of Nims, nor was it awarded upon the competition held.”

From the foregoing authorities it is my opinion that a waiver by the State Printing Board of the thirty (30) day firm price requirement contained in Section 35, above quoted, would result in the contractor receiving benefits from the contract upon terms more favorable and different from those upon which all others formed their bids and, therefore, would destroy the purpose of competitive bidding in this type of case.

In answer to your question, therefore, it is my opinion that the Board of Public Printing does not have the authority to waive the thirty (30) day clause contained in Section 35, above quoted, and permit contractors to bill the cost of paper as of the cost at delivery.

OFFICIAL OPINION NO. 103

December 31, 1946.

Hon. C. E. Ruston, State Examiner,
State Board of Accounts,
304 State House,
Indianapolis 4, Indiana.

Dear Mr. Ruston:

I have your letter of December 23, 1946 in which you request an official opinion upon the following question:

“The city of South Bend has no treasurer other than the county treasurer and such county treasurer has charge of the collection and disbursement of the Barrett Law assessments of such city. It is necessary that clerks be employed to assist the county treasurer in the performance of such duties.

“This department has been asked whether the appointment of such clerks to assist the county treasurer are to be made by such county treasurer or by the mayor of the city of South Bend.”
Section 1 of Chapter 48 of the Acts of 1941, same being Burns' 1933, Section 48-4401 (Pocket Part), provides in part as follows:

"From and after the taking effect of this act all special assessments which may have been heretofore, or which may hereafter be, levied by any city or town directly against the various parcels of property benefited by any improvements, * * * the duties of cities and towns relative to the collection and enforcement of said assessments and the payment of said bonds, shall be performed by the following named officers of such cities and towns respectively: In cities having a city controller and where the county treasurer acts as the city treasurer, such duties shall be performed by the city controller; except that in cities of the first class and cities of the second class having a population not less than one hundred one thousand (101,000) and not more than one hundred four thousand (104,000), according to the last United States census, where the county treasurer acts as the city treasurer, such duties shall be performed by the county treasurer; in cities having no city treasurer other than the county treasurer, such duties shall be performed by the county treasurer; * * *." 

The city of South Bend is a second class city with a population of 101,268 and by virtue of the foregoing quoted statute, there is no question that in such city the county treasurer performs the duties of the city treasurer in collecting Barrett Law assessments. Also, Section 1 of Chapter 317 of the Acts of 1935, same being Burns' 1933, Section 48-4403 (Pocket Part), provides in part as follows:

"It shall be the duty of the common council, or board of trustees, in every city and town, to anticipate and provide for, in the budgets adopted and tax levy made in the year 1935, the necessary expense to be incurred for the employment of additional clerks, the furnishing of suitable quarters, the obtaining of necessary records, books, forms and other supplies so as to enable the officers designated by this act to fully take over and perform the duties herein specified. This additional
help, when needed, and the budget and appropriation therefor shall be in addition to the amount now provided by law in counties having cities of sixty thousand (60,000) population or over and the county treasurer is ex officio city treasurer, charged with the collection of what is known and commonly called Barrett Law Assessments. * * * Provided, however, That in all cities except cities of the first class such necessary expense shall first be paid out of the delinquency fund provided for in section six (§ 48-4406) hereof, in so far as such funds will cover such expense, and it shall be the duty of the common council, or board of trustees, in every city and town, to ascertain from the proper officers, the amount of such delinquency fund, prior to and for consideration when they anticipate and provide for such necessary expense in their budgets as herein provided.”

The foregoing quoted statute expressly provides for the payment of expenses incurred for the employment of additional clerks, etc., so as to enable the officers designated, including county treasurers in cities of the second class, to collect Barrett Law assessments, but said statute does not expressly provide who shall appoint such additional employees.

However, Section 1 of Chapter 112 of the Acts of 1935, same being Burns' 1933, Section 48-1215a (Pocket Part), provides in part as follows:

 "In all second class cities the office of city treasurer is hereby abolished and all of the rights, powers and duties of such city treasurer in each of such cities, as now prescribed by law, are hereby conferred upon and shall be performed by the county treasurer of the county in which any such city or cities are located. In each such city as is not a county seat an office for the collection, disbursement and distribution of taxes and assessments and/or assessments commonly referred to as Barrett law assessments, shall be furnished by the city, either in the city hall or elsewhere, as shall be determined by the common council of such city, and such county treasurer shall there assume and perform all of the rights, powers and duties of the
city treasurer, as now provided by law and the treasurer of the county in which such city or cities are located shall appoint one (1) deputy for each such city and such other assistants as shall be necessary to collect, disburse and distribute the taxes and assessments therein. Each of the deputies so appointed shall receive a salary of not less than three thousand dollars ($3,000) and not to exceed four thousand two hundred dollars ($4,200) per annum. Such deputies and other assistants shall be appointed and their compensation fixed and paid in the same manner as is prescribed by the provisions of chapter 21, Acts of 1933 of the General Assembly of the state of Indiana, approved February 16, 1933, * * *.” (Our emphasis).

