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Account" of the general fund in accordance with the Acts of 1935, Ch. 287, Sec. 38, as found in Burns' (1952 Repl.), Section 47-1248. The appropriation for the Motor Vehicles Division of the Public Service Commission is taken from this Motor-Vehicle Account pursuant to the Acts of 1961, Ch. 298, Sec. 2, page 769. The purpose of these fees according to the above acts is to defray the expenses incurred by the Motor Vehicles Division of the Public Service Commission and the State Police in the administration, regulation and enforcement of the law.

The authority given the Reciprocity Commission by Burns' 47-202 *supra*, specifically authorizes that Commission to enter into reciprocal agreements with other states regarding fees to be charged to motor vehicle operators of this state and foreign states. There is no indication that the term fees in this statute is meant in any other way than the usual definition of the term or that the fees charged by the Public Service Commission are to be excluded from the agreements which the Reciprocity Commission is authorized to consummate.

In view of the statutory authority given to the Reciprocity Commission, because of the language of such authority and because of the nature of the fees charged by the Public Service Commission, it is my opinion that the Public Service Commission fees provided for in Burns' 47-1244, *supra*, and Burns' 47-1245, *supra*, are the proper subject of reciprocal agreements as provided for in Burns' 47-202, *supra*.

OFFICIAL OPINION NO. 63

November 30, 1961

Mr. B. B. McDonald
State Examiner
Indiana State Board of Accounts
912 Indiana State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in response to your request for an Official Opinion. Your letter reads as follows:

“Section 49-1311, Burns’ Indiana Statutes, 1951 Replacement provides for an allowance to the sheriff for house rent and fuel by the Board of County Commissioners in counties where there are no jails or sheriff’s residence. Your official opinion is requested on the following:

“1. Could such payments be made to the county sheriff for rental of his own home not located in the county seat?

“2. Would such payments be in violation of the provisions of Section 10-3713, Burns Indiana Statutes, 1956 Replacement, which prohibits officers being interested, directly or indirectly, in any contract etc.?”

The statute to which you refer, providing for the allowance in question is Acts of 1895, Ch. 145, Sec. 122, as amended, as found in Burns’ (1951 Repl.), Section 49-1311. This section provides a schedule of fees to be taxed and charges made by the sheriff in the performance of his official duties. The concluding sentence of this section is as follows:

“In counties where there are no jails or sheriff’s residence, the board of county commissioners shall allow to such sheriff a reasonable amount for house rent and fuel.”

In order to determine the effect of the above language, it is necessary to make reference to the 1957 County Officers Salary Act (Acts of 1957, Ch. 319, as amended, as found in Burns’ [1961 Supp.], Section 49-1053 *et seq.*), in which the Legislature classified the several counties of the state for the purpose of fixing the salaries and remuneration of all county officers including sheriffs.

Section 7 of the Act, as found in Burns’ (1961 Supp.), Section 49-1059 recites the salaries of sheriffs in the several classifications and also reads as follows:

“* * * The sheriff shall be allowed mileage at the rate of eight cents [8¢] per mile for travel within the state for the use in any emergency of his personal auto-

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mobile, as determined by the judge of the court having jurisdiction in the premise.

“All mileage for service of process, foreign writs, process fees for execution and order of sales, unemployment compensation mileage and fees and all damages and mileage from gross income tax warrants shall be collected, accounted for and paid into the county general fund.”

Section 3 of the Act as found in Burns' (1961 Supp.), Section 49-1055, reads as follows:

“The annual salaries fixed by this act [§§ 49-1053—49-1069] shall be in full for all services and in lieu of all fees, per diems, penalties, fines, interests, costs, forfeitures, commissions, percentages, *allowances*, mileage and any and all other remuneration whatsoever for official services or involving official authority except as herein otherwise provided. Such salary shall be paid in twelve [12] equal monthly instalments. County officers shall be entitled to all fees earned by them prior to the effective date of this act regardless of when paid.”
(Our emphasis)

Section 16 of the Act, as amended, as found in Burns' (1961 Supp.), Section 49-1068, reads as follows:

“It is the intent of this act [§§ 49-1053—49-1069] that all fees, per diems, penalties, costs, interests, forfeitures, percentages, commissions, *allowances*, mileage, and any and all other remuneration of whatsoever kind or character now received by all officers included in this act for official services, or involving official authority, except as herein otherwise provided, shall be collected, accounted for and paid into the county general fund; Provided, that nothing in this act contained shall be construed as an abolition of the fees allowed by law to sheriffs for the feeding of prisoners: * * *.”
(Our emphasis)

This 1957 Act does not provide an allowance for house rent and fuel for the sheriff.

