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Your second question is as to the legality of a school principal serving on a City Council and your question assumes that the City Council appropriates all the school money. I am aware of no instance in which the City Council appropriates money for the operation of the school system as that is a function of the school board which is a separate and distinct corporation from the civil city government.

It has been held that city councilmen are not lucrative officers within the meaning of Article II, Section 9 of the Constitution of Indiana.

1949 Ind. O. A. G., p. 29, Official Opinion No. 6; 1944 Ind. O. A. G., p. 469, Official Opinion No. 110, and authorities therein cited.

It is also pointed out that the authorities heretofore cited in answer to your first question are in substance applicable to your second question.

I am therefore of the opinion a principal in a local city school would not be prohibited from serving as a member of the City Council of such city.

OFFICIAL OPINION NO. 27

April 24, 1953.

Mr. C. F. Cornish, Director,
Aeronautics Commission of Indiana,
311 W. Washington Street,
Indianapolis 4, Indiana.

Dear Sir:

I have your request for an official opinion in which you ask the following questions:

- "1. What is the 'governing body' of:
 - a.) the County of St. Joseph
 - b.) any Indiana city or town which owns and operates a municipal airport?
- "2. What municipality official is the 'executive officer' of a

- a.) County
- b.) City
- c.) Incorporated town?

- “3. Does the provisions of Chapter 280, Acts of 1953 pertaining to the negotiation and execution of ‘any lease which involves an offer to erect a permanent structure of the lessee on land belonging to said airport’ conflict with or contradict the provisions of Sec. 5, Chapter 73, Acts of 1947 which state that the ‘said Board of Aviation Commissioners shall have as a part of its powers full and exclusive power on behalf of such municipality: to negotiate and execute any and all contracts of sale or purchase, lease * * * or any other transaction, business or otherwise, relative to any municipal airport under the Board’s control and operation * * * ?’ If so, can the conflicting provisions be reconciled to permit efficient and effective execution of airport land lease for the erection of permanent structures, and what procedure for such negotiation and execution should be used?
- “4. Inasmuch as the Administrative Adjudication Act, Chapter 165, Acts of 1947, pertains exclusively to State officers and agencies, how does it apply as an appellate procedure from the ‘action of the governing body of any municipality’ as set forth in the subject 1953 Amendatory Act?”

The pertinent statutory provision about which you inquire appears in Section 1 of Chapter 280 of the Acts of 1953. In order to show the changes made by this Act in Section 5 of the 1945 Airport Act, I am setting out the provision about which you inquire italicizing the words that have been added and including in brackets the provisions that have been deleted:

“To manage and operate any and all airports and landing fields and other air navigation facilities now or hereafter acquired or maintained by any such municipality; and to lease all or any part of any such airport or landing field and any buildings and other structures thereon and parts thereof and to fix, charge, and collect

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rentals therefor and for commercial privileges thereon, and to fix, charge and collect rentals, tolls, fees and charges to be paid for the use of the whole or any part or parts of any such airports or landing fields, and other air navigation facilities and for aircraft landing thereon, and the servicing thereof; and to erect and construct such public recreational facilities as will not conflict or interfere with air operational facilities; and to fix, charge and collect fees for public admissions and privileges; and to make contracts for the operation and management of any such airports, landing fields and other air navigation facilities; and to provide for the use, management and operation of such air navigation facilities through lessees thereof or through its own employees or otherwise: Provided, That contracts or leases for the maintenance, operation or use of such airport or any portion thereof may be made for any term not exceeding ten [(10)] years, and may be extended for similar terms of years, except that any parcels of the land of such airport may be leased for any use, connected with the operation and convenience of such airport for an original term of not exceeding twenty [(20)] years, and may be extended for a period not to exceed ten [(10)] years: Provided, further, that if any person or organization, whose character, experience, and financial responsibility has been determined satisfactorily by the board, shall offer to erect a permanent structure on land belonging to said airport, a lease may be entered into for a period not to exceed *ninety-nine* [fifty (50)] years: Provided further, That the board of aviation commissioners shall grant no exclusive right for the use of any landing area under its jurisdiction. However, this shall not prevent the making of leases in accordance with other provisions of the Act. All such contracts and leases shall be subject to such restrictions and conditions as the board of aviation commissioners may prescribe. *Any lease which involves an offer to erect a permanent structure of the lessee on land belonging to said airport shall be approved and authorized by the majority vote of the governing body of such municipality and shall be executed by the executive officer of such municipality. Such lease*

