Honorable Joda G. Newsom  
Chairman, State Board of Tax Commissioners  
Room 404, State House  
Indianapolis 4, Indiana

Dear Mr. Newsom:

Your letter of May 7, 1957, reads as follows:

"This department is desirous of an official opinion in regard to the salary which may be paid to a city clerk in the City of South Bend as provided for in Chapter 257 of the Acts of 1957 or Chapter 357 of the Acts of 1957.

"We are in possession of a copy of a letter which has been addressed to you by the city clerk of South Bend which sets forth the facts in the case.

"We are desirous of knowing what your official opinion is as to the salary which might be paid from April 1st, 1957, to December 31st, 1957. Also as to what salary might be paid after January 1st, 1958."

The first one of the Acts to which you refer is the Acts of 1957, Ch. 257 (S. 163), approved March 13, 1957, which reads as follows:

"SECTION 1. In all counties of this state having a population of not less than one hundred ninety-five thousand nor more than three hundred thousand according to the last preceding decennial United States census, the salaries of the city officials in any city of the second class having a population of not less than ninety thousand and not more than one hundred and twenty-five thousand, according to the last preceding decennial United States census shall be as follows: the mayor shall receive an annual salary of twelve thousand dollars; the controller shall receive an annual salary of eight thousand eight hundred dollars; the city attorney shall receive an annual salary of six thousand four hundred dollars; the city engineer shall receive an annual salary of six thousand eight hundred dollars;"
The city clerk shall receive an annual salary of five thousand five hundred dollars; and the judge of the city court shall receive an annual salary of seven thousand five hundred dollars.

"SEC. 2. The provisions of this act shall be in full force and effect from and after January 1, 1958." (Our emphasis)

The second one of the Acts to which you refer is the Acts of 1957, Ch. 357 (H. 436), approved March 15, 1957, which reads as follows:

"SECTION 1. On and after the effective date of this act, clerks of cities of the first class, second and third class and clerk-treasurers acting as clerks of cities of the fourth and fifth class shall receive and the common council of the city shall appropriate in lieu of any salary other than additional compensation provided for additional duties, annual basic salaries respectively as follows: first class cities, not less than $4,500.00 nor more than $6,000.00. In cities of the second class having a population in excess of 50,000 and located in counties having a population of not more than 250,000, not less than $5,500.00 nor more than $6,000.00. In cities of the second class having a population of not less than 35,000 nor more than 50,000, not less than $3,500.00 nor more than $4,500.00. Provided, however, that the provisions of this act shall not apply to any city of the second class that is situated in a county having a population of more than three hundred thousand according to the last preceding United States Census.

"In cities of the third class, not less than $3,800.00 nor more than $4,300.00.

"In cities of the fourth class, not less than $3,500.00 nor more than $4,000.00.

"In cities of the fifth class having a population of not less than 7,000 nor more than 10,000 not less than $2,500.00 nor more than $3,500.00. In cities of the fifth class having a population of not less than 5,000 nor more than 7,000, not less than $2,000.00 nor more than $3,000.00."
"In cities of the fifth class having a population of not less than 3,000 nor more than 5,000, not less than $2,000.00 nor more than $2,800.00. In cities of the fifth class having a population of not less than 1,500 nor more than 3,000, not less than $1,500.00 nor more than $2,000.00. In cities of the fifth class having a population less than 1,500, not less than $500.00 nor more than $1,000.00.

"SEC. 2. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect on and after April 1, 1957." (Our emphasis)

Each of the above statutes is an independent Act and a comparison of the two reveals the following:

The Acts of 1957, Ch. 257, supra, may be considered as being a general statute in the sense that it applies to the salaries of city officials generally, in all cities of the second class having a population of not less than 90,000 nor more than 125,000, which cities are located in counties having a population of not less than 195,000 nor more than 300,000—the population standards being based upon "the last preceding decennial United States census," such now being the United States census of 1950. (Our emphasis) In this Act, the emphasis is directed generally toward the salaries of all city officials of a certain type of city.

