OPINION 19

There is nothing before me to show that the ordinance of the city requiring the property owner to install service pipes that such pipes should be of copper or that the Water Company is to have authority to designate the type of pipes to be used.

I am therefore of the opinion that the Indianapolis Water Company has no right to attempt to force all of its customers to install new copper service pipes as suggested in your letter. However, if the customer’s service pipes are in such bad condition that they have to be replaced, there is no reason why the Water Company could not suggest the use of copper instead of galvanized pipes but it has no authority to require it.

I trust this answers your inquiry.

CHJ

OFFICIAL OPINION NO. 19

April 19, 1949.

Mr. Noble W. Hollar, Chairman,
State Board of Tax Commissioners,
Room 301, State House,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your communication of April 5, 1949 in which you request an opinion on the following:

“In connection with a request for additional appropriations a question is presented as to the salary to be paid to the surveyor of Lake County, Indiana.

“In House Enrolled Act 75, being Chapter 241 of the Acts of 1949, approved March 10, 1949, the salaries are determined for the county surveyor in each county of Indiana. The salary for the surveyor of Lake County is fixed at $3200 with a provision that if the county surveyor is licensed under the laws of the State of Indiana to practice civil engineering, the salary of surveyor in Lake County shall be $4800. It is further provided in counties where the county surveyor is a licensed engineer the county council may increase the maximum salary for the surveyor of such county by an amount not exceeding $1500. This will determine a
maximum salary of $6300 for the surveyor of Lake County if its county council took such action.

"In another Act of the General Assembly at the same session, House Enrolled Act No. 396, being Chapter 259 of the Acts of 1949, which was filed on March 12, 1949 and became law without the signature of the Governor, in counties having a population of not less than 250,000 nor more than 350,000 according to the last preceding United States census (and this would include Lake County) it is provided that if the surveyor is licensed to practice civil engineering his annual salary, for all services and in lieu of fees, shall be $9600. Each of these Acts contains an emergency clause making the same effective April 1, 1949. Your attention is called to the fact that Chapter 241 is a general statute applying to all counties and that Chapter 259 which became law later, in point of time, is a special statute applying only to counties of a certain population."

It appears from what you have stated that House Enrolled Act 75 was approved on March 10, 1949, and is an amendatory Act, and House Enrolled Act 396 was filed on March 12, the same year, and is an original Act special in its application, so that it seems apparent that House Enrolled Act 396 was enacted by the Legislature subsequent to House Enrolled Act 75. In the absence of evidence as to which Act is the later, the statute which is the clearest expression of the legislative intent will control, but little comfort can be had from this statement because each of the Acts seem to contain a clear expression of the intent of the legislature with respect to such Act. It appears that both Acts become effective by their terms on April 1, 1949. An analysis of the two Acts discloses that No. 75 had two subdivisions, designated by (a) and (b). Under subdivision (a) the salary of Lake County surveyor was fixed along with the salaries of all of the surveyors in the various counties of the State of Indiana and was fixed at $3200 per year, but subdivision (b) of the same Act contains a proviso to the effect that if a surveyor is licensed under the laws of the State of Indiana to practice civil engineering, the salary of the Lake County surveyor should be $4800. House Enrolled Act 396 seems to re-enact
the salary provided in subdivision (a) of House Enrolled Act No. 75 by giving a surveyor in counties of the classification of Lake County $3200.00, but modifies the proviso where the surveyor is a licensed practical civil engineer, so as to allow him $9600 instead of $4800. It becomes apparent that the effect of House Enrolled Act 396 has the effect of amending the proviso allowance in Act No. 75, if he is a licensed civil engineer; but considering the two Acts in this manner, Acts can be construed in *pari materia* and the proviso in Act 75 is deemed amended. It is a well known rule of construction, that when two Acts on the same subject are approved on the same date or at the same Session of the Legislature, and they are repugnant, that the last expression of the Legislature will prevail (Sutherland on Statutory Construction, Vol. 1, page 276) so in this case House Enrolled Act 396 would control. (Cummins v. Pence 174 Ind. 115; Holle v. Drudge 190 Ind. 520; State *ex rel.* v. Grange 200 Ind. 506.) We call attention to the statement of the Court at page 509 of said last cited decision, where the Court said:

"Statutes which relate to the same thing, or to the same subject, person or object are in *pari materia* and it is presumed that such Acts are imbued with the same spirit and actuated by the same policy, 36 Cyc. 1151, and they should be construed together as if parts of the same Act, 36 Cyc. 1157, to determine their effect. State v. Rockley (1829), 2 Blackf. (Ind.) 249; State v. Gerhardt (1896), 145 Ind. 439, 44 N. E. 469, 33 L. R. A. 313; 25 R. C. L. 1060. This rule applies with peculiar force to statutes passed at the same session of the legislature—statutes contemporaneous or nearly contemporaneous. Bish v. Boyle (1857), 9 Ind. 169, 68 Am. Dec. 615, and note; Swinney v. Ft. Wayne, etc. R. Co. (1877), 59 Ind. 205; State *ex rel.* v. Flynn (1903), 161 Ind. 554, 582, 69 N. E. 159; City of New Albany v. Lemon (1925), 198 Ind. 127, 149 N. E. 350; 25 R. C. L. 1062; 36 Cyc. 1151."

In this connection, see also Lutz, Attorney General v. Arnold, *et al.* 208 Indiana 480 and also Sutherland on Statutory Construction, *supra*. Where there is repugnancy between two statutes, the repugnancy need not be as to every provision of the two Acts, but may operate on parts only of one statute,
and where this is true, the older statute will be treated as amended or repealed by implication only as to the extent of the repugnancy (Crawford on Statutory Construction, page 632; Kramer v. Beeler, 186 Ind. 349.) Each of the two Acts have provisos and the repugnancy existing here relates only to the provisos; inasmuch as House Enrolled Act 396, so far as the surveyor of Lake County is concerned, re-enacts the provisions of House Enrolled Act No. 75, except as to the proviso regarding the fact that the surveyor is a licensed civil engineer, the inconsistency of the two Acts is narrowed. Taking all factors in consideration, I am of the opinion that House Enrolled Act 396 is special in its nature and the latest expression of the legislative intent on the subject of the salary of Lake County surveyor and that whatever repugnancy exists between the Acts, that the proviso of House Enrolled Act 396 will prevail and that the proviso of House Enrolled Act 75 is to be deemed amended so far only as it relates to the rule regarding a licensed civil engineer and that his salary should be fixed at $9600.

It is further my opinion that both of the provisos in the House Enrolled Act 75, referred to in subdivision on (b), which would permit the County Council to make an additional allowance, not exceeding $1500, does not apply to the surveyor of Lake County.

CHJ:aa

OFFICIAL OPINION NO. 20

April 13, 1949.

Brig. Gen. Robinson Hitchcock,
The Adjutant General,
State Capitol Building,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your request under date of March 28, 1949 for an official opinion regarding the following query, to wit:

"Is there a distinction between the operation of this office as an agency of the State and the operation of the armories under the State Armory Board?"

Section 1, Chapter 135 of the Acts of 1945 provides:

"There shall be appointed within the State of Indiana