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any class of Employee Beneficiaries the consent required shall be a majority of the Employees so affected.

The amendment does not provide a compulsory feature but rather provides an election or "option" to the Employee Beneficiary upon return to the Indiana State Police Department who is desirous of again participating in the Indiana State Police Pension Trust Agreement and if the Employee Beneficiary so elects he is bound by the amendments to the Pension Trust Agreement.

It is therefore my opinion :

1. The Department of State Police Pension Trust Agreement may be amended such as was done by the amendment of January 15, 1947 if the amendment is distributed for vote to all the Indiana State Police Pension Fund members and is voted in the affirmative by more than the majority of all the Employee Beneficiaries except if such change or amendment shall modify or change the relative rights under the respective pension classifications, then the consent required shall be a majority of the Employee Beneficiaries of each pension classification so affected. In either of the aforementioned instances the consent of the Pension Engineers must be secured.
2. The amendment providing "optional" rather than compulsory features has met the requirements of all Indiana laws pertaining to such matters.

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### OFFICIAL OPINION NO. 71

August 26, 1953.

Mr. R. R. Wickersham,  
State Examiner,  
State Board of Accounts,  
304 State House,  
Indianapolis, Indiana.

Dear Mr. Wickersham:

I have your request for an official opinion upon the following:

"Is the county auditor authorized to draw a warrant in payment of a claim for compensation of a clerical

assistant to the prosecuting attorney in a judicial circuit having a population of not more than nineteen thousand nine hundred ninety-nine, such payment to be made from an existing appropriation therefor in the current operating budget?"

This question, generally, has been the subject of two opinions heretofore issued by this office, each of which held that a prosecuting attorney has the implied power to employ clerical assistants when such assistance is necessary in order for the prosecutor to carry out the duties enjoined upon him from his office. (See 1937 O. A. G. 41; 1946 O. A. G. 214.)

At the time the foregoing opinions were written, the statute providing for the salaries of prosecuting attorneys and their deputies made no mention of stenographic or clerical assistance for prosecuting attorneys. The 1946 opinion also held that the necessary stenographic assistance could not be construed to be work the prosecutor was required to perform under the salary act.

The circumstances bearing on your question would appear to be unchanged from those above stated with the exception of the present prosecutor's salary act which is Chapter 270 of the Acts of 1953 and is found in Burns' Indiana Statutes Annotated (1953 Supp.), Sections 49-2601 to 49-2619.

Section 2 of this Act, Burns' Indiana Statutes Annotated, Section 49-2602, provides in part as follows:

"\* \* \* There shall be appropriated annually by the various county councils for deputy prosecuting attorneys, investigators, clerical assistants, out of state travel and extradition expenses *not less* than the amount fixed herein for such purposes. \* \* \*" (Our emphasis.)

Section 4 of this Act, Burns' Indiana Statutes Annotated, Section 49-2604, then provides for the salary of the prosecuting attorneys in Judicial Circuits having a population of not more than 19,999 but no mention is made of a minimum amount to be appropriated for deputy prosecuting attorneys, investigators, clerical assistants, out of state travel and extradition expenses.

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Sections 5 through 16, Burns' Indiana Statutes Annotated, Section 49-2605 to Section 49-2616, of the Act then provide for the salary of prosecuting attorneys in all of the other Judicial Circuits in the state, which Circuits are classified according to population, and said sections each provide for a minimum appropriation in said Circuits for deputy prosecuting attorneys, investigators, clerical assistants, out of state travel and extradition expenses.

It is clear that this Act makes no provision for a minimum appropriation for \* \* \* clerical assistants \* \* \* in Judicial Circuits having a population of not more than 19,999. It is also equally clear that the Act does not expressly prohibit the employment of the same when necessary to the proper functioning of the office.

Does the fact that the Legislature has provided for a minimum appropriation for clerical assistants in all Judicial Circuits in the state except those Circuits having a population of not more than 19,999 prohibit the employment of clerical assistants for prosecutors in the latter? It has been held that:

“What is expressed is exclusive only when it is creative, or in derogation of some existing law, or of some provision in the particular act.”

*Strauss v. Yeager* (1911), 48 Ind. App. 448, 459, 93 N. E. 877, 881.

So, where a statute creates a new offense, by prohibiting and making unlawful anything which was lawful before; and appoints a specific remedy against such offense (not antecedently unlawful), by particular sanction and particular method of proceeding, that particular method of proceeding must be pursued and no other \* \* \* and where a statute creates a new right and prescribes a mode of enforcing it, that mode must be pursued to the exclusion of all other remedies. See *Couchman v. Prather* (1903), 162 Ind. 250, 253, 70 N. E. 240.

Chapter 270 of the Acts of 1953 is not in express derogation of a prosecuting attorney's implied power to employ stenographic and clerical assistants necessary to enable him to perform the duties enjoined upon him by the office; nor is Chap-

ter 270 creative of this power. Rather, the statute appears to be in derogation of the right of the county council, in certain Judicial Circuits, to appropriate an amount for deputy prosecutors, investigators, clerical assistants, out of state travel and extradition expenses, which amount is *less* than the minimum specified by the Act.

“This maxim (*expressio unius est exclusio alterius*) properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment.”

Ford v. United States (1926), 273 U. S. 593, 611, 47 S. Ct. 531, 71 L. Ed. 793.

In view of these authorities, I am of the opinion that this maxim is not applicable to the question here involved under Chapter 270 of the Acts of 1953.

“It is a rule of statutory construction that courts must give effect, when ascertained, to the legislative intent. In seeking such intent, effect must be given, if possible, to every word and clause of the act. Words and phrases must be given their plain, ordinary, and usual meaning, unless a contrary purpose is clearly manifested.”

Snider v. State *ex rel.* Leap (1933), 206 Ind. 474, 478, 190 N. E. 178.

“Words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the legislature has in view.”

Zoercher v. Ind. Assoc. Tel. Corp. (1937), 211 Ind. 447, 7 N. E. (2d) 282.

When the words and phrases of this Act are read in the light of their common and usual meaning, and in the sense in which they best harmonize with the subject of the enactment

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and the object the Legislature had in view, it would appear that the Legislature's intent was to place a minimum or floor upon the appropriation for deputy prosecuting attorneys, investigators, clerical assistants, out of state travel and extradition expenses in certain Judicial Circuits in this State. Such provisions would appear to be for the benefit and protection of the prosecutor's office in the Circuits named.

I do not believe this Act should be construed to deprive prosecuting attorneys, in Circuits of not more than 19,999 population of the implied power to employ the necessary stenographic and clerical assistants to enable them to carry out the duties enjoined upon them from their office.

In view of the foregoing, I am of the opinion that a county auditor, in a Judicial Circuit having a population of not more than nineteen thousand nine hundred ninety-nine (19,999) is authorized to draw a warrant on an existing appropriation in the current operating budget in payment of a claim for compensation of a clerical assistant to the prosecuting attorney in such Judicial Circuit.

This opinion assumes, of course, that the employment of the clerical assistants was necessary in order for the prosecuting attorney to carry out the duties enjoined upon him from his office.

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### OFFICIAL OPINION NO. 72

September 1, 1953.

Mr. Robert M. Reel,  
Executive Secretary,  
Indiana Real Estate Commission,  
1433 N. Meridian Street,  
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which is as follows:

"An official opinion is desired regarding the authority of this Commission to require by rule a one year tenure as a salesman before being eligible to transfer