

page 67; 36-109 Burns' 1933 R. S. It necessarily requires time for the voucher to then go through the routine of approval and payment. If the date of receipt of the voucher could not be said to fix the time of payment, the computation of interest would present exceedingly difficult practical problems because there would always be an interim between submission of the voucher to the clerk and its payment and the issuance of a warrant. In my opinion the law contemplates no such result.

Specifically then, my answer to your fourth and fifth questions is that the State is liable for interest upon a judgment in condemnation if the voucher for payment thereof has not been submitted to the clerk within forty-five days after the rendition of the judgment.

OFFICIAL OPINION NO. 11

March 31, 1947.

Hon. Edwin Steers, Sr.,
Member, State Election Board,
108 East Washington Building,
Indianapolis, Indiana.

Dear Mr. Steers:

I have your letter of recent date in which you ask an official opinion on the following questions:

"1. The city of Whiting is a 4th class city, having five councilmanic districts and seven councilmen. A candidate filing for the office of councilman in the primary for a certain councilmanic district must be a resident of that district. In the election, all of the voters of this city are entitled to vote for councilmen other than the one from the voter's councilmanic district. Is it, therefore, possible that of the seven councilmen to be elected that six councilmen could be elected from two councilmanic districts (the district councilmen and aldermen at large both on the Republican and Democratic tickets)?

"2. The duly elected councilman from the 3rd councilmanic district of the city of Whiting resigned his office, because he moved from the city. Must the person elected by the council to fill the vacancy caused by this resignation be from the same district as the councilman who resigned?

"3. During the past year the elected councilman from the 1st councilmanic district moved into the 3rd councilmanic district. May he still retain his office?"

Section 9, Chapter 233 of the Acts of 1933, p. 1042, as amended by Section 1 of Chapter 276 of the Acts of 1935, p. 1342, same being Burns' 1933 (Pocket Supp.) Section 48-1220 provides as follows:

"The number of members of the common council in cities of the second class, as herein defined, shall be nine (9) and no more; in cities of the third and fourth class, as herein defined, shall be seven (7) and no more; and in cities of the fifth class, as herein defined, shall be five (5) and no more; and such members of the common council shall be known as Councilmen-at-Large, and shall be elected by the electors of the entire city except in cities of the second class, as herein provided, and such councilmen shall not be elected by wards: Provided, That in cities of the second class there shall be elected in each of the councilmanic districts herein provided one councilman, and the whole city shall elect three (3) councilman-at-large. Any city coming within the provisions of this act, for the purpose of carrying out the same, shall, by the common council of such city, be divided into districts, to be known as Councilmanic Districts. The number of councilmanic districts of cities of the second class shall be six (6); in cities of the third and fourth class of five (5) and in cities of the fifth class, shall be four (4). Each district shall contain, as nearly as possible, an equal number of electors, and in elections in cities of the second class not more than one (1) councilmanic candidate of any political party or organization shall be named or nominated from either or any one of said districts.

“On or before March 27, 1934, the common council of cities of the second, third, fourth and fifth classes, shall, by ordinance, establish councilmanic districts as herein provided and the nomination of candidates and the election of members of the common council in the year 1934 and each election thereafter shall be in accordance with the provisions of this act and the laws governing primary and general elections.

“In cities of the third and fourth classes each and every legal voter shall have the right to vote for any seven (7) candidates for the office of councilman, and the seven (7) who shall receive the largest number of votes of those cast for candidates for the office of councilman shall be declared elected. In cities of the fifth class each and every legal voter shall have the right to vote for any five (5) candidates for the office of councilman, and the five (5) who shall receive the largest number of votes of those cast for candidates for the office of councilman shall be declared elected.”

From certain language of the above statute, it might appear that in cities of the third, fourth and fifth classes the councilmen are to be elected by the electors of the entire city without reference to any councilmanic districts in said cities, but that in cities of the second class one councilman is to be elected from each councilmanic district by the voters thereof, and that the electors of the entire city then shall elect three “Councilman-at-Large”. This construction might be further supported by the fact that the foregoing statute in 1933, before its amendment in 1935, expressly provided that not more than one councilmanic candidate of any political party or organization should be named or nominated from any one councilmanic district; and that this provision was left out of the statute as amended in 1935, thus, indicating that councilmen are now to be elected in cities of the third, fourth and fifth classes, without regard to any councilman districts existing in said cities.

