and its attendant appropriation in new subsec. (2), 20.205 requires a payment by the state treasurer to the county treasurer of ten cents per acre on such lands, in addition to the ten cents per acre to the town, by virtue of ch. 39, Laws 1931, on lands owned by the county and entered under the forest crop law.

FMW

Legislature — Witness Fees — Witnesses may be subpoenaed by assembly committee created by resolution so authorizing. Fees and mileage need not be paid in advance but should be certified to secretary of state in amounts prescribed by sec. 13.30, Stats., and paid out of appropriation made by sec. 20.01.

Witness refusing to appear or to testify may be attached by court and committed until he testifies, under sec. 325.12.

September 12, 1931.

Erwin Schubert, Clerk,
Assembly Interim Committee,
Milwaukee, Wisconsin.

You write as follows:

"I am instructed by the assembly interim committee created by Resolution No. 99, A., to investigate the trial and conviction of George Strabel, to make inquiry of the attorney general of Wisconsin as follows:

"Whether, under the resolution, provision is made for the payment of fees to witnesses?

"And, whether, under the resolution, a witness subpoenaed to appear before the committee may refuse to appear, or even testify, on the grounds that witness fees are not forthcoming?"

Resolution No. 99, A., reads as follows:

"Resolved by the Assembly, That an interim committee to consist of three assemblymen be appointed by the speaker to investigate the trial and conviction of George Strabel, and the administration of justice as revealed in connection with this case. The members of the said committee shall receive
no compensation for their services. The committee herein created shall report its findings of fact, with any recommendations which it may deem proper, to this legislature at its special session.

"The said committee is authorized to hold such meetings as it may deem expedient and any member thereof shall have power to administer oaths to persons appearing before it. The committee may by subpoena, issued over the signature of its chairman or acting chairman and served in the manner in which circuit court subpoenas are served, summon and compel the attendance of witnesses and the production of all books, papers, documents and records necessary or convenient to be examined or used by them in the discharge of their duties. If any witness subpoenaed to appear before said committee shall refuse to appear to answer inquiries propounded, or shall fail or refuse to produce books, documents, papers, and records within his possession or control when the same are demanded, said committee shall report the facts to the circuit court of Dane county, and it shall be the duty of such court to compel obedience to such subpoena by attachment proceedings for contempt, as in case of disobedience of the requirements of a subpoena issued from such court, or refusal to testify therein."


But, by virtue of the legislative power vested in it by the constitution, the legislature, or either house thereof, has the necessary incidental power to obtain any information that may assist it in legislating, and may compel the attendance of witnesses to that end. State ex rel. Rosenhein v. Frear, 138 Wis. 173; McGrain v. Daugherty, 273 U. S. 135, 71 L. ed. 580.

The provisions of secs. 13.25 to 13.30, providing for subpoena of witnesses by presiding officer and clerk, with contempt proceedings by the house itself, and method of payment of witnesses so subpoenaed, are not exclusive of the exercise of its general powers of investigation into legislative matters by either house. McGrain v. Daugherty, supra. The subpoena may, by authority of the house, be issued by the committee, as provided in Res. No. 99, A., 1931. McGrain v. Daugherty, supra.

Under a resolution of like content, the attorney general in 1915 advised the use of secs. 13.25 to 13.30. IV Op. Atty.
Gen. 622. And this was suggested as applicable to an interim committee at a time after the sine die adjournment of the legislature. II Op. Atty. Gen. 782. The only question is, whether the terms of the speaker and chief clerk, who are there required to sign the subpoena, extend beyond the sine die adjournment, it having been the practice to reorganize any special session by the election of these officers. It is to be noted that now the speaker is paid by the month throughout the two years for his services as speaker. Sec. 20.01 (2). I think these officers hold their positions at the pleasure of the house, and that their positions are continuous until that pleasure displaces them. I am of the opinion, therefore, that your committee may subpoena and compel the attendance of witnesses as required by secs. 13.25 to 13.30, although the citations for contempt provisions are suspended when the legislature is not in session. These sections obviously contemplate that the witness shall attend without advance payment (II Op. Atty. Gen. 782), and sec. 13.30 fixes the fee at two dollars per day and ten cents per mile, one way, for travel, to be audited and paid by the secretary of state upon certificate of the committee chairman.