By contrast, the Acts of 1957, Ch. 357, supra, although applying generally to the salaries of City Clerks of cities of all classes, may be considered as being a special statute in the sense that it applies only to the salaries of City Clerks, based upon the classification of the city involved; in other words, in this Act emphasis is directed solely to the question of City Clerks' salaries; further, the latter Act provides for a classification within a classification with respect to both cities of the second class and cities of the fifth class. This treatment of the subject is some evidence of the proposition that the Legislature may have given more particular attention and careful consideration to the question of salaries for City Clerks and dealt with the subject in a more minute manner in considering and enacting Chapter 357, than in the case of the other law.
The letter of the City Clerk of the City of South Bend, Indiana, to which your letter refers, states that South Bend is includable within the requisite classifications of each of said Acts. The United States census of 1950 indicates South Bend's population as then being 115,911 and the population of St. Joseph County as then being 205,058. Based upon said 1950 census, pursuant to Chapter 257, supra, the annual salary of the City Clerk of South Bend would be $5,500.00 commencing January 1, 1958, whereas, pursuant to Chapter 357, supra, such salary would be not less than $5,500.00 nor more than $6,000.00 commencing April 1, 1957. It is thus apparent that there is an irreconcilable conflict between the two Acts in the above respect.

In Sutherland, Statutory Construction, 3rd Ed., Vol. 1, Sec. 2020, pp. 483, 484 and 485, the following is stated:

"The enactment by a legislative assembly of two or more acts upon the same subject matter creates a presumption that the acts which were born of the same legislative mind were actuated with the same policy, and were intended to coexist to attain by their mutual operation the object of the legislation. The rules of construction and interpretation of acts in pari materia apply with singular force to enactments promulgated by the same legislative body, with the consequent strengthening of the presumption against implied repeals. * * *

"In the absence of an irreconcilable conflict between two acts of the same session, each will be construed to operate within the limits of its own terms in a manner not to conflict with the other act. However, when two acts of the same session cannot be harmonized or reconciled, that statute which is the latest enactment will operate to repeal a prior statute of the same session to the extent of any conflict in their terms. * * *" (Our emphasis)

Indiana follows the above general rule as indicated in the case of Newbauer v. State of Indiana (1928), 200 Ind. 118, 122, 161 N. E. 826, wherein the rule is explained as follows:

"Should there be an irreconcilable conflict between two statutes, a later expression of the legislature will
prevail against a former one. Swinney v. Ft. Wayne, etc., R. Co. (1877), 59 Ind. 205, 217; Shea v. City of Muncie (1897), 148 Ind. 14, 46 N. E. 138. When two acts are passed at the same session of the legislature, the presumption is strong against implied repeal, and effect must be given to each if possible; but if the two are irreconcilable, the one which was approved last will prevail. State ex rel. v. Board, etc. (1908), 170 Ind. 595, 621, 85 N. E. 513. Generally the later of two inconsistent statutes will prevail although the prior one is not to take effect until a time subsequent to the passage and taking effect of the later one. Mesker v. Whitsell (1914), 181 Ind. 120, 103 N. E. 1078; Ex parte Sohncke (1905), 148 Cal. 262, 82 Pac. 956; Dewey v. City of Des Moines (1897), 101 Iowa 416, 70 N. W. 605; Belding Improvement Co. v. Belding (1901), 128 Mich. 79, 87 N. W. 113; Heilig v. Puyallup City Council (1893), 7 Wash. 29, 34 Pac. 164.” (Our emphasis)

In other words, generally the relative order of the effective dates of two irreconcilable acts passed by the same session of the Legislature is not of controlling materiality. Rather, it is the relative order of the dates upon which said enactments became law which is ordinarily used as a guide in determining which is the latest expression of legislative intent. In such a case, it is the act which last became a law which will prevail against a former one in case of conflict.

