Act 381, an appropriation of $13,506,800.00 was made, subject to like conditions, to various state institutions. I understand this latter appropriation is in an amount of approximately equivalent to what receipts are estimated will be paid in to said Postwar Construction Fund in the coming biennium. Such matter of appropriation indicates the legislative intent to continue to make incoming monies in such fund available for such Postwar Construction projects, as was contemplated at the time Chapter 357 of the Acts of 1945 was enacted.

It is to be further noted that under House Enrolled Act No. 380 of the 1949 General Assembly, an appropriation of $11,820,000 was made for construction purposes for many of the State institutions referred to in Chapter 234 of the Acts of 1947. However, this latter appropriation is from the general fund, evidently for the reason that there would not be sufficient money in the Postwar Construction fund to take care of this appropriation made by House Enrolled Act 380, supra, when full effect was given by the Budget Committee and the Governor to the authorized appropriations made by Chapter 234 of the Acts of 1947 and House Enrolled Act 381 of the 1949 General Assembly from said Postwar Construction fund.

I am, therefore, of opinion the appropriation made in Chapter 234 of the Acts of 1947 from the Postwar Construction fund will not lapse on June 30, 1949, but is continued and available for allocation by the Budget Committee with the approval of the Governor, after said date.

OFFICIAL OPINION NO. 22

May 5, 1949.

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

Dear Sir:

Your letter of April 19, 1949, requests an official opinion construing House Enrolled Act No. 115 of the Acts of 1949. You particularly state:
"My question is as to whether or not, in accordance with the terms of House Enrolled Act No. 115 of the Acts of 1949, such salary increases shall apply during the present terms of the respective duly elected officials now holding such offices or whether, by reason of either constitutional or statutory limitations, such increases shall apply only to those hereafter elected to such offices."

House Enrolled Act No. 115 concerns county assessors and deputies and other employees, fixing their compensation, salary, per diem and mileage and fixing the manner of payment thereof.

You call my attention to our Article 15, Section 2 of the Constitution of Indiana (as amended November 2, 1926) and Section 49-1103, Burns 1933 Indiana Statute. As to the constitutional limitation, you seem concerned with that part which provides as follows:

"* * * nor shall the term of office or salary of any officer fixed by this constitution or by law be increased during the term for which such officer was elected or appointed."

In the case of Swank v. Tyndall (1948), — Ind. —, 78 N. E. (2d) p. 535, our supreme court held that this amendment to the Constitution was not legally adopted and that there is no constitutional prohibition against an increase of salary of a public official during his term of office.

Section 49-1103, Burns, (Chapter 161, Acts of 1925) provides as follows:

"Increase of salary during term prohibited.—The salary of any officer elected to any elective township, city, county or state office in the state of Indiana, shall not be increased during the term for which such officer was elected, and this act shall be construed to be a part of any law enacted for the change or increase of any such salaries."

If it can be said that this act has application to House Enrolled Act No. 115 then it can only effect the assessor and not his deputies and other employees as it can be readily seen
that it applies only to elected officers. It is to be noted that the statutory limitation on increased salaries was by an act of the 1925 legislature. The general rule is, no session of the legislature can be estopped by a legislative act of a previous session, nor can any session pass an irrepealable law.

State v. Lake Superior Court, — Ind. —, 76 N. E. (2d) 254 at 261.

Section 1 of House Enrolled Act No. 115 provides as follows:

“From and after the effective date of this act, the annual salary of the county assessor of each county, as such county assessor, shall be as provided for in this act and shall be payable in monthly installments and for each year shall be fixed by the respective county councils, within the minimum and maximum limits hereinafter set out. Within 10 days after the effective date of this act the auditor of each county shall issue a call for a special meeting of the county council of such county to be held for the purpose of determining and fixing such salary for the period from the effective date of this act to and including December 31, 1949, and the salary fixed at such meeting shall be payable from the effective date of this act and within the limits provided for herein, at the time of the adoption of the annual county budgets.”

Thereafter under various sections of the act the salaries of county assessors are fixed according to population. Under Section 15 of said act provision is made for the employment of deputies and other assistants. Section 16 of said act then makes a further provision:

“It shall be the duty of the county council of each county to make such additional appropriations, for the year 1949 and including annual appropriations thereafter, as may be necessary to carry out the provisions of this act. It shall be the duty of the Board of Commissioners, Auditor, and Treasurer to allow, issue warrants for, and pay the compensation of, assessors,
deputies, and employees in accordance with the provisions of this act.”

