAT. ANN., § 49-2601; § 19 of the act, Burns IND. STAT. ANN., § 49-2619 (1965 Supp.).

In § 18a itself, Burns IND. STAT. ANN., § 49-2618a (1965 Supp.), the Legislature scrupulously refers to salaries in
"judicial circuits." All Indiana counties are in a judicial circuit. See various Indiana Acts as amended and compiled as Burns IND. STAT. ANN., § 4-332.

Therefore, had the Legislature intended to limit the salary increase to prosecutors in the designated circuits which adjoin only Indiana counties of more than one hundred sixty thousand population, it would have used the words "judicial circuits" instead of the word "counties," and the out-of-state counties would thereby have been excluded.

In my opinion, prosecuting attorneys in judicial circuits in the State of Indiana of less than seventy-five thousand inhabitants which adjoin one or more counties of another state which have more than one hundred sixty thousand inhabitants, according to the last preceding United States Census, are entitled to the seven hundred and fifty dollars ($750.00) salary increase provided by § 14 of 1965 Ind. Acts, ch. 270, which adds § 18a to Ind. Acts of 1959, ch. 277, Burns IND. STAT. ANN., § 49-2618a.

OFFICIAL OPINION NO. 36

August 31, 1965

Hon. John P. Daley
Prosecutor
703 Michigan Avenue
LaPorte, Indiana

Dear Mr. Daley:

At the recent summer meeting of the Indiana Prosecutors' Association, serious questions concerning the operations of a prosecuting attorney's office in the State of Indiana were posed by members of the Association.

These problems involve the prosecuting attorney's appointment of personnel, travel and office expenses, other operating expenses and equipment, and rent or office space for the prosecuting attorney's office. The statutes involved are Ind. Acts of 1959, ch. 277, § 2, as amended by Ind. Acts of 1965, ch. 270, § 1, Burns IND. STAT. ANN., § 49-2602 (1965 Supp.), and Ind. Acts of 1959, ch. 277, § 19, as amended by