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OFFICIAL OPINION NO. 43

November 30, 1960

Hon. William H. Herring
Indiana State Representative
P. O. Box 86
Linton, Indiana

Dear Representative Herring:

This is in answer to your recent request for an Official Opinion concerning the courtroom facilities and supplies and equipment to be furnished a justice of the peace by the township. You enclosed a letter addressed to you from a justice of the peace in which he states that a question has arisen as to the duty of the township to furnish courtroom facilities and supplies and equipment to him pursuant to Acts of 1957, Ch. 322, Sec. 13, as found in Burns' (1959 Supp.), Section 5-137. The justice asks for a definition of the phrase "adequate provisions for court room facilities in suitable and convenient place or places" and, further, whether docket books, cash receipt and disbursement books, envelopes, postage stamps, receipt books and law books are "necessary supplies and equipment."

The applicable statute making provisions for courtroom facilities and supplies and equipment of a justice of the peace is Burns' 5-137, *supra*, which section reads as follows:

"In all townships in 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 courtroom 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 courtrooms 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 township lies shall have jurisdiction and supervisory power to enforce the provisions of this section by mandamus."

From a reading of the above section and an examination of the nature of the office of justice of the peace, it is apparent that the township trustee and the township advisory board shall exercise their discretion with respect to providing courtroom facilities and supplies and equipment to the justice of the peace. A justice of the peace is a township officer with limited jurisdiction to act in civil and criminal cases. There may be either one or two justices of the peace in each township depending upon the population thereof and the existence of magistrates in the county in which the township is located. Personal observation has revealed that the volume of cases handled by justices of the peace varies from but a few cases in some courts annually to an almost overwhelming case load in other courts. Some justices deal almost exclusively in cases of a criminal nature, others hear both civil and criminal cases, and still others exclusively civil cases. Therefore, due to the difference in the volume of business and nature of cases heard in the various justice of the peace courts, it is necessary that the amount of moneys supplied for their operation be left to a great extent to the determination of the appropriate township officials. This is not to say, however, that the township trustee and township advisory board have the power to curtail the necessary functions of the office of justice of the peace by failure to provide funds in amounts sufficient for those necessary functions.

Our laws require certain records to be kept by a justice of the peace and further require certain reports to be made by him. 2 R. S. 1852, Ch. 1, Sec. 18, as found in Burns' (1946 Repl.), Section 5-1801, requires a justice of the peace to keep a bound docket book of not less than two hundred pages in which he shall record proceedings in full of all suits instituted before him.

Certain statutory forms are prescribed for use by justices of the peace as nearly as the circumstances will permit. Thus, the forms for summons, subpoenas, execution, writ of attachment, replevin and others are set out in 2 R. S. 1852, Ch. 1, Sec. 127, as found in Burns' (1946 Repl.), Section 5-1601. In addition to the above, the Indiana State Board of Accounts prescribes certain forms to be used by a justice of the peace including a cash book of receipts and disbursements, reports to the county auditor of fines and fees collected, an official receipt

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book, checks, a register of trust funds, and finally a quarterly report form to be filed with the county auditor and prosecuting attorney pursuant to Acts of 1957, Ch. 128, Sec. 1, as found in Burns' (1959 Supp.), Section 5-1723.

It is my opinion that the records and forms listed above and, for that matter, any other legal forms which the justice of the peace requires in the conduct of his court are "necessary" for the proper functioning of his court, as that word is used in Burns' 5-137, *supra*. Furthermore, such other items as desks, chairs, filing cabinets, stationery and postage stamps would seem to fall within the "necessary" classification. The word "necessary" does not have a fixed meaning in law and may express mere convenience or that which is indispensable, or an absolute physical necessity, and its force and meaning must be determined with relation to the particular object sought.

Chicago, Indianapolis & Louisville R. Co. v. Baugh
et al. (1911), 175 Ind. 419, 94 N. E. 571.

