dall (1948), 226 Ind. 204, 78 N. E. (2d) 535, and the superior force of the Constitution would also override the last paragraph of Burns' 48-1244, *supra,* insofar as it provides for a vacancy in city offices if a person fails to file his oath within ten days after the beginning of the term for which he has been elected.

I am, therefore, of the opinion that, based upon the facts which you have submitted to me, the present City Councilman will hold over, under Art. 15, Sec. 3 of the Indiana Constitution, until his successor is elected and qualified.

OFFICIAL OPINION NO. 2

January 9, 1956

Hon. Charles T. Rachels
State Representative
115 East Fourth Street
Mt. Vernon, Indiana

Dear Sir:

This is in reply to your letter of December 27, 1955, in which you request an Official Opinion as to the following:

> May a Mayor of a fifth class city decline to serve as City Judge?

The Acts of 1933, Ch. 233, Sec. 8, as amended in 1955, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Section 48-1219 provides as follows:

> "The elective officers of cities of the fifth class shall consist of a mayor, a clerk-treasurer and members of the common council as hereinafter provided. Such officers shall be elected in accordance with provisions of laws now in effect except as herein provided.
>
> "In such cities the mayor shall act as city judge and the duties now provided by law for city judge shall devolve wholly upon the mayor. The salary herein provided for mayor shall be in full for all services performed by him as mayor and for acting as city judge."

The Acts of 1945, Ch. 277, Sec. 1, as found in Burns' Indiana Statutes (1946 Repl.), Section 4-2614 provides:

> "In cities of the fourth and fifth class, the powers and duties of city judge shall be held and exercised by the mayor, unless he shall choose to be relieved of such duties and shall declare such action at a common council meeting and such declaration shall become a part of the minutes of that meeting as recorded by the clerk-treasurer, in which case the powers and duties of city judge shall be conferred upon a city judge, appointed by the mayor for a period of one [1] year, such city judge to possess the usual qualifications for judge. The salary of such city judge may be fixed by the city council."

When the Acts of 1933, Ch. 233, Sec. 8, *supra,* was first amended by the Acts of 1949, Ch. 26, Sec. 1, which amendment also re-enacted the portion of the Section of the statute above quoted, it was held in 1949 O. A. G., page 341, No. 90, that the Acts of 1945, Ch. 277, Sec. 1, *supra,* was not repealed by implication and that it still qualified the 1933 statute as so amended. The question there presented was identical with the present question and reached the same conclusion.

Note should be taken that the Acts of 1933, Ch. 233, Sec. 8, *supra,* was last amended in 1955, Ch. 346, Sec. 1 and did not change the wording of that portion of the Acts of 1933, Ch. 233, Sec. 8 hereinabove set out.

In the case of City of New Albany v. Lemon *et al.* (1926), 198 Ind. 127, 149 N. E. 350, the Supreme Court of Indiana reaffirmed the following principle of statutory construction: "Where a later statute merely re-enacts the provisions of an earlier one, it does not repeal an intermediate act which has qualified or limited the earlier one, but such intermediate act will be deemed to remain in force and to qualify or modify the new act in the same manner as it did the first."

Therefore, the Acts of 1933, Ch. 233, Sec. 8, *supra,* was modified by the Acts of 1945, Ch. 277, Sec. 1, *supra,* to permit the Mayor of fourth and fifth class cities to be relieved of the duties of City Judge. Therefore, by virtue of the doctrine in the case of City of New Albany v. Lemon, *supra,* the Acts of

1933, Ch. 233, Sec. 8, as last re-enacted in 1955, Ch. 346, Sec. 1, was modified in the same manner as the original enactment in 1933.

It is, therefore, my opinion that a Mayor of a fifth class city may decline to serve as City Judge.

OFFICIAL OPINION NO. 3

January 31, 1956

Mr. A. L. Fossler, Chairman
State Board of Tax Commissioners
Room 301, State House
Indianapolis, Indiana

Dear Mr. Fossler:

This is in reply to your request for an Official Opinion which reads as follows:

> "This Commission has received numerous requests for a definite ruling as to whether the assessors of Indiana should or should not assess the property of certain service personnel for the purpose of establishing a charge for ad valorem taxes. Therefore the State Board of Tax Commissioners requests your official opinion based on the following conditions:
>
> "In view of the recent decision of the Supreme Court of the United States in the case of Dameron v. Brodhead, 1953, 345 U. S. 322 interpreting the Soldiers and Sailors Relief Act, 54 Stat. 1186, as amended, 56 Stat. 777, 58 Stat. 722, 50 U. S. C. App., Sec. 501 *et seq.*, relative to the assessment and taxation of property of non-resident servicemen, stationed in Indiana, under Military orders, we would appreciate answers to the following questions:
>
> > "1. Is the personal property of a serviceman, located in Indiana, whose permanent residence is outside of Indiana, subject to assessment for taxation in Indiana?
> >
> > "2. Does the purchase of Indiana license tags