shall be finally approved, authorized and executed only after the terms of the proposed lease have been reduced to writing and copies made available for inspection by interested persons at the office of the clerk of the municipality, and after publication of notice once each week for two successive weeks in two daily newspapers of general circulation published in the county where the airport is located, which notice shall state the name of the lessor and the name of the lessee, shall state that the lessor proposes to enter into a lease with the lessee, shall state where copies of the proposed lease are available for inspection by interested persons, and shall state the time and place of the meeting at which action will be taken on the question of approving and authorizing the proposed lease. Such meeting shall not be held less than thirty days from the date of the first publication. Appeals from action of the governing body of any such municipality may be taken within ten days after authorization of any such lease, pursuant to the provisions of an act entitled 'An Act concerning the proceedings, orders and determination of State officers and agencies and judicial review thereof,' approved March 14, 1947 and acts amendatory thereof or supplemental thereto.

"To sell machinery, equipment or material under the control of such board of aviation and belonging to the municipality which in the judgment of the board may not be required for aviation purposes; and the proceeds derived from all such sources shall be deposited with the municipality's treasurer or comptroller to the credit of the department of aviation.

"To negotiate and execute any and all contracts of sale or purchase, lease, or contracts for personal services, materials, supplies or equipment, or any other transaction, business or otherwise, relative to any municipal airport under the Board's control and operation; provided however, that whenever such Board determines to sell any part or whole of aviation lands, buildings or improvements now owned by such municipality, such sale shall be in accordance with Section 8 of this Act. [(Sec. 14-421.)] Whenever personal property

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under the control of the Board valued in excess of \$500.00 is to be sold, such Board shall sell to the highest and best bidder after due publication of notice of such sale."

Section 8 which is referred to in the above quoted provision as last amended appeared in Burns' Indiana Statutes Annotated (1950 Repl.) Section 14-421 and reads as follows:

"If such board of aviation commissioners should wish to sell any part of the whole of the aviation land, buildings or improvements now owned by such municipality or that may be hereafter acquired, it is hereby authorized to prepare an ordinance authorizing such sale and submit the same to the council of such municipality. If the council shall pass such ordinance, such land, buildings or improvements shall be sold as other lands, buildings or improvements of the municipality are sold, and the proceeds of such sale shall be deposited in the aviation fund of the municipality."

Section 1 of Chapter 190 of the Acts of 1945 as last amended by Section 1 of Chapter 109 of the Acts of 1949 found in Burns' Indiana Statutes Annotated (1950 Repl.) Section 14-412 contains a definition of "council" as follows:

"The term 'council' means the town board of any town, the common council of any city, and the county council of any county."

Prior to the 1949 amendment the same definition appeared; however, it was used as the definition of the term "governing body" rather than the definition of the term "council." In fact the governing body of a county is the board of county commissioners, the governing body of a city is the common council and the governing body of a town is the town board. Thus, it would appear that this definition as it originally appeared was at odds with the general law and the change of terminology made in 1949 would appear to be solely for the purpose of avoiding any possible confusion. Therefore, in answer to your first question it is my opinion that the term "governing body" as used in the 1953 amendment of the 1945 Airport Act when referring to a county means the Board of

County Commissioners, when referring to a city means the Common Council, and when referring to a town means the Town Board.

Your second question is as to the meaning of the term "executive officer." It is obvious in a city this refers to the mayor. However, in neither a county nor an incorporated town is there a single chief executive office. Generally the executive powers of the county reside in the Board of County Commissioners. Thus it would appear that the executive officer, as used in regard to counties, means the Board of County Commissioners. Similarly the executive power of a town is vested in the Town Board, and the term "executive officer" as used in reference to a town must be concluded to mean the Town Board.