It is my opinion that the above items are indispensable to the necessary operation of a justice of the peace court.

I express no opinion, however, as to the *quantity* of these items which must be furnished since the quantity can only be determined by the volume of cases filed in the justice of the peace court. For example, postage stamps are, among other things, necessary in order to transmit monthly reports to the auditor and prosecuting attorney, reports to the Division of Safety Responsibility of the Bureau of Motor Vehicles, and reports of unclaimed funds to the office of the Attorney General of the State of Indiana. However, the amount of such postage should be determined by the township trustee and township advisory board upon a showing of the amount needed by the justice of the peace. Similarly, filing cabinets should be supplied to a justice of the peace in order to properly store his records. However, the number of such filing cabinets is again determined by the volume of records in the custody of the justice of the peace.

With respect to the purchase of law books, may I refer you to 1943 O. A. G., page 183, in which it was concluded that a then-published justice of the peace manual should be consid-

ered a necessary item within the classification of "supplies" to be furnished to any justice of the peace. This conclusion was based on the reasoning that most of the justices of the peace in this state are laymen and persons unlearned and unskilled in questions of law and matters of legal procedure and, further, unless a justice of the peace has such a work or legal publication *available*, it is impossible for him to transact and conduct the affairs of his office in an intelligent or legal manner. I concur in this opinion with the additional comment that, where law books are readily available to a justice of the peace, as in the case where the justice of the peace court and a law library are both located in the county courthouse, the necessity for furnishing such books to the justice of the peace would be limited.

Your remaining questions concern the matter of the duties of the township trustee and advisory board to make adequate provisions for "court room facilities in suitable and convenient place or places for the holding of such court." In a somewhat analogous situation, the Kentucky Court of Appeals defined the language "convenient and suitable" with respect to a waiting room which Kentucky law required railway companies to furnish at their depots for the convenience of passengers. In *Commonwealth v. Louisville & Nashville R. R. Co.* (1921), 191 Ky. 634, 231 S. W. 236, the court held that such waiting room, in order to comply with the language of the statute, must not be too small, should be well ventilated and lighted, have suitable furniture and fixtures, and be maintained in good repair and decent order. These standards seem to me to be similarly applicable to a justice of the peace court.

In addition, with respect to the location of such court, consideration should be given to its suitability and convenience, not so much for the justice of the peace as for the public which he serves.

I should like to draw your attention to the last sentence of Burns' 5-137, *supra*, which states as follows:

"* * * It is further provided that the circuit judge of the county in which any such township lies shall have jurisdiction and supervisory power to enforce the provisions of this section by mandamus."

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Thus the statute permits a justice of the peace to question the actions of the township trustee and the township advisory board when he feels that they have not complied with the provisions of the act.

Therefore, it is my opinion that, pursuant to Burns' 5-137, *supra*, it is the duty of the township trustee and the township advisory board to furnish a justice of the peace with legal forms and books necessary to conduct his court. Further, it is my opinion that the township trustee and township advisory board have a duty to provide suitable facilities for the operation of this court including a courtroom appropriately furnished and conveniently located, and office supplies including postage stamps in a quantity as shown necessary by the justice of the peace. Law books are also an item necessary for the conduct of a justice of the peace court and should be furnished to the justice by the township. In the event these officers fail to perform the above duties, a justice of the peace may seek their enforcement by application to the judge of the circuit court of the county in which the township is located.

OFFICIAL OPINION NO. 44

December 1, 1960

Mr. T. M. Hindman, State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Hindman:

This is in reply to your request for an Official Opinion to clarify the interpretation of the Health and Hospital Corporation Act of 1951, Ch. 287, Section 26. Your letter presents the following question:

“Does this Act specifically permit the Corporation to establish its own retirement program, as well as permitting the Corporation to participate in the Public Employees' Retirement Fund?”

Your letter further states that the employees of the Health and Hospital Corporation of Marion County now participate in the Federal Social Security program.