Mr. John A. Whitehead
Executive Director
Indiana State Office Building Commission
Room A-3, Senate Chamber
Indianapolis, Indiana

Dear Mr. Whitehead:

This is in reply to your request for my Official Opinion dated May 22, 1957, concerning the following subject:

"I am requesting an official opinion concerning the method and amount of payment of expenses to the Members of the State Office Building Commission.

"House Enrolled Act No. 544, Section 1, Sec. 2, states 'The Officials constituting the Commission shall be allowed and paid their actual expenses incurred in connection with the affairs of the Commission but shall receive no further or additional compensation.'

"This expense payment appears to be in conflict with the General Budget Bill, House Enrolled Act No. 2, Page 67, Sec. 14, which allows $15.00 per diem and 7¢ per mile for members of such a Commission as the State Office Building Commission. House Enrolled Act No. 2 also provides for payment from the General Fund of the State.

"Can you kindly advise me which expense payment shall be made and whether these expenses should be charged to the State Office Building Commission or to the General Fund."

The first Act to which you refer is the Acts of 1957, Ch. 304 (H. 544), approved March 14, 1957, which is amendatory of the State Office Building Commission Act, being the Acts of 1953, Ch. 221, as found in Burns' (1955 Supp.), Sections 60-2101 et seq. The Acts of 1957, Ch. 304, supra, Sec. 2, provides, in part, as follows:

"** The officials constituting the commission shall be allowed and paid their actual expenses incurred in
connection with the affairs of the commission \textit{but shall receive no further or additional compensation.}” (Our emphasis)

The second Act to which you refer is the Acts of 1957, Ch. 285 (H. 2), also approved March 14, 1957, which is commonly known as the Budget Act. The Acts of 1957, Ch. 285, \textit{supra}, Sec. 14, provides, in part, as follows:

“SEC. 14. Any member of the General Assembly or any person, who is appointed either by the Governor, the Speaker of the House, the President of the Senate, or by the Indiana Legislative Advisory Commission to serve on any research, study or survey committee or commission, shall be entitled, when so specified by the appointing authority, to receive a per diem allowance of fifteen dollars ($15.00) for expenses for each and every day in actual attendance of any meeting of such committee or commission. In addition to the per diem allowance such persons shall be allowed the sum of seven cents (7¢) per mile for each mile necessarily traveled to attend any meeting of the committee or commission. PROVIDED, That this section shall not reduce the \textit{per diem} as set up in specific statute but it shall increase the \textit{per diem} to the amount herein stated. The per diem herein stated shall be in full payment for such service and shall not be considered as supplemental to such per diem otherwise provided. * * *

(Our emphasis)

It should be noted that the above-quoted provision extracted from the Budget Act provides both for a per diem “for expenses for each and every day in actual attendance of any meeting,” irrespective of actual expenses incurred, and also provides for seven cents (7¢) per mile for each mile necessarily traveled to attend any such meeting of a committee or commission to which the section is applicable. By contrast, the above quoted sentence of the Acts of 1957, Ch. 304, Sec. 2, \textit{supra}, explicitly prohibits compensation to members of the State Office Building Commission except for the reimbursement of “actual expenses incurred in connection with the affairs of the commission.”
Two Acts conceivably applicable to the same subject-matter enacted by the same session of the General Assembly create the presumption that since the Acts were created by the same legislative mind, they were intended to co-exist to attain by their mutual operation the object of the Legislature, unless otherwise provided. The above-quoted portion of the Budget Act is expressly applicable to specific acts providing for payments on a per diem basis of less than fifteen dollars ($15.00) but is stated as not being applicable to specific statutes providing a per diem in excess of fifteen dollars ($15.00). In other words, the Budget Act prescribes a minimum per diem for expenses of those members of commissions when payable upon a per diem basis and is applicable only to such statutes as provide for the payment of a per diem. The Acts of 1957, Ch. 304, Sec. 2, supra, does not provide for the payment of expenses on a per diem basis and to hold that the Budget Act prevails in your situation would, in effect, completely nullify the express requirement that members of your commission be paid only "actual expenses incurred" and "shall receive no further or additional compensation." I find no provision in the Budget Act justifying such an interpretation. Further, a general statute is not to be considered as superseding the provisions of a special statute passed by the same Legislature which treats a refinement of a subject common to both with particularity.

Sutherland, Statutory Construction, 3rd Ed., Vol. 1, Secs. 2020, 2022, pp. 483, 484, 488, 489;


In conclusion, therefore, it is my opinion that the provisions of the Acts of 1957, Ch. 304, Sec. 2, supra, prevail and that the reimbursement of actual expenses incurred as therein provided shall be payable from the appropriation made to the State Office Building Commission, pursuant to the Acts of 1953, Ch. 221, Sec. 13, as found in Burns' (1955 Supp.), Section 60-2113—the appropriation there made being expressly "for the purpose of paying the expenses of the Commission."