Your attention is directed to the fact that a somewhat stricter construction is made of statutes containing penal provisions, in that the court will not attempt to legislate concerning penal statutes. (Hargis v. State (1942), 220 Ind. 429, 435.) However, this rule has not seemed to be strictly enforced where the court is not changing the meaning and effect of a statute but is only construing the statute in the light of the clear and evident intention of the Legislature in enacting it, even where statutes contain penal provisions.

Gustavel v. State (1899), 153 Ind. 613, 616, 617; Marks v. State (1942), 220 Ind. 9, 18-20.

The latter case also announces the well established rule that it is not presumed that the Legislature intends an absurdity. (1945 Ind. O. A. G. 194, 198, Official Opinion No. 41.)

From the foregoing, I am of the opinion House Enrolled Act No. 240 is valid and enforceable and that the same should be read and construed so that any references, appearing in the body of any section of the Act shall apply to that section to which the Legislature clearly intended to refer.

OFFICIAL OPINION NO. 26

March 24, 1951.

Mr. Edwin Steers, Sr.,
Member, State Election Board,
108 East Washington Street Building,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion in which you ask the following question:

"We received a letter from Bartel Zandstra, Clerk of the Lake Circuit Court, Crown Point, Indiana, a paragraph of which is as follows:

"Peter Chronowski, was elected Justice of the Peace for a term of four years beginning January 1, 1951. He qualified and is now holding that office. At present he filed for the Office of Mayor of the City"
of East Chicago, a second class city, which has a City Judge. The question now is can he run for the Office of Mayor of the City of East Chicago, where all the judicial powers are vested in the City Judge, and not the Mayor, in view of the constitutional prohibition of a judge running for any office except a judicial office during his term.'

"We would like to have your official opinion as to whether or not the Justice of Peace referred to by Mr. Zandstra is eligible to run for mayor of East Chicago, under the circumstances related in Mr. Zandstra's letter. * * *"

Article VII, Section 16 of the Indiana Constitution reads as follows:

"No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office."

In the Case of Waldo v. Wallace (1859), 12 Ind. 569, a mayor was held to be a judicial officer. That case is outstanding in its analysis of the problems of separation of government and government function.

In the case of Howard et al. v. Shoemaker, Auditor, et al. (1871), 35 Ind. 111, the Supreme Court discussed the statute of the mayor if he were not city judge.

Section 1 of Chapter 99 of the Acts of 1943, same being Burns Section 48-1215 provides for an election of a city judge in cities in the population bracket into which East Chicago falls.

Section 80 of Chapter 129 of the Acts of 1905, same being Burns Section 47-1502 outlines the duties of mayors and includes no judicial functions. On the basis of these authorities and the reasoning of the cases cited above, it is my opinion that the Mayor of East Chicago is not a judicial officer.

It is clear that a justice of the peace is a judicial officer within the meaning of Article VII, Section 16 of the Indiana Constitution. See 1918 O. A. G. 118 and authorities cited and discussed therein.
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Therefore, it is my opinion that a justice of the peace is not eligible to hold the office of Mayor in cities in which the mayor does not act as city judge during the term for which he was elected to the office of justice of the peace.

OFFICIAL OPINION NO. 27
March 26, 1951.

Senator Jack A. Stone,
Law Offices of Stone and Stone,
Old National Bank Building,
Evansville, Indiana.

Dear Sir:

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

"In checking the law as to the powers of a Notary Public and the power of a member of the General Assembly to act as a Notary, I found a note in Burns Indiana Statutes, Volume 10, 1951 Replacement, at Section 49-3513, that the section giving members of the General Assembly Notary Powers has been superseded by the Acts of 1939, Chapter 61. I would like your opinion on whether this means that members of the General Assembly no longer have Notary powers, whether this note in Burns Statutes is erroneous, or whether members of the General Assembly can have Notary powers under some other sections of the Act?"

Chapter 65 of the Acts of 1909, formerly Burns 49-3513 and 49-3516, provides that a member of the legislature, by virtue of his office, is entitled to do all acts which a notary may do and charge the same fee therefor. Chapter 61 of the Acts of 1939, same being Burns 1951 Replacement, Section 49-3501, provides that no public official who holds a lucrative office may serve as a notary public with certain exceptions. There is no conflict between these two acts. The latter act prohibits officers from being commissioned as notaries. It