OPINION 101

procedure to be followed in such instances is that outlined in the provisions of section 63-1806, Burns' 1951 Replacement, supra.

OFFICIAL OPINION NO. 101

November 26, 1951.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your request for an Official Opinion reads as follows:

"Will publishers of newspapers be entitled to charge and collect at the rate of $1.50 per square for publication of the summary statement of receipts and the statement of disbursements which shows the combined gross payment to each person, firm or corporation according to classification of expense, which publication is contemplated in Chapter 252, Acts of 1951, or will the publishers be entitled to charge and collect for those portions of the published report at the rate of ten cents (10c) per item?

Prior to this year township annual reports have been published pursuant to Ch. 214, Acts of 1907 (Burns 65-113). Compensation to publishers has been paid pursuant to Sec. 1, Ch. 96, Acts of 1927 (Burns 49-701).

For your information in considering this question, I submit herewith a copy of a form prescribed by the State Board of Accounts for use of township trustees in preparing the report required by Chapter 252, Acts of 1951. Submitted also is a printed sample of a report as this department considers it should appear in newspapers.

In considering the foregoing question, it may be of interest to note the history of S. B. 224 from the
It appears that the answer to your question turns upon the legislative intent and meaning given to the word "item."

Prior to the enactment of Chapter 252, Acts of 1951, the law required township trustees to publish their annual reports showing receipts and disbursements item by item. Historically, it was the original purpose and intent of this 1951 Act to reduce the size and extent of such publication, and thereby to reduce the cost of such publication, by publishing an abstract of the receipts and disbursements. The original bill (Senate Bill No. 224) provided for such abstract omitting the individual items of receipts and expenditures. Section 4 of the Act was a part of the original bill and provided that:

"All laws and parts of laws requiring annual reports of township trustees to be published by items as they appear in such annual reports are hereby repealed."

Thus, it is seen that Sec. 4 was in harmony with the purpose and intent of the original bill. However, the bill was amended before passed in its present form. The amendment made the following provision as shown by Sec. 1 of Chapter 252, to-wit: "Said abstract—shall contain a statement of disbursements showing therein the combined gross payment to each person, firm or corporation, according to classification of expense." By way of illustration, before the 1951 Act, all disbursements by items were published, as:

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Doe</td>
<td>$1.00</td>
</tr>
<tr>
<td>John Doe</td>
<td>2.00</td>
</tr>
<tr>
<td>John Doe</td>
<td>3.00</td>
</tr>
</tbody>
</table>

Under the original Senate Bill 224, before amendment, none of the above items would be published as items. Under the provisions as enacted into Chap. 252, Acts of 1951, the above items would be condensed into a gross statement, such as:

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Doe</td>
<td>$6.00</td>
</tr>
</tbody>
</table>

Now the question presented is, shall the statement, "John Doe—$6.00," be considered an "item" of disbursement, the
same as the foregoing items? This question becomes im-
portant for the reason that public advertising is paid for on
the basis either of so much money per measured square
or by so much money for each item. Your question concerns
itself only with whether or not "John Doe—$6.00" should
be paid for as an "item", or paid for by the square. Section
1, Chap. 96, Acts of 1927, (Burns Stat.—Sec. 49-701) pro-
vides in part as follows:

"* * * for the publication of all annual reports
where details of receipts and disbursements are to be
shown, ten cents (10c) for each item for one (1)
insertion."

Webster's International Dictionary defines the noun "item"
as follows:—

"An Article; a separate particular in an enumera-
tion, account, or total; a detail; as the items in a
bill."

It is noted that Sec. 4 of Chapter 252, Acts of 1951, is
somewhat contradictory to the purposes of the Act as finally
enacted. As noted heretofore, Sec. 4 was in the original
bill which provided that no disbursements by items were
to be published in the abstract of the trustee's annual report.
In harmony with the original bill, Sec. 4 repealed all laws
requiring such publications by items.

It may be contended that since Sec. 4 prohibits "items",
that items in such publications no longer furnish a basis
of charge or compensation to the publisher. But it is seen
that if all "items" are to be eliminated from such publica-
tions, then such prohibition runs counter to the Act as
amended which provides that "said abstract shall contain
a summary statement of receipts, showing the source thereof
and shall contain a statement of disbursements showing
therein the combined gross payment to each person, firm or
corporation according to classification of expense."

It appears that the intended effect of the Act is, that
the name of each person, to whom a disbursement has
been made, shall be published, showing the amount of the
disbursement; but that if such person's name appears more
than once in any separate classification of the annual report
of disbursements, then such disbursements shall be combined into one gross statement. That is to say, that multiple items of disbursements to the same person are to be stated as but one item of disbursement.

If such is a correct statement of the legislative intent, then it would appear that the publication of the gross payment to any one person should be considered as but one item, to be paid for at the rate of ten cents (10c) per item rather than by the measured square. There appears to be no reason why several items may not be consolidated into one item. Certainly, before payment, such several items might have been consolidated in one claim.

We may apply the following rules for construing Chapter 252, Acts of 1951. The court said the following in State ex rel. Clemens v. Kern et al. (1939), 215 Ind. 515-522:

"* * * When all is said, there is but one basic and fundamental rule of statutory construction, and that is to ascertain the legislative intent or, to put it more accurately perhaps, to determine the true meaning of the language used in the light of the object and policy of the law-making authority. * * *"

Also, in Williamson et al. v. Civil City of Huntington (1935), 101 Ind. App. 280-283:

"In determining the intent of the legislature in passing the above act we must take into consideration all and every part of the act, including the Act of 1907 referred to therein, and if one part of the statute is susceptible of two constructions and the language of another part is clear and definite and is consistent with one of such constructions and in conflict with the other, that construction which will render all clauses harmonious must be adopted. 59 C. J., § 597, page 1002, and cases there cited. See also Lewis' Sutherland Statutory Construction, §§ 374 and 375."

Also, in Hamilton v. Huntington (1945), 223 Ind. 143-147:

"This, therefore, appears to be a case for the application of the rule that in ascertaining the legislative intent in the enactment of an ambiguous statute the courts will look to its general purpose and the effect
and consequences of the various meanings that might be ascribed to it. State ex rel. v. Board, etc. (1931), 203 Ind. 23, 178 N. E. 563. Chancellor Kent amplified this rule in the following appropriate language:

'In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When words are not explicit, the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt and the remedy in view; and the intention should be taken or presumed according to what is consistent with reason and good discretion.'" Quoted from 2 Horack's Sutherland Statutory Construction (3rd Ed.), § 4704.

In view of the foregoing, it is my opinion that such combined gross payments to the same person should be considered as one item and paid for as such.

OFFICIAL OPINION NO. 102
November 26, 1951.

Honorable C. A. Frech,
Secretary-Treasurer,
Indiana State Board of
Dental Examiners,
Gary National Bank Bldg.,
Gary, Indiana.

Dear Mr. Frech:

Your letter of November 19, 1951, has been received requesting an official opinion as to whether or not your Board may return to the applicant the $25.00 filing fee prescribed by section 63-503, Burns' 1951 Replacement, where the applicant does not appear for his examination. The pertinent part of said statute reads as follows:

"* * * Every applicant shall pay to the board twenty-five dollars ($25.00) at the time of making