I am further of the opinion, however, that the subpoenas may be issued by the committee as provided in the resolution, although the provision for punishment for contempt by the circuit court has no force of law, and that subpoenas so issued are effective to require attendance, without advance payment of fees or mileage.

If the statutes make no provision for the payment of witness fees to witnesses so subpoenaed and required to attend, then they must attend without compensation or reimbursement.

"Although at common law witnesses were required to attend court without pay, under statutes they are very generally allowed compensation. But in cases in which no fees are provided for by statute a witness is entitled to none." 40 Cyc. 2181.

1927, XVI Op. Atty. Gen. 119, advised that a legislative investigating committee was not prevented from incurring expenditures in advance of a special appropriation bill, either by sec. 20.75, prohibiting any official to "forestall" an appropriation, nor by sec. 8, art. VIII of the constitution, requiring certain prescribed legislative action to create a debt, relying upon the decision in State ex rel. Rosenhein v. Frear, 138 Wis. 173, that the term "debt" as used in that section of the constitution did not include the expenses of an investigation in aid of ordinary legislative business. But I am of the opinion that we need not go so far, for, as was suggested in the opinion just referred to, sec. 20.01 contains this general appropriation:

"There is appropriated from the general fund to the legislature, * * * such sum as may be necessary to carry out its functions * * *".

It may be thought that the specific "allotments" that follow this introductory paragraph exclude any of this appropriation from being used for any except the specified purposes and in the specified manner. But I do not think this a proper construction of the section. The language is broad and all-inclusive, and the mere fact that the legislature has limited the amount that may be used for certain purposes and specified the manner of disbursement in specified instances, evidences no intent to restrict the broad language of the appropriation itself. Similar language of allotment is made in other appropriation sections, where a specified sum is appropriated and the allotments do not exhaust it, showing that the allotments are not exclusive. But without this aid, I think the broad language of the legislative appropriation is not limited by the allotments. We have, then, an appropriation out of which witness fees of legislative committees may be paid, independent of the provisions of sec. 13.30, which, therefore, need not be construed to be, in itself, an appropriation.

It may be thought that witness fees are properly within the allotment of sec. 20.01 (10), for contingent expenses, and prescribing a rather onerous procedure for its disbursement that could be had only when the legislature is in session. But sec. 13.30 places witness fees under a different
procedure; they have been, I am informed, heretofore audited and paid without reference to sec. 20.01 (10), and that section, when enacted by ch. 654, Laws 1911, contained this clause:

"Nothing in this act shall in any manner limit or change the appropriations made for the expenses of the legislature."

I am of the opinion that sec. 20.01 (10) was intended to cover contingent expenses other than such ordinary legislative expense as witness fees. The manner in which the disbursements are guarded indicates that it is to cover matters of a more or less extraordinary character.

I am of the opinion, further, that the fees and mileage as fixed by sec. 13.30 should be followed in the payment of the witnesses, although that section, in its present form, is on its face confined to witnesses subpoenaed under sec. 13.25. See II Op. Atty. Gen. 782; XVI Op. Atty. Gen. 466.

My advice to your committee, therefore, is that you subpoena witnesses as provided in the resolution, and certify their fees and mileage to the secretary of state, in the amounts provided by sec. 13.30.

In case the witness shall fail to attend and testify, I advise you to proceed under sec. 325.12, instead of under the provisions of resolution No. 99, A. That section provides ample authority in judicial officers to compel attendance by attachment and to commit the witness until he shall purge himself of his contempt by testifying.

FMW