From the foregoing quoted statute it is clear that the Legislature has specifically provided that in all second class cities the county treasurer shall perform the duties of city treasurer, including the collection, disbursement and distribution of taxes and assessments, commonly referred to as Barrett Law assessments. In such cities which are not county seats it expressly provided that the county treasurer shall appoint one deputy for each city, and such other assistants as shall be necessary to collect, disburse and distribute the taxes and assessments therein. It is further provided that such deputies and assistants shall be appointed by the county treasurer in a manner prescribed by Chapter 21 of the Acts of 1933. Under this section (Burns’ 1933, Sections 49-1001 and 49-1002—Pocket Part), county officers are authorized to appoint deputies and assistants to enable them to carry out the duties of their office.

Thus, it appears that while the Legislature has expressly authorized the county treasurer to appoint deputies and assistants in carrying out the work which was formerly performed by city treasurers in second class cities, other than county seats, there is no specific provision in the statute concerning the appointment of deputies and employees in those second class cities which are county seats and in which the county treasurer is performing the duties of the city treasurer. It is a familiar rule of statutory construction that sta-
tutes on the same subject matter should be construed, wherever possible, in pari materia. (Sherfey v. City of Brazil (1937), 213 Ind. 493, 498).

Applying this principle to the instant case, and construing Sections 48-4401 and 48-4403 of Burns' 1933 (Pocket Part) along with Section 48-1215a of Burns' 1933 (Pocket Part), it is evident that the Legislature intended that the county treasurer should be authorized to appoint additional deputies and employees necessary to perform the duties which had formerly been performed by the city treasurers in all second class cities.

Furthermore, an analysis of the statutes and authorities indicates that the county treasurer in performing the duties of a city treasurer in the collection of taxes and Barrett Law assessments, is not acting as a city officer, but is acting as a county officer. Section 1 of Chapter 99 of the Acts of 1943, same being Burns' 1933, Section 48-1215 (Pocket Part), provides in part as follows:

“(a) In cities of the second class other than cities having a population of more than eighty-five thousand (85,000) and less than one hundred thousand (100,-000) according to the last United States census, the elective officers shall consist of a mayor, a city clerk, a city judge, and members of common council. Such officers shall be elected in accordance with the provisions of laws now in effect, except as hereinafter provided. The county treasurer shall be ex officio treasurer of all cities of the second class and shall perform all duties now provided by law for the office of such city treasurer.”

In the case of Conter, Treasurer v. Post (1934), 207 Ind. 615, the Indiana Supreme Court construed the foregoing statute and held that the office of city treasurer in cities of the second class had been abolished and that the county treasurer in performing the duties formerly performed by the city treasurer was not acting as a city officer but was acting as a county officer. The court said at page 620:

“* * * In the act of 1905 the words 'county treasurer of such county shall be, ex officio, treasurer
of such city' clearly were not intended to continue the office of city treasurer and to make the county treasurer, ex officio, a city officer holding the office of city treasurer, since the act expressly abolished that office. Also it is evident that treasurer as used in the phrase 'treasurer of such city' did not mean treasurer in the sense of an officer of the city, but merely indicated the nature of the functions which would devolve upon the county treasurer as a part of his duties as county treasurer. In other words, the provision in the Act of 1905 that the county treasurer should be 'ex officio treasurer of such city' transferred the functions of the office of city treasurer to the office of county treasurer and did not confer upon the county treasurer the office of city treasurer. * * *.” (Our emphasis).

Also, as heretofore shown, Section 48-1215a of Burns' 1933 (Pocket Part) specifically abolished the office of city treasurer in second class cities.

It is true that Section 1 of Chapter 32 of the Acts of 1945, same being Burns' 1933, Section 48-1222 (Pocket Part), Provides that all appointive officers, deputies, employees, assistants and departmental and institutional heads not provided for under the provisions of this act, but which are provided for by law or authority of laws now in effect, shall not be considered as abolished by this act, but such appointments shall be made by the mayor within his discretion as to number and positions named under laws or authority of law now in effect. However, this provision could only reasonably apply to the appointment of city officers or employees and could not be construed to include the appointment of county officers or employees. As heretofore demonstrated the county treasurer in performing the duties of city treasurer in second class cities is not acting as a city officer, but is acting as a county officer.

Finally, since the county treasurer is charged with the performance of the duties in question, and required by Section 2 of Chapter 112 of the Acts of 1935, same being Burns' 1933, Section 48-1215b (Pocket Part), to execute his bond for the faithful performance of his duties in acting as treasurer of second class cities, it is reasonable that he have the authority
to appoint his own assistants and employees for whom he is to be held responsible.

Based upon the foregoing reasons and authorities, it is, therefore, my opinion that the appointment of clerks to assist the county treasurer in performing the duties as treasurer of the city of South Bend is to be made by the county treasurer and is not to be made by the mayor of the city of South Bend.