Honorale Joseph E. Klen  
State Representative  
6607 Marshall Avenue  
Hammond, Indiana

Dear Representative Klen:

This is in response to your request of July 1, 1959, for an Official Opinion regarding the following questions, both of which concern townships in Lake County, Indiana, with population of not more than twenty thousand:

"1. Is it permissible for the Township Trustee to pay rent for a part of the premises owned by the Justice of the Peace as suitable for courtroom facilities for such court?

"2. Is it permissible for the Justice of the Peace to employ secretarial help for the purpose of filling out required state reports and to facilitate the functioning of the court and pay said clerical help from the fees collected?"

In answer to your first question, I refer you to Acts of 1905, Ch. 169, Sec. 517, as found in Burns' (1956 Repl.), Section 10-3713. This Act reads as follows:

"Any state officer, county commissioner, township or town trustee, mayor or a common councilman of any city, school trustee of any town or city, or their appointees or agents, or any person holding any appointive power, or any person holding a lucrative office under the constitution or laws of this state, who shall, during the time he may occupy such office or hold such appointing power and discharge the duties thereof, be interested, directly or indirectly, in any contract for the construction of any state house, court house, school house, bridge, public building or work of any kind, erected or built for the use of the state, or any county, township, town or city in the state, in which he exercises any official jurisdiction, or who shall bargain for or receive any percentage, drawback, premium, or
profit or money whatever, on any contract, or for the
letting of any contract, or making any appointment
wherein the state, or any county, township, town or
city is concerned, on conviction, shall be fined not less
than three hundred dollars [$300] nor more than five
thousand dollars [$5,000], and be imprisoned in the
state prison not less than two [2] years nor more than
fourteen [14] years, and disfranchised and rendered
incapable of holding any office of trust or profit for
any determinate period."

It is settled in this state that a justice of the peace is a
township officer.

The Town of Spencer v. Cline (1867), 28 Ind. 51;

Petition of Justice of the Peace Assn. of Indiana,
Inc. (1958), 237 Ind. 436, 147 N. E. 216.

In order for a justice of the peace to rent a part of his
premises for courtroom facilities it would be necessary for
him, a township officer, to enter into a contract with the town-
ship in which he exercises official jurisdiction and receive
"profit or money" for such contract. Such a situation would
appear to come squarely within the provisions of Burns' 10-3713, supra, and many decisions of the Supreme Court of
Indiana clearly indicate that contracts in violation of this
statute are void ab initio.

Noble et al. v. Davison (1911), 177 Ind. 19, 96 N.
E. 325;

Moss et al. v. Sugar Ridge Tp., Clay County (1903),
161 Ind. 417, 68 N. E. 896;

Case et al. v. Johnson et al. (1883), 91 Ind. 477.

I should like to point out that our Supreme Court has made
an exception to this general rule of illegality. In Marion
Township v. Howard (1925), 196 Ind. 167, 147 N. E. 619, the
Court held that the provisions of the above statute do not
apply to the payment to himself by a township trustee for
rent for the use of a room in his residence as an office for the
transaction of the township business where there is no other
suitable room available in the township which could be had for the amount lawfully appropriated for that purpose, which amount was limited by statute at that time to ninety dollars a year.

However, no such limitation as to money which may be appropriated for rent exists for justice of the peace courts. Statutory authority for providing adequate facilities for justice of the peace courts is found in Acts of 1957, Ch. 322, Sec. 13, as found in Burns' (1959 Supp.), Section 5-137. This section reads as follows:

“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 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.”

You will note from the above quoted section that it is the mandatory duty of the township trustee and advisory board to make “adequate provisions for courtroom facilities” in suitable and convenient places for the holding of justice of the peace courts. It is their further mandatory duty to pay the cost of providing for such courtrooms. These duties may be enforced in the circuit court by mandamus.

Inasmuch as the township trustee and the township advisory board are not limited in the amount to be expended for furnishing courtroom facilities to a justice of the peace, and for the further reason that such officers have a mandatory duty to provide for such courtrooms, it is my opinion that it is not
permissible for the township trustee to pay rent for a part of
the premises owned by a justice of the peace for use by said
justice in conducting his court as such payment would be
based on a contract executed in violation of Burns' 10-3713,
supra.

In answer to your second question, and for purposes of
clarity, I again quote your question which concerns justices
of the peace in townships with a population of not more than
twenty thousand:

"Is it permissible for the Justice of the Peace to
employ secretarial help for the purpose of filling out
required state reports and to facilitate the functioning
of the court and pay said clerical help from the fees
collected?"

An examination of Acts of 1957, Ch. 322, as found in Burns'
(1959 Supp.), Section 5-128 et seq., reveals that the provisions
concerning justices of the peace in townships of not more than
twenty thousand do not authorize employment of a clerk of
the justice of the peace court to be paid from township funds
as is the case in the two larger populated classes of townships.
Further, I am unable to find any statutory authority for the
collection of a fee by a justice of the peace in such townships
for clerical or secretarial help. Acts of 1957, Ch. 322, Secs. 14
and 15, as found in Burns' (1959 Supp.), Sections 5-1721 and
5-1722, provide for a docket fee of six dollars to be paid in
criminal actions where the final judgment is entered against
the defendant and in all civil actions instituted before a
justice of the peace. In each instance the docket fee is in
lieu of all other fees and costs except certain constable fees
excepted from the provisions of the act, and witness fees,
prosecuting attorney fees and moving traffic violation fees
taxed in criminal cases. In the townships in question, with a
population of not more than twenty thousand, the justice of
the peace is authorized to retain four dollars of the six dollar
docket fee in the above mentioned civil and criminal actions.
Under Burns' 5-1721, supra, the justice is also entitled to
receive four dollars from the funds of the township in each
case wherein a defendant is discharged in a criminal action.
The total amount such justice may retain from these fees is
three thousand dollars annually.
A justice of the peace is expressly prohibited from receiving any remuneration or thing of value from any litigant in any pending case in his court except for fees and costs as provided by law. Under the provisions of Acts of 1957, Ch. 256, Secs. 1 to 3, as found in Burns’ (1959 Supp.), Sections 10-3729 to 10-3731, any justice of the peace violating the above is subject to fine and imprisonment.

Therefore, in answer to your second question, it is my opinion that a justice of the peace in a township with a population of not more than twenty thousand may not charge or collect a fee from any litigant in any case pending in his court for “clerical help.” However, I can see no prohibition against such justice employing a clerical assistant and paying such assistant from his own private income which may, of course, consist of fees collected and retained by him pursuant to law.

OFFICIAL OPINION NO. 41
August 13, 1959

Mr. Paul L. Myers, Chairman
State Board of Correction
210 State House
Indianapolis 4, Indiana

Dear Mr. Myers:

I am in receipt of your recent letter requesting an Official Opinion on the following question:

“Did the General Assembly intend that Chapter 265 of the Acts of 1959 should apply only to chief adult probation officers, or did the General Assembly intend that said Act, by use of the words ‘any adult probation officer,’ should apply to both the chief and assistant adult probation officers?”

As stated in your letter, prior to the enactment of Chapter 265 of the Acts of 1959, the provisions controlling the pay for adult probation officers were contained in Acts of 1951, Ch. 316, Sections 1 and 2, as found in Burns’ (1956 Repl.), Sections 9-2214d and 9-2214e. With respect to the salary of the