However, I do not believe such a construction to be correct. Under the 1933 Act it was provided that in cities of

the second, third, fourth and fifth classes all councilmen were to be elected by the electors of the entire city, and that the total number of candidates for councilman allowed to each city by statute who received the largest number of votes of those cast for candidates for the office of councilman were declared elected. This provision was amended in 1935 to except cities of the second class and provided that in such cities the candidates for councilman from such councilmanic districts are to be elected by the electors of each such district, except three councilmen at large who are to be elected by the electors of the entire city. Thus, a reasonable construction of this amendment would be that the legislature in 1935 was merely providing that in all cities of the second, third, fourth and fifth classes, a councilman should be elected from each of the councilmanic districts established in each of such cities, but that the *method* of election should be different in second class cities.

This last construction is supported by the provisions of the Acts of 1933 as amended in 1935 (Section 48-1220, Burns' 1933, Pocket Supp.), which specifically provide that any city coming within the provisions of this act for the purpose of carrying out the same, *shall*, by the common council of such city, be divided into districts to be known as Councilmanic Districts. The number of councilmanic districts of the cities of the second class shall be six; in cities of the third and fourth classes, five; and in cities of the fifth class, four. Each district shall contain, as nearly as possible, an equal number of electors and in elections in cities of the second class not more than one councilmanic candidate of any political party or organization shall be named or nominated from either or any one of said districts. It is further provided that on or before March 27, 1934, the common council of cities of the second, third, fourth and fifth classes shall, by ordinance, establish councilmanic districts as herein provided and the nomination of candidates and the election of members of the common council in the year 1934 and each election thereafter shall be in accordance with the provision of this act and the law governing primary and general elections.

By these last provisions of the statute in question, it seems evident that the legislature intended to continue the prac-

tice of declaration of candidacy for councilman by districts even though candidates are voted on at large in cities of the third, fourth and fifth classes. Otherwise, all of these provisions would be wholly meaningless and surplusage. It is a familiar rule of statutory construction that each provision and word of a statute must be given effect if possible, and it will not be presumed that the legislature intended to put into a statute words which are meaningless (*Garvin, Rec. v. Chadwick Realty Corp.* (1937), 212 Ind. 499).

In 1938 the Attorney General of Indiana issued an opinion (1938 Ind. O.A.G., p. 144) to the State Board of Election Commissioners in which he construed the statute in question with particular reference to the changes made by the 1935 amendment. He held that in elections for councilmen in cities of the third, fourth and fifth classes the statute contemplated that all candidates for the office of councilman shall declare for that office as a candidate of a certain district or as a councilman at large and as such candidate stands for nomination by vote of the city at large. He said in part as follows:

“The practical aspect of such an interpretation is that all candidates for the office of city councilman declare for that office as a candidate of a certain district or as a councilman-at-large and as such candidates stand for nomination by vote of the city at large. This insures each councilmanic district representation upon the council, for otherwise, there would be little or no reason for the division of the cities into districts. In other words, the vote at large at the primary nominates for all parties a councilmanic candidate for every councilmanic district and likewise candidates at large. In the latter case, the candidates at large are those who declared as such and did not stand for nomination by districts, and will be, two in the cities of third and fourth class, and one in cities of the fifth class. This insures to the parties a full slate of candidates for all councilmanic offices.”

In my opinion such interpretation of the Attorney General of the statute in question, shortly after its amendment in 1935, is a reasonable one, and I find no contrary

authority requiring such opinion to be set aside. However, such opinion is confined to the question of how many candidates may appear upon the ballot of cities of the third, fourth and fifth classes and how it is to be determined which of the candidates filing in the *primary* will be nominated to places on the fall ballot. It does not decide your first question, to wit: That if candidates for councilman for each councilmanic district are nominated by each of the political parties, whether it would be possible that in cities of the fourth class six councilmen could be elected from two councilmanic districts, as a result of the two candidates at large on the Republican ticket and the two candidates at large on the Democratic ticket, and two other candidates from two councilmanic districts, receiving the highest number of votes for councilman; this to be occasioned by the fact that all councilmen in cities of the fourth class are elected by the electors of the entire city.

In view of the interpretation of the statute in question by the Attorney General of Indiana, heretofore mentioned, I do not believe that this result could follow. According to such interpretation candidates for city councilman in cities of the third, fourth and fifth classes must declare their candidacy either from a particular councilmanic district, or as a candidate for councilman at large. They are thus either a candidate for the office of councilman from a district or for the office of councilman at large and the candidate of any political party for a district receiving the highest number of votes from the electors of the entire city as a candidate for that district will be elected over the other candidates of the other political parties for that district. The same rule would be applicable to the candidates for councilman at large. The two candidates for councilman at large, in fourth class cities, for example, receiving the highest number of votes for councilman at large will be elected over the other candidates for councilman at large. Thus, those candidates for councilman at large who were not elected as such, cannot be considered as elected, simply because they may have received more votes than a particular candidate for councilman from a particular district.

