(50%) of the salary of the circuit court judge” as used in Chapter 316, must mean fifty percent of the salary of the circuit court judge, now or hereafter.

Inasmuch as Burns 4-3238 specifically makes the additional allowance a portion of the salary paid a circuit court judge and inasmuch as such a construction does not violate the constitution, it is my opinion that such additional allowance should be taken into consideration in determining the maximum allowable salary of any chief adult probation officer.

OFFICIAL OPINION NO. 77

August 31, 1951.

Mr. O. S. Patterson,
Clerk, Ripley Circuit Court,
Versailles, Indiana.

Dear Mr. Patterson:

This is in reply to your request for an opinion on the following questions:

“(1) Can a man hold two elective offices if the offices are Township Advisory Board Member and Town Trustee. The man in question holds the office of Township Advisory Board member and is running for Town election. Must he resign if elected for the Town office?

“(2) On City and Town elections do the men running opposite one another elect the one having the greatest number of votes or do the high three, four or five, as the case may be, receive the election.”

In the case of Wells v. State ex rel. (1910), 175 Ind. 380 at 385, wherein our Supreme Court had before it the question of whether or not a deputy county auditor could hold the office of trustee of a school of a town, it said:

“** There are, however, several particulars in which the duties are incompatible. Among the duties of the auditor and of his deputy are that of apportioning the school revenue ** and approving the bonds
of school trustees. * * * The school trustees make certain tax levies, the auditor makes certain assessments, and the auditor or his deputy computes the taxes and extends them on the duplicates. The auditor apportions to school corporations the funds arising from transfers of pupils. * * *

"The auditor or his deputy apportions and disburses certain of the school funds, and the trustees receive them through him. * * *

"There is such a connection between the two offices with respect to the school funds that leads to such incompatibility with respect to their management, and the supervision of one office over the other, that the acceptance of one is the vacation of the other. * * *"

On checking the statutory duties of a township trustee (Burns 65-104) and the duties of a member of an advisory board (Burns 65-301), we find such a connection between the two offices that leads to such incompatibility, especially with respect to the supervision of one officer over the other, and in view of the opinion in Wells v. State, supra, I believe that the acceptance of one is the vacation of the other.

It is to be noted that one of the many duties of the advisory board is to consider the various estimates of township expenditures proposed by the township trustee, and the board shall have the power to concur in such estimates or in any part thereof, or to review any proposed item in whole or in part.

My answer, therefore, to your first question is that, if a member of an advisory board be elected and accepts the office of town trustee, he vacates the office of member of the advisory board.

As to your second question, if you mean a case wherein the voters have the right to elect three, we will say, to an office, then the three receiving the highest number of votes are elected. Their positions on the ballot or on the voting machine does not necessarily indicate they are running against each other.