

See also: Port of Palm Beach v. State (1945),
156 Fla. 113, 22 So. (2d) 581;
Attorney General v. Bickford (1914), 77 N. H.
433, 92 Atl. 835.

Therefore, a majority of the votes means a majority of the formally expressed choices which are the actual votes cast and not those which might have been cast.

I am, therefore, of the opinion that the candidate for county chairman who receives a majority of the eligible votes actually cast in the county convention for that office is thereupon duly elected, assuming that a quorum is present.

OFFICIAL OPINION NO. 77

December 20, 1947.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Mr. Ruston:

Your letter of November 28, 1947, has been received in which you request an official opinion on the following questions:

“1. Can the mayor of a city lawfully appoint an active volunteer fireman as chief of the fire department if such volunteer fireman shall have had at least five years of continuous service as a volunteer fireman with the fire department of the city immediately prior to appointment as chief?

“2. If your answer to question one is in the affirmative, can the chief retain the status of an active volunteer fireman, and if so would his annual compensation be limited to \$300.00 per annum?”

Section 1, Chapter 312, Acts 1947, provides in part as follows:

“Hereafter in all cities of the first, second, third, fourth and fifty classes, promotion in the fire department of any such city, shall be from the active personnel of such fire department: Provided, That the chief of any such department so appointed shall have had at least five years of continuous active service with said fire department immediately prior to his said appointment,* * *.”

Chapter 163 of the Acts of 1939, as amended, same being Section 48-6161 *et seq.* Burns’ 1945 Supplement, makes available to cities the services of active volunteer firemen. Section 1 of said acts, same being Section 48-6161, Burns’ 1945 Supplement authorizes an exemption from poll, real and personal property of any active volunteer fireman, not exceeding \$500.00, as exempted from the payment of city, town or township taxes.

Section 2 of said act, same being Section 48-6162, Burns’ 1945 Supplement provides the manner in which such taxes may be so claimed.

Section 48-6163, Burns’ 1945 Supplement, same being Section 3, Chapter 163, Acts 1939, as amended, requires a procurement by any city, town or township of a policy of insurance for the benefit of members of such volunteer fire companies, and Section 48-6164, Burns’ 1945 Supplement, same being Section 4 of said act, prescribes the amount of insurance that shall be taken out.

Section 48-6165, Burns’ 1945 Supplement, same being Section 5, Chapter 163, Acts 1939, as amended by Section 2, Chapter 196, Acts 1941, reads as follows:

“The term ‘active volunteer fireman’ as used in this act means a fireman who of his own free will has volunteered to assist either without compensation or for nominal compensation, in fighting all fires occurring within the corporate limits of the city or town or township of which he is a resident; who shall have made application in writing for membership in the volunteer fire company of the city, town or township of which he is a resident, and who by virtue of such application shall have been elected or appointed to membership in such volunteer fire company and whose

name shall have been entered on a roster of volunteer firemen which shall be kept by such volunteer fire company, and which shall have been approved by the proper municipal officers of such city, town or township, and who at the time of his election or appointment shall have taken and signed a pledge to comply with all orders that may be given by the chief, assistant chief or other officer in charge of such volunteer fire company, relative to any matter pertaining to the work of such volunteer fire company.

“The term ‘volunteer fire company’ means any company organized for the purpose of answering fire alarms and extinguishing fires, the members of which receive either no compensation or nominal compensation for their services thus rendered. If one or more members of any such volunteer fire company shall be paid compensation in any amount not in excess of the amount hereafter set out by any such city, town or township, or if such city, town or township shall provide for the payment of a nominal prescribed amount of compensation per annum to any one or more members of such volunteer fire company or a prescribed amount for each fire which any such fireman assists in extinguishing, or for each call to which any such fireman responds, such fire company shall be deemed to be a volunteer fire company as contemplated in this act, notwithstanding the payment of any such compensation, and each and every member of such fire company who serves either without compensation or for nominal compensation, shall be entitled to avail himself of the provisions of this act.

“The term ‘nominal compensation’ as used herein shall be held to include any sum of money not in excess of three hundred dollars (\$300.00) per annum.”

It has been held that words in a statute must be construed in their plain, ordinary, and usual meaning unless a contrary purpose clearly appears.

Section 1-201, Burns' 1933, Carvin v. Chadwick Realty Company (1937), 212 Ind. 499, 506;

Dreves v. Oslo School Township (1940), 217 Ind. 388, 397.

It is also true that in ascertaining the legislative intent as to a statute, the court may take into consideration other acts in *pari-materia*, whether passed before or after the act in question.

Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 498.

The legislature is presumed to be acquainted with the existing law and in legislating on any subject to have in view its provisions together with the construction placed thereon by the courts.

Stith Petroleum Co. v. Department of Audit and Control (1936), 211 Ind. 400, 405;

Town of Brownstown v. Trucksess (1933), 98 Ind. App. 322, 329.

1. In answer to your first question when the foregoing sections of the statutes are construed in *pari materia* with each other as required by the foregoing authorities, I am of the opinion a person who has fully qualified as an "active volunteer fireman" under the provisions of Section 48-6165, Burns' 1945 Supplement, *supra*, and has been so employed in continuous active service with said fire department in said city for five years immediately prior to his appointment as chief of the fire department of such city, would be qualified for such appointment under the provisions of Chapter 312, Acts 1947, *supra*.

This is true due to the fact that such firemen are thereby made active members of the volunteer fire force in said city and are subject to the orders and directions of the chief, assistant chief or other officer in charge of such volunteer fire company, relative to any matter pertaining to the work of such volunteer fire company; and said member is so closely associated with said fire fighting force of said city as to be entitled to be paid a salary of \$300.00 per annum and is entitled to insurance coverage payable from the public funds of said city as well as being entitled to an exemption from said city taxes. These facts certainly remove such a member

of such volunteer fire department from the status of a mere casual or occasionally available volunteer and would in my opinion place him in a classification of being in the active service of such city while a member of such volunteer fire department, within the meaning of said statute.

2. In answer to your second question attention is called to the fact that under the provisions of the various statutes governing appointments in cities of the first to the fifth class, the chief of the fire department is appointed by the mayor and their salaries are fixed by the mayor subject to the approval of the common council.

See the following statutes applying to the class of cities designated as to appointment of fire chief:

First class — 48-1204 Burns' 1945 Supplement;

Second class — 48-1215 Burns' 1945 Supplement;

Third class — 48-1216 Burns' 1945 Supplement;

Fourth class — 48-1217 Burns' 1933;

Fifth class — 48-1219 Burns' 1933.

As to the fixing of salaries see Sections 48-1222, Burns' 1945 Supplement.

As shown in answer to your question number 1, such member of such volunteer fire department meeting the above requirements is qualified for appointment as chief of the fire department in such city. Under the last referred to statutes, upon such appointment as fire chief he would be entitled to the salary provided by statutes for such office. He would no longer be limited to the salary of \$300.00 per year fixed by Section 48-6165, Burns' 1945 Supplement, *supra*, for the reason his status has changed on such appointment from that of an active volunteer fireman to that of chief of the fire department.