language seems a little anomalous that there should be a separate fund, to be a part of the General Fund. I am of the opinion that the law requires that only one fund be kept and that is the "Real Estate Commission Fund." All funds in excess of $5,000.00 which by the terms of the act are to be deposited with the General Fund are to remain in a separate permanent fund for the maintenance of the commission. Judging by other similar statutes having like import the deposits to the General Fund should be made annually and the expenses of the Commission should not exceed in any year the fees collected during that year, which are deposited with the "Real Estate Commission Fund" and the accounts handled in the same manner as those under the "Beauty Culture Law," Chapter 72, Acts 1935. I conclude that the effect of the statute as to this fund is merely to earmark it and not to constitute a separate fund and may thereafter be used for the maintenance of the commission under proper additional appropriations. There seems to be no language which makes an appropriation of this latter fund. Therefore, warrants could not be drawn on this separate permanent fund which becomes a part of the General Fund without an additional appropriation.

CHJ:ar

OFFICIAL OPINION NO. 54

June 16, 1949.

Mr. Paul E. Middleton, Director,
Indiana Economic Council,
610 Board of Trade Building,
Indianapolis, Indiana.

Dear Sir:

I have your letter dated May 24, 1949 which is as follows:

"Section 11 of Chapter 174 of the Acts of 1947 states 'The County plan commission shall consist of nine members.' In Section 16, however, the Act states: 'In case there is a city plan commission a designated representative of the city plan commission shall be an
advisory member of the county plan commission. Such advisory members shall have all the privileges of membership except the right to vote. However, the right to vote shall be extended to advisory members representing city plan commissions on county plan commissions only on those questions regarding the unincorporated area within two miles of the corporate boundaries of the cities which they represent.'

"Section 19 of the Act further states: 'A majority of the members shall constitute a quorum. No action of the Commission is official, however, unless authorized by a majority of the Commission at a regular or properly called special meeting.'

"Certain questions and practical difficulties have arisen in the administration of the affairs of the Marion County Plan Commission that are directly related to the foregoing provisions of the act, and the Commission has requested the Indiana Economic Council to obtain your official opinion on the following:

"1. For the purpose of determining the number of members that shall constitute a quorum and a majority, will the total membership of the commission vary from nine to ten members depending upon the eligibility of the advisory member to vote?

"2. If the membership of the commission will vary from nine to ten members under the conditions outlined, would it not be necessary for the Chairman of the Commission to determine the eligibility of the advisory member to vote on each case as it arises and thus establish the number constituting a legal quorum or majority?"

To answer the questions presented in your letter consideration and interpretation must be given to two sections of the County Plan Commission Act. Section 16 (Burns' 53-716) reads as follows:

"In case the city is situated in a county which has a county plan commission, a designated representative of the county plan commission shall be an advisory member of the city plan commission. In case there is
a city plan commission a designated representative of
the city plan commission shall be an advisory member
of the county plan commission. Such advisory mem-
ers shall have all the privileges of membership except
the right to vote. However, the right to vote shall be
extended to advisory members representing city plan
commissions on county plan commission only on those
questions regarding the unincorporated area within
two (2) miles of the corporate boundaries of the cities
which they represent.”

Section 19 (Burns’ 53-719) reads as follows:

“A majority of members shall constitute a quorum.
No action of the commission is official, however, unless
authorized by a majority of the commission at a regu-
lar or properly called special meeting.”

These two sections are not entirely clear upon a casual
reading and apparently contain provisions which are con-
tradictory. The problem then is to interpret correctly the
meaning of these two sections and in doing so one must
attempt to ascertain the true intent of the Legislature in
enacting them and once being ascertained this intent must
be given effect.

State, ex rel. O’Donnell v. Flickinger (1936),
211 Ind. 361.

It is a familiar rule of statutory construction that in con-
struing a statute consideration must be given to the statute
as a whole and all of its provisions must be read together and
effect given to all of its provisions, where possible.

Kryder v. State (1938), 214 Ind. 419;
State v. Mears (1937), 213 Ind. 257.

In the case of Garvin v. Chadwick Realty Corp. (1937),
212 Ind. 499, 512, 9 N. E. (2) 268, 273 it was stated:

“* * * * where one part of a statute is sus-
ceptible to two constructions, and the language of an-
other part is clear and definite, and is consistent with
one of such constructions, and opposed to the other,
that construction must be adopted which will render all classes harmonious.’"

With these rules of construction in mind I wish to point out that in Section 16 above quoted the advisory member of the County Plan Commission has all of the privileges of membership including the right to vote when the Commission is considering questions regarding the unincorporated area within two miles of the corporate boundary of the city which the advisory member represents. Section 19 states that a majority of members shall constitute a quorum. In giving the advisory member complete privileges including the right to vote in certain matters the Legislature apparently had in mind that in those particular instances the advisory member would function fully and completely in the same manner as any of the regular members of the Commission.

A quorum has been defined to mean “such a number of members of a body as is competent to transact business in the absence of other members.” A majority always constitutes a quorum of a deliberative body in the absence of some legal requirement fixing a different number and can take action within power of the body to transact.


It seems to me that if the provisions of Section 16 as noted above are to be given full force and effect it must be the intent of the Legislature to count said advisory member in arriving at a majority of members to constitute a quorum.

It is the general rule of common law that a majority of a body constitutes a quorum to do business and that a business matter is passed upon the vote of a majority of that quorum. However, both of these rules may be changed by statute. I call attention to the fact that in Section 19 the Legislature has decreed that the number necessary to constitute a quorum and the number necessary for official action are the same. Although a Commission consisting of nine members is created in Section 11 of the Act, Section 16 places on that Commission another member with full and complete rights in certain designated instances. Therefore, it seems to me that this additional member would have to be considered in arriving at the number necessary to constitute a majority of the Com-
mission in those instances in which he has been granted that right.

As stated above, this advisory member only has full and complete rights and privileges when matters are considered that affect the limited area specified in the Act. Thus it seems that it would be imperative for the Commission to decide when it is going to consider matters affecting those particular areas in order to determine whether or not the advisory member has and can exercise full and complete rights as a member of the Commission. Therefore, in construing the sections of this Act in conformity with the rules of construction stated above it is my opinion that both of your questions should be answered in the affirmative.

HWW:vb

OFFICIAL OPINION NO. 55


Mr. Roscoe C. O'Byrne, Chairman,
Public Service Commission of Indiana,
State House, Room 401,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of May 8, 1949, which is as follows:

"I hand you herewith copy of the letter from William E. Steckler, Public Counsellor, bearing date of May 9, 1949 and bearing reference to the above subject matter. I am transmitting the same with the request by the Public Service Commission of Indiana that you submit all opinions called for by the enclosure, for the advice and information of the Commission."

Accompanying this letter was enclosed a letter from Mr. William E. Steckler, Counselor, which embraces the matter on which you desire an opinion. This letter is as follows:

"The evidence in the above captioned matter, which is now pending before the Commission, establishes the