Any other construction than the one just mentioned of the statute in question would destroy the theory of council-

manic districts in cities of the second, third, fourth and fifth classes. As indicated in the opinion of the Attorney General in 1938, quoted in part above, the purpose of having councilmanic districts is to insure their representation on the council and if candidates for councilmen could be elected regardless of their candidacy for a particular district, certain districts of a city would have no representation on the council at all.

My answer to your first question is, therefore, that of the seven councilmen to be elected in cities of the fourth class six councilmen should not be elected from two councilmanic districts, but should be elected in the manner heretofore pointed out.

In connection with your second question, reference should be made to Section 45, Chapter 129 of the Acts of 1905, p. 219, as amended by Section 2 of Chapter 188 of the Acts of 1909, p. 454, same being Burns' 1933, Section 48-1246, which provides in part as follows:

“* * * In case of a vacancy in the office of councilman from death, resignation or other cause, the common council shall fill such vacancy at a special meeting, to be held at a time not less than two (2) nor more than fifteen (15) days after such vacancy is discovered by such council, of which special meeting notice shall be given by the clerk as herein required when the council is to fill a vacancy in the office of mayor. All persons so filling vacancies in elective city offices shall hold only during the unexpired term of any such officer * * *.”

Also Section 43 of Chapter 129 of the Acts of 1905, p. 219, as last amended by Section 1 of Chapter 161 of the Acts of 1921, p. 404, same being Section 48-1242 of Burns' 1933, provides in part as follows:

“No person shall be eligible to any city office unless he shall have been a resident of such city for at least one (1) year immediately preceding his election, nor shall any person be eligible to the office of councilman to represent any ward unless, for the last six (6) months of his residence in such city,

he shall have been a resident of such ward. And should any city officer cease to be a resident of such city, or any councilman representing any ward cease to be a resident of such ward, during his term of office such office shall thereby at once become vacant.

* * *”

From the foregoing statute, it is apparent that in case of a vacancy in the office of councilman from resignation, the common council shall fill such vacancy. It also appears pursuant to Section 48-1242, Burns' 1933 that no person is eligible to the office of councilman to represent any *ward*, unless for the last six months, of said city, he shall have been a resident of such *ward*.

It is true that such residence requirement of six months for councilmen refers to a time when councilmen were elected by *wards*, and that Section 48-1220 of Burns' 1933 (Pocket Supp.) changes the election of councilmen from wards to districts. However, this statute on residence requirement of councilmen has not been specifically repealed by the legislature and has only been superseded to the extent of electing councilmen by districts instead of by wards. I do not believe that it was the intention of the legislature to eliminate the residence requirement of councilmen but that such requirement should now be construed to mean six months residence in the district rather than in the ward. In construing a particular statute to ascertain the legislature's intent, reference may be made to other statutes on the same subject matter and where two statutes may well stand together and be related to the same subject matter one is an aid to the other. It is the duty of the courts, if possible, to construe them in *pari materia*. Or as stated, in other words, all laws upon a subject or germane to it, should be construed together so that all may be given effect and produce a harmonious system and it will be presumed that the legislature in enacting a law did so with reference to existing laws.

Fleenor v. State (1928), 200 Ind. 165, 170-171;

Ensley v. State (1908), 172-198, 203;

Board of Commissioners v. Ritterskamp (1941),
110 Ind. App. 436, 442.

Since a reasonable interpretation of the foregoing statute would mean that a person to be eligible to represent any district shall have been a resident of such district for six months, and in view of the purpose of the establishment of councilmanic districts and the election of councilmen from each district, it is my opinion that the person elected by the council to fill the vacancy, caused by the resignation of a councilman from a particular district, must be from the same district as the councilman who resigned.

In answer to your third question, I call your attention to Section 48-1242 of Burns' 1933, quoted above, which provides that should any councilman representing any *ward* cease to be a resident of such ward during his term of office, such office shall at once be vacated. In answering your second question, I interpreted the provisions of this statute as being applicable to districts, instead of wards. Therefore based upon the express terms of such statute, any elected councilman who moves from one councilmanic district into another thereby vacates his office, and the common council of such city should fill the vacancy by appointing another person who is a resident of that same district.

OFFICIAL OPINION NO. 12

April 2, 1947.

Colonel Robert Rossow, Superintendent,
 Indiana State Police,
 State House,
 Indianapolis, Indiana.

Dear Sir:

I have before me a written request by your predecessor in office for an official opinion upon the following question:

“Will you kindly render an official opinion concerning the present status of the Presidential emergency which permitted, during the war, the operation on Indiana highways of commercial carrying vehicles with weight, height and length in excess of laws governing such operation in this state?”