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1951 Replacement, at Section 49-3513, that the section giving members of the General Assembly Notary Powers has been superseded by the Acts of 1939, Chapter 61.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
1951 O. A. G.

does not prohibit or affect powers given to officers by virtue of their office.

Thus, inasmuch as Chapter 65 of the Acts of 1909 has not been amended or repealed, it is in full force and effect and a member of the legislature upon meeting the requirements of that act, may administer oaths and take acknowledgments.

OFFICIAL OPINION NO. 28

March 26, 1951.

Honorable Edwin K. Steers, Sr.,
Member, State Election Board,
108 E. Washington Street,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion concerning problems confronting cities in the coming primary and general city elections due to the 1950 census which has, as yet not become effective. You draw particular attention to the possibility that the census may become effective after the expiration of the period provided for filing declarations of candidacy and before the general election whether before or after the primary election.

The first question to be considered is when a United States decennial census is effective. Official Opinion No. 12 of February 12, 1951, examines the authorities on this point and concludes that such a census is effective when officially announced as of the first of April in the year taken. Thus, if the results of the 1950 decennial census were announced on April 1, 1951, they would be effective on that date as of April 1, 1950.

It is to be noted that the classification of cities is on the basis of population according to "the last preceding United States census." Acts 1933, Chap. 233, Sec. 1, as amended, same being Burns 1950 Replacement, Sec. 48-1201.

Changes in classification of cities are automatic; that is, no affirmative act is required for the change to take place, but it follows as a direct result of the official pronouncement