The Indiana Constitution, Art. 5, Sec. 14, requires that every Bill which shall have passed the General Assembly shall be presented to the Governor. If he signifies his approval by signing the same, such Act becomes a law as of the time of the Governor's approval. Other provisions of said section of the Indiana Constitution relative to the manner by which and the time at which Acts not signed by the Governor may become law are immaterial in the present problem for the reason that the Governor approved each of the Acts in question. As noted in Newbauer v. State of Indiana, supra, it is the Act last “approved” which prevails. The last approved of the two Acts in question is Chapter 357, supra, approved March 15, 1957. It appears, therefore, that Chapter 357, supra, will prevail over Chapter 257, supra, only to the extent of any conflict.
In support of the foregoing conclusion, reference is further made to Sutherland, Statutory Construction, 3rd Ed., Vol. 1, Sec. 2022, pp. 488 and 489, which provides as follows:

“A general statute applies to all persons and localities within its jurisdictional scope, prescribing the governing law upon the subject it encompasses, unless a special statute exists to treat a refinement of the subject with particularity or to prescribe a different law for a particular locality. The subsequent enactment of a statute which treats a phase of the same general subject matter in a more minute way consequently repeals pro tanto the provisions of the general statute with which it conflicts. * * *” (Our emphasis)

As stated in State ex rel. Davenport v. International Harvester Co. (1940), 216 Ind. 463, 467, 468, 25 N. E. (2d) 242:

“Repeals by implication are disfavored. Where two acts are seemingly repugnant, they should be construed, if possible, so that the later will not operate as a repeal or modification of the former. If, by the application of every reasonable rule of construction, substantial harmony is found possible, then there is no irreconcilable conflict. The presumption is especially strong against an implied repeal of an act by another act of a later date at the same session of the Legislature. There is no inference that one act was intended to destroy another if they are on the same subject-matter and enacted at the same meeting of the Legislature, but, on the contrary, they should be construed, if possible, to give full effect to each. The purpose of all rules of statutory construction is to ascertain the legislative intent. Where two statutes, apparently inconsistent, are passed at the same session of the Legislature, the one dealing with the common subject in a more minute way will prevail over the one of a more general character. Hennessey v. Breed, Elliott & Harrison, Inc. (1931), 92 Ind. App. 165, 177, 176 N. E. 251; Cleveland etc., R. Co. v. Blind (1914), 182 Ind. 398, 105 N. E. 483.” (Our emphasis)

As heretofore stated in this opinion, it appears that the provisions of Chapter 357, supra, not only are confined solely to
the subject-matter of salaries payable to City Clerks, but also Chapter 357, supra, deals with such subject in a more minute and comprehensive manner. For this reason, I consider said Chapter 357, supra, as being more in the nature of a special act whose provisions should control insofar only as any conflict may appear between the two Acts.

In conclusion, therefore, it is my opinion that the salary to be paid the City Clerk of the City of South Bend is governed by the Acts of 1957, Ch. 357, effective April 1, 1957; also the salary there authorized will not be affected on January 1, 1958, the date upon which the other Act will become effective.

OFFICIAL OPINION NO. 16

May 22, 1957

Honorable Joda G. Newsom
Chairman, State Board of Tax Commissioners
404 State House
Indianapolis 4, Indiana

Dear Mr. Newsom:

This is in reply to your inquiry in which you ask the following question:


"I respectfully request your official opinion and interpretation of Sections 2 and 3 of the above Act as to the following point:

"1—Will the assessors be entitled to the salaries as set out in this Act for the remainder of 1957 calendar year?"

The Acts of 1957, Ch. 350, Secs. 2, 3 and 4 read as follows:

"SEC. 2. Immediately after passage of this act and at the regular annual meeting of the county council each year thereafter, the county council of each county of the state shall determine and fix the amount of the salary of the township assessors for the townships located in such county for the ensuing year within the limits as provided for herein."