In your third question you point out possible conflict between the provisions added by the 1953 amendment and the provisions otherwise existing in Section 5 and merely restated by the 1953 amendment. The rules of statutory construction in this regard appear to be clear. The general rule is that the statutes and sections of the statute dealing with a single subject matter should be treated as a whole and reconciled if possible. See:

Taylor v. Phalen (1946), 117 Ind. App. 40, 46, 69 N. E. (2d) 145;

Myer v. Town of Greenville (1903), 162 Ind. 165, 70 N. E. 145;

State v. Gephart (1896), 145 Ind. 439, 44 N. E. 469.

However, it has been held specifically that when there is a conflict between the different sections or provisions of the same act, that the provision last in order of time controls:

Woodring v. McCaslin (1914), 182 Ind. 134, 104 N. E. 759;

Cox v. Timm (1914), 182 Ind. 7, 105 N. E. 479;

Rees v. City of Muncie (1932), 95 Ind. App. 480, 486, 179 N. E. 668;

Curless v. Watson (1913), 54 Ind. App. 110, 122, 100 N. E. 576, 580.

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In the Rees case, *supra*, it was said in this regard:

“* * * It seems to me that inasmuch as Sec. 160 is a later section than 10859, and there is an irreconcilable conflict between the two, the rule should be invoked that where there is a conflict between different sections or provisions of the same act the last in order of time or local position must prevail. *Quick v. Whitewater Township* (1856), 7 Ind. 570; *Curless et al. v. Watson* (1913), 54 Ind. App. 110, 100 N. E. 576; *Woodring et al. v. McCaslin et al.* (1914), 182 Ind. 134, 104 N. E. 759. * * *”

It is clear that if the words supplied by the 1953 amendment are in conflict with the provisions of the section amended which are merely restated that the words added by the 1953 amendment would control. Examining the provisions of Section 1 of Chapter 280 of the Acts of 1953 previously set out it appears that specific provision is made for at least three types of leases—first, contractor leases for maintenance and operation; second, leases for use and non-permanent construction connected with operation of an airport; and third, leases for the erection of permanent structures. The sole changes concerned leases of the last type. Pursuant to the 1953 amendment these leases are required to be made by the governing board of the municipality and executed by the executive officer of the municipality. This procedure must be followed in all such leases taking into consideration the definitions of “governing board” and “executive officer” previously discussed.

Your fourth question concerns the question of review of the granting of leases for the purpose of construction of permanent structures. Pertinent provisions of Section 1 of Chapter 280 of the Acts of 1953 in regard to this are as follows:

“* * * Appeals from action of the governing body of any such municipality may be taken within ten days after authorization of any such lease, pursuant to the provisions of an act entitled ‘An Act concerning the proceedings, orders and determination of State officers and agencies and judicial review thereof,’ approved March 14, 1947 and acts amendatory thereof or supplemental thereto.”

1953 O. A. G.

An examination of the Administrative Adjudication Act referred to in the above quoted excerpt shows that that act has no application to municipal procedure. However, it is a universal rule of statutory construction that an absurd or meaningless result will not be given to language used by the legislature.

Marks v. State (1942), 220 Ind. 9, 40 N. E. (2d) 108;

Lee Bros. v. Jones (1944), 114 Ind. App. 688, 54 N. E. (2d) 108;

Groher v. Colgate-Palmolive-Peet Co. (1931), 94 Ind. App. 234, 178 N. E. 242.

Thus it appears that the words used must be construed to mean that the same procedure, provided for state agencies in the Administrative Adjudication Act, should be followed in regard to the governing body of a municipality pursuant to Chapter 280 of the Acts of 1953 when appeals are had from the granting of leases for permanent structures.

OFFICIAL OPINION NO. 28

April 28, 1953.

Hon. Wilbur Young,
Superintendent of Public Instruction,
227 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 7, 1953 has been received and is in part as follows:

“The following questions have arisen in regard to the election of the county superintendent of schools in May, 1953:

“1. Which official has the responsibility of issuing the call for the meeting of the township trustees for the purpose of appointing the county superintendent of schools?