Historically, the intent of our Legislature as evidenced by its statutes providing for salaries of county officers has been to restrict the compensation of such officers to the amount provided in said statutes. Since the passage in 1891 of the first specific salary law applicable to county officers, the Legislature has included in such statutes a provision to the effect that the salary provided therein was for all official services and that officers could receive no other compensation whatsoever, except as otherwise provided in the statute. The Act of 1895 in which the language of Burns' 49-1311, *supra*, is found contains such a provision.

The Acts of 1933, Ch. 21, was the general fee and salary law pertaining to county officers which was in effect prior to the passage of the 1957 County Officer Salary Act. Section 1 of the 1933 Act contained a statement that the officers named in the statute could receive no compensation other than that provided in the act and, in addition, Section 8 reads in part as follows:

“The salaries herein provided for sheriffs shall be in full for all services required of the sheriffs by statute including the attendance upon all courts and boards, except herein otherwise provided. * * *”

The Acts of 1933, Ch. 21, *supra*, made no provision for house rent and fuel similar to the language in Burns' 49-1311, *supra*, nor did it repeal it.

In the case of *Losche v. Marion County et al.* (1934), 207 Ind. 44, 194 N. E. 193, the plaintiff was Clerk of the Marion Circuit Court and filed a claim for services rendered as a member of the Board of Election Canvassers, which allowance was authorized by a 1905 Act. However, the 1921 Legislature had passed an act (Acts of 1921, Ch. 274, Sec. 1) providing that in counties having a population of more than 300,000, the clerk was entitled to a certain salary and “The salaries named herein shall be in full and for all services, and no other compensation or fees of any nature shall be paid to any of the above officials.” The Court concluded that the 1921 Act impliedly repealed the provisions of the 1905 Act, stating as follows:

“* * * We are unable to see how the legislature could have selected stronger language in which to ex-

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press the intention that the salary provided for should be in full for all services, and that no other compensation of any nature should be paid to the clerk. The provision in § 7557, *supra*, for an allowance to members of the board of canvassers was in existence when the Act of 1921 was passed, and, insofar as it provides for an allowance to the clerk, must be deemed to be repealed.”

It should be noted that Section 1 of the County Officer Salary Act which is Burns’ (1961 Supp.), Section 49-1053 reads as follows:

“For the purpose of this act (§§ 49-1053—49-1069) the several counties of the state of Indiana are graded on the basis of population and gross assessed valuation *including the necessary services required in each office*, and each county is set up on the percentage ratio it bears to the state, the whole state being considered as one hundred per cent (100%).” (Our emphasis)

The above language clearly indicated that the Legislature, in fixing the salaries in the act contemplated the necessary statutory services required of the sheriff and strengthens the conclusion that the salary provided therein is in full for all services and in lieu of the allowance in question.

Based on the foregoing, and in answer to your question number one, it is my opinion that the language of Burns’ 49-1311, *supra*, providing for an allowance to be paid and retained by a sheriff for house rent and fuel has been impliedly repealed, and under the provisions of the Acts of 1957, Ch. 319, *supra*, now in effect, the payment of such allowance is not authorized.

Your question number two asks whether the allowance of house rent and fuel when expended by a sheriff for the rental of his own home would be in violation of the provisions of the Acts of 1905, Ch. 169, Sec. 517, as found in Burns’ (1956 Repl.), Section 10-3713. This act prohibits public officials from being interested, directly or indirectly, in any contract wherein the municipal corporation in which the public official exercises his authority is a party. Although the answer to your question is, in a sense, moot in view of my answer to

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question number one, I feel it is appropriate to make the following comments. Burns' 49-1311, *supra*, permitted an allowance to the sheriff for house rent and fuel under certain circumstances. Under the terms of this statute, no contractual relationship existed between the sheriff and the county by the granting of this allowance, and there were no statutory restrictions on the expenditure of such allowance by the sheriff other, of course, than that it be expended for rent and fuel. Thus, any subsequent disposal of such allowance by the sheriff either by contracting with a third party for house rental or by renting his own home, would not have created a contract or agreement to which a county was a party and therefore would not have been within the terms of Burns' 10-3713, *supra*.

In summary, and in answer to your question number one, it is my opinion that the allowance for house rent and fuel for a sheriff as provided in Burns' 49-1311, *supra*, has been impliedly repealed and such payment is not authorized by the provisions of the County Officers Salary Act. In answer to your question number two, it is my opinion that any allowances made under said provisions of Burns' 49-1311, *supra*, and expended for the sheriff's own home, have not violated provisions of Burns' 10-3713, *supra*, which prohibits officers from being interested in public contracts.

OFFICIAL OPINION NO. 64

November 30, 1961

Mr. Mark D. Miltenberger, Chairman
Indiana Real Estate Commission
1022 State Office Building
Indianapolis 4, Indiana

Dear Mr. Miltenberger:

This is in response to your letter requesting an Official Opinion. Your specific question is stated as follows:

“Are the names and addresses of those persons who apply to take examinations for real estate broker or salesman licenses considered to be ‘public records’