1945 and that Act need not be followed in the adoption of the same.

OFFICIAL OPINION NO. 9

February 10, 1950.

Hon. George W. Long, Judge,
Ninth Judicial Circuit,
Columbus, Indiana.

Dear Sir:

I have your letter of October 17, 1949, which asks my opinion on the following question:

"Does a county have a legal enforceable claim against a Judge to recover back the per diem payment paid by the county to a Judge from April 1, 1945 to April 1, 1947, under Ch. 295 of the Acts of 1945 of the General Assembly of the State of Indiana."

The pertinent parts of Chapter 295 are as follows:

"Whereas, the 1933 fee and salary bill fixed fees and salaries at a time of world-wide depression; and

"Whereas, since that time the United States Supreme Court has decided that salaries of officers and employees of political subdivisions of the state are subject to Federal income taxes which have progressively increased; and

"Whereas, since 1933 the legislature has created the Indiana Welfare Department which today spends thirty millions of tax dollars and a great share of the work of collecting this money and administering its expenditure falls upon the county officials and for this additional burden no extra compensation has been granted; and

"Whereas, in numerous counties over the State of Indiana there are located defense plants, army camps, proving grounds, air bases or shipyards and these war projects employ thousands of workers; and
“Whereas, these workers to a large extent were not residents of the counties that are near these plants until they gained such employment; and

“Whereas, this great influx of population has created a great and ever increasing problem for every governmental unit in these counties; and

“Whereas, the county officials in each of these counties have had their work and responsibility greatly increased and often doubled by this tremendous rise in population; and

“Whereas, the 1933 salary act and all acts amendatory and supplementary thereto did not and could not take this increase in population into consideration when the salaries of these officials were fixed in direct ratio to the population of the various counties in 1933; and

“Whereas, every session of the legislature since 1933 has imposed additional duties upon such county officials without an increase of compensation; Now, therefore

“Section 1. The auditor, assessor, clerk of the circuit court, sheriff, recorder, judges of the circuit or superior courts and treasurer of each county in this state having a population of less than seventy-five thousand according to the last preceding United States census, and in which is located a defense plant, or an army camp, or a naval air base or station or a proving ground, or a shipyard, and in each county contiguous or near to such a county shall each be paid a per diem of one dollar and seventy-five cents for each day such official shall be engaged in the official duties of his office, said per diem to be in addition to all others (other) provisions of law for his compensation.”

This section on its face clearly authorizes the payments of per diem about which you inquire. The only possible complication is that presented by the fact that salaries of judges were increased by Chapter 242 of the Acts of 1945, the pertinent parts of which are as follows:

“That the salary of each judge of the circuit, superior, criminal, probate and juvenile courts of this
state shall be four thousand eight hundred dollars annually, payable monthly out of the state treasury: Provided, That in all judicial districts of this state, composed of one (1) county, whether for circuit, superior, criminal, probate or juvenile court, containing any city which has a population of more than twenty-five thousand (25,000) as shown by the last preceding United States census, or which contains cities whose aggregate population was more than sixty thousand (60,000) as shown by such census, whenever twenty or more resident free-holders of the county in which such city is, or such cities are, situated shall, by their petition, file with the board of commissioners of such county, represent that the annual salary of the judge of such circuit, superior, criminal, probate or juvenile court, as otherwise provided by law, is not an adequate compensation for the services of such judge or judges, and should be increased in the sum to be specified in such petition, than (then) it shall be the duty of the board of commissioners of such county, in open session, without delay, at any term of such board, to consider such petition and hear the evidence thereon, and thereupon, such board of commissioners may, by entry of record, fix and allow a certain sum as an addition to or increase of the annual salary of the judge or judges of such circuit, superior, criminal, probate or juvenile court, but in no event in excess of the sum of two thousand eight hundred dollars ($2,800) or in excess of the sum specified in such petition. * * *

There can be no doubt that in construing statutes the primary object is to determine the legislative intent. At the time of the meeting of the General Assembly in 1945 it was generally assumed by administrative officers and members of the General Assembly that what purported to be an amendment to the Indiana Constitution, adopted in 1926 (Article 15, Section 2) was in effect. That amendment provided that there could be no raise in salary of an officer during his term of office. It has since been determined in the case of Swank vs. Tyndall (1948), — Ind. —, 78 N. E. (2d) 535, that that amendment was not adopted. That being so, Chapter 242 of the Acts of 1945 was effective on December 12, 1945, when the Acts
were promulgated, in raising the base salaries of all judges from $4,200.00 to $4,800.00 a year and allowing further increases by petition. The problem with which we are confronted is, in essence, whether the legislature of 1945, which may have been laboring under a mistake of law, intended that any one judge should receive the benefits of both Chapter 242 and Chapter 295 concurrently.

In order to resolve this question it is necessary to examine carefully the scope of those two acts. Chapter 295 applies only in counties which have a population of less than 75,000 and in which a defense plant or army camp, etc. is located, etc., while Chapter 242 in its increase in salary is effective in all counties and the additional permissive increase provision is effective in counties having a population of more than 60,000 or having a city over 25,000. From the differentiation in the scope of those two acts it becomes apparent that the legislature was not dealing with the same subject matter, nor was it attempting to remedy the specific inequity in salaries. In the case of Chapter 295 the legislature seemed to be attempting to remedy an inequality due to the location of branches of the armed services or defense plants which drastically changed the complexion of a county, while Chapter 242 was attempting to remedy inadequate salaries due to a lack of increase since 1921, and also to allow some mobility in urban counties in which the burden on the courts was heaviest and most varied. Since these two acts were attempting to remedy substantially different inequalities I fail to see any reason why they should be considered to be in the alternative even though the legislature may have been laboring under a mistake as to their ability to increase salaries during term.

It is a well accepted rule of statutory construction that statutes shall be construed in pari materia, particularly when adopted by the same legislature, and that implied repeal is looked on with disfavor.

It is, therefore, my conclusion that Chapter 242 provides no reason to construe the otherwise unambiguous words of Chapter 295 in any other way than to allow per diem to judges in all counties within its scope.