statute other definitions are given for "primary elections" and "city" or "town elections" and "special elections".

I am therefore of the opinion, the words "general, congressional or state elections" as used in the foregoing statute means the elections provided for in the General Election Code to be held in this State on the first Tuesday after the first Monday of November in every even-numbered year.

OFFICIAL OPINION NO. 66
August 3, 1951.

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

Dear Sir:

Your letter of July 2, 1951, has been received requesting an official opinion. The letter is as follows:

"During a discussion of this opinion (Official Opinion No. 49) at a recent Commission meeting, a question was raised. Would not this opinion be confined to cases where Business Enterprise includes some real estate?

"Assuming the business has absolutely no connection with real estate, would it then be necessary to obtain real estate license to sell same? We presume your opinion refers to a situation where the Business Enterprise does include real estate; however, we would like your comments to clear up this question during our next meeting.

"Also discussed was the authority of this Commission to set up minimum office requirements for real estate firms by rule when no specific reference is made in the Act itself (See Section 10 and Section 13). We would also like your opinion on this situation."

Official Opinion No. 49 was concerned with the definition of the term "real estate broker" in Section 22, Chapter 44,
Acts 1949; specifically, the extent of the manner of dealing with "business enterprises."

Your first question in the present request asks for a determination of the meaning of "business enterprise" as used in Section 22, Chapter 44, Acts 1949. This section reads, in part, as follows:

"* * * The term 'real estate broker', within the meaning of this act shall include all persons, partnerships, associations and corporations, foreign and domestic who, for another and for a fee, commission, or other valuable consideration, or who with the intention, in the expectation or upon the promise of receiving or collecting a fee, commission or other valuable consideration, sells, exchanges, purchases, rents or leases, or negotiates the sale, exchange, purchase, rental, or leasing of, or offers, or attempts, or agrees to negotiate the sale, exchange, purchase, rental or leasing of or lists or offers or attempts or agrees to list, or appraises, or offers or attempts or agrees to appraise, or auction, or offers or attempts or agrees to auction, any real estate, or business enterprise, or the improvements thereon; * * *" (Our emphasis).

The first rule of statutory construction is to ascertain the legislative intent. In determining such intent courts will look to the statute as a whole, to the whole law on the subject, to other statutes and to the evils sought to be remedied.

W. H. Dreves, Inc. v. Oslo School Tp. of Elkhart County, 217 Ind. 388;
Chicago & Calumet Dist. Transit Co. v. Mueller, 213 Ind. 530.

The intention of the Legislature in enacting the legislation in question was dealt with at some length in 1949 Ind. O. A. G. 344. It is clear that the intention of the legislative body was to deal with commercial real estate transactions. Doubt arises as to the use of the words "business enterprise" because of the fact that a business enterprise involving no real estate, may be the subject matter of commercial transactions. There are a number of indications that it was not
the intention of the Legislature to include transactions involving "business enterprises" completely divorced from real estate.

The title of the Act of 1949, Chapter 44, reads: "An Act regulating real estate brokers and real estate salesmen, and prescribing penalties for the violation thereof." It is apparent upon reading the Act that the purpose is to regulate real estate transactions. There is no indication of an intention to cover other commercial transactions.

In New York there are a number of judicial decisions interpreting a similar statute. The New York statute does not include "business enterprise" in the definition of real estate broker. The New York decisions held that the license requirement does not apply to one who sells a business as a going concern, including real estate as a part of the subject matter of the transfer. See:

Weingast v. Rialto Pastry Shop, Inc. (1926), 243 N. Y. 113, 152 N. E. 693;
Shalov v. Rosovsby (1930), 136 Misc. 132, 239 N. Y. W. 54;

This line of decisions clearly holds that where the property is mixed, both real and personal, no license is needed. The Indiana Real Estate Commission Act by including "business enterprise" achieves a different result. When a business enterprise or going concern including real estate is the subject matter of a commercial transaction in Indiana, a license is required. It appears that "business enterprise" was included in Section 23, Chapter 44, Acts of 1949, to require those engaged in transactions involving mixed property, real and personal, to obtain a license. It is difficult to extend the meaning of "business enterprise" as used in defining "real estate broker" to those transactions dealing solely with personal property.

Section 7 provides as follows:

"On and after October 1, 1949 it shall be unlawful for any person, firm, partnership, association or cor-
poration to act as a real estate broker or real estate salesman without first having procured a license issued by Indiana Real Estate Commission and to have kept the same unrevoked after issuance. Upon conviction a fine of not less than fifty dollars nor more than one thousand dollars to which shall be added the amount of any real estate commission paid or earned on such violation, shall be imposed for each violation of this Act. Each transaction shall be regarded as a separate offense and shall be punished as such."

In Weingast v. Rialto Pastry Shop, Inc., supra, the court stated that since the failure to procure a license is made subject to criminal penalty the statute must not be extended by implication. The Indiana decisions are in accord with this view. See:

Manners v. State (1936), 210 Ind. 648;

It is my opinion that "business enterprise" as used in Section 22 means business enterprises including some real estate and does not include business enterprises involving no real estate.

The second question is whether or not the Indiana Real Estate Commission may by rule set up minimum office requirements for real estate firms. Section 5, Chapter 44, Acts of 1949, provides as follows:

"The Commission is empowered to adopt and promulgate rules and regulations for its guidance and for the regulation of its business and procedure so far as consistent with or in furtherance of this Act pursuant to the laws of the State of Indiana."

Section 15 gives the Indiana Real Estate Commission the power to regulate the issuance of licenses and to suspend or revoke licenses either on its own motion or on a complaint of any other person when the licensee is guilty of any of the enumerated actions. The reason for prescribing such rules for office procedure is not apparent, however, when it is necessary to effectuate the powers given the Commission under Section 15 of Section 5 of Chapter 44, the Commission
would have the power to prescribe reasonable office procedures for real estate firms.

Therefore, my answer to your second question is in the affirmative.

OFFICIAL OPINION NO. 67

October 3, 1951.

Mr. Ross Teckemeyer,
Executive Secretary,
Public Employees' Retirement Fund,
704 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Mr. Teckemeyer:

Your request for an official opinion in substance is as follows:

A state employee, retired at age of 61, under the provisions of Chap. 340, Acts of 1945, on September 1, 1946, with more than 16 years' service. The retirement benefit was determined according to the provisions of Section 8, which reads in part as follows:

"If the total creditable service of such member shall be less than twenty years, such member shall receive the full member's annuity and proportionate parts of both the employer's annuity and the prior service annuity determined in accordance with subsection (b) of this section to the extent of twenty per cent of such annuities for each completed year of service above fifteen years to a maximum of one hundred per cent thereof."

The benefit was determined to be fifty-eight dollars and sixty-two cents ($58.62) per year.

In the year 1947, the 1945 Act was amended and the above quoted language was omitted. By computing the retirement benefit under the 1947 Act with the foregoing language deleted, the benefit would amount to three hundred thirty-nine dollars and fifty-one cents ($339.51). Your question is: "Can