Section 19 repeals all laws in conflict therewith and Section 20 declares an emergency for the immediate taking effect of the act.

While in the construction of statutes resort is made in testing such statutes to many well recognized rules of statutory construction, it must be borne in mind that all other rules for statutory construction are subservient to the one that the legislative intent must prevail, if it can reasonably be discovered from the language used by the legislature.


In connection with the above theory that the legislature’s intention is to be primarily considered in construing a statute, the Supreme Court of Indiana, in the case State v. Griffin (1948), — Ind. —, 79 N. E. (2d) 537, at page 540 of the opinion said:

“We shall consider these objections in the order named, and in so doing we are bound by the rule that a statute must be reasonably and fairly interpreted so as to give it efficient operation, and to give effect if possible to the expressed intent of the legislature. It should not be wantonly narrowed, limited or emasculated and rendered ineffective, absurd or nugatory. If possible it should be allowed to perform its intended mission as shown by the existing evils intended to be remedied.”

Words in a statute must be construed in their plain ordinary and usual meaning unless a contrary purpose clearly appears.

Sec. 1-201, Burns 1933; Garvin v. Chadwick Realty Co. (1937), 212 Ind. 499, 506; Dreves v. Oslo School Township (1940), 217 Ind. 388, 397.
Statutes must be construed as a whole in order to determine the legislative intent.

Snider v. State *ex rel.* Leap (1934), 206 Ind. 474, 478;
State v. Ritters Estate (1943), 221 Ind. 456, 469, 470.

Courts will look to the general purpose and scope of a statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567;
State *ex rel.* Bailey v. Webb (1939), 215 Ind. 609, 612.

From the foregoing authorities, as applied to the provisions of the 1949 statute in question, it is clear the legislature intended the salaries for county assessors to take effect immediately upon the passage of said act. This is indicated by the emergency clause contained in Section 20 of said act. It is also apparent from the language used in the body of said act that it was to be effective and said salaries paid during the year 1949.

While it is true that the 1925 law, *supra*, is not specifically referred to in the 1949 law, under the clear intention of the legislature in the enactment of the 1949 law, to give the prior law any effect would be contrary to the authorities hereinbefore cited and would, in effect, curtail the authority of a subsequent legislature to amend prior acts by implication. I am, therefore, of the opinion the 1925 law in no way affects the construction of the 1949 act involved in the instant case.

In arriving at this conclusion, it must be borne in mind that where there are several statutes co-existing and the last of them is repugnant to the others, it impliably repeals the others to that extent.

State v. Lake Superior Court (1947), — Ind. —, 76 N. E. (2d) 254, 262;
DeHaven v. South Bend (1937), 212 Ind. 194;
It must also be considered that in the Preamble of the act in question the legislature in no uncertain terms indicated that it believed that the basic salaries of county assessors are inadequate and below that of 1930; that additional and increased duties have been placed upon such office and that the living costs since 1930 have increased approximately one hundred percent. The foregoing was its specific reasons for increasing salaries of such assessors, deputies and assistants.

I am therefore, of the opinion House Enrolled Act No. 115 became effective on the date it was signed by the Governor. That on that date the increase in salaries for the county assessors as therein outlined became effective; that the other provisions of the act became effective on that date, including the provisions for the payment of mileage, the authority to employ deputies and other assistants and to fix their salaries as provided in Section 15 of said act.

CHJ:ar:lp

OFFICIAL OPINION NO. 23

May 5, 1949.

Honorable Albert E. Virgil,
Superintendent,
Indiana State Farm,
Greencastle, Indiana.

Dear Mr. Virgil,

This will acknowledge receipt of your letter of March 21, 1949, in which you give the following statement of facts:

“As requested by telephone this morning, I am enclosing two commitments from St. Joseph County Probate Court and a letter from Chief Probation Officer Gordon E. Weist of that Court.

“Each commitment shows a term of six months and a fine and costs of $512.90 and the letter states that the Judge in this case requests that they be served consecutively. The enclosed Pre-Sentence Investigation Report shows the exact details of the case.”