but also Local Board exercises a portion of the sovereignty of the state and is, therefore, a lucrative office. Inasmuch as membership on the County Council is a lucrative office and membership on the Local Alcoholic Beverage Board is a lucrative office, it is improper for one person to attempt to hold both offices. There is an additional problem involved which concerns the compatibility of the two offices and the propriety of the Council's appointing one of its members to another position. In this regard, see 1949 O. A. G. 373, holding that the Board of Trustees of the Northern Indiana Children's Hospital cannot appoint one of their members as a member of the active staff of that hospital. Official opinion 77 of 1951 discusses generally the problem of incompatibility. It is, therefore, my opinion that the two offices in question are lucrative offices and that it is improper for a member of the County Council to be appointed by the County Council as a member of the Local Alcoholic Beverage Board.

OFFICIAL OPINION NO. 79

Semptember 18, 1951.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

Your request for an official opinion is as follows:

"A question has been presented to this office by the City Clerk of Fort Wayne, Indiana, regarding the fixing of salaries of deputies in the City Clerk's office.

"Chapter 127 of the Acts of 1951 provides:

'Said clerk shall also fix salaries subject to approval of the common council.'

"Reference is also made to the provisions of Section 48-1226a which provides for compensation of certain cities of second class. This act was originally passed in 1924 and was amended in 1929, 1941 and 1943.

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"We would like to have your official opinion on this question:

"Does Chapter 127 of the Acts of 1941 remove the $2500 maximum and repeal that provision as outlined in Burns, Statutes 48-1226a?"

Burns Statutes, Section 48-226a reads in part as follows:

"In cities of second class having a population of more than thirty-five thousand (35,000) according to the last preceding United States census, and an assessed valuation of more than seventy-five million dollars ($75,000,000) and which own and operate three (3) or more municipal utilities, * * * the city clerk shall be paid an annual salary of three thousand dollars ($3,000), which may be increased by ordinance to any amount not exceeding forty-eight hundred ($4800) and said city clerk may be authorized by ordinance to employ deputies who may receive a salary not to exceed twenty-five hundred dollars ($2,500) per year * * * ."

The question is: does the 1951 Act supersede the former Act, or the part thereof as above set out. Section 1 of Chapter 127, Acts of 1951, reads as follows:

"The city clerk in each city of the second class is authorized to appoint any number of full-time deputies, and employees as may be necessary for the proper discharge of the duties of his office, subject to the approval of the common council. Said clerk shall also fix salaries subject to approval of the common council. Such deputies and employees shall serve at the pleasure of the clerk. Said clerk, at his discretion, may terminate the employment of any deputy or employee appointed prior to the effective date of this act."

In the first place, it is noted that the 1951 Act is a general Act applying to all Second Class cities; while the former act applies only to certain defined or designated Second Class cities. The 1951 Act is the last expression of the Legislature, and its language appears to be free from ambiguity. The
Indiana Supreme Court has said that statutes free from ambiguity are not subject to the rules of construction.

Tucker v. Wesing (1941), 219 Ind. 527, 531-2, comments as follows:

"In case of ambiguity in statutes, there are certain rules of construction to which the court resorts in arriving at the intention of the Legislature, but such rules have no application to a statute that is free from ambiguity."

The intent of the Legislature is further indicated by Section 2 of Chapter 127, Acts of 1951, which reads:

"All laws and parts of laws in conflict herewith are hereby repealed."

Thus it appears that it was the intent of the Legislature by the 1951 Act to supersede that part of the former law dealing with the compensation of all deputies and employees of city clerks in certain second class cities.

The following language of the 1951 Act is noted, to wit:

"Said clerk, at his discretion, may terminate the employment of any deputy or employee appointed prior to the effective date of this act."

From this language, the intent of the Legislature may be demonstrated that all compensation of former deputies and employees that may have been considered fixed by the former law, may be terminated by the 1951 Act.

In view of the foregoing, it is my opinion that Chapter 127, Acts of 1951, supersede the provisions referred to in Burns Statutes, Section 48-1226a and that the $2,500 provision maximum compensation should be considered as repealed.