

with the provisions of the statute. It is not within the duty and power of the Commission, however, to adjudicate the merits of a claim nor to adjudicate the question whether a claim has or has not been properly filed and prosecuted, since such questions are judicial and hence for the courts to determine.

It appears from your statement, however, that the Circuit Court of Bartholomew County, in which the cause involving the claim is pending has adjudicated the question of the legality of the filing of the claim in question. The Court by its order has determined that the certificate of the clerk purporting to show the filing of the claim within the statutory period is null and void, and that is to say the certificate is a nullity. The Commission's record in this respect is in the same status as though no action had been filed within the required period, in which event, as against the claim in question, the Commission would in my opinion be authorized to pay the final estimate.

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OFFICIAL OPINION NO. 44

May 18, 1945.

Hon. Clement T. Malan,  
State Superintendent of Public Instruction,  
State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter of May 15, 1945, received requesting an official opinion on the following question:

"Under Chapter 156, Acts of 1945, County Board of Education Act, in Section 1, I find this sentence: 'Such additional persons as are employed for the necessary administration of the county school system shall be selected and voted upon by a vote of at least two-thirds of the members of the County Board of Education.'

"Does this passage apply to the election of a county superintendent of schools?"

Section 1 of Chapter 156 of the Acts of 1945, is in part as follows:

“\* \* \* The county superintendent of schools of each county together with the trustees of each and every township shall constitute a county board of education. Said board shall meet monthly at the office of the county superintendent of schools and at such other times as the county superintendent of schools may deem necessary. \* \* \* The county superintendent shall act as administrator of board of education and shall carry out such acts and duties as shall be designated by the board of education. A quorum shall consist of a two-thirds majority of the members of the board, other than the county superintendent who shall act as the president of the board of education. Business shall be transacted and the acts of the board shall become effective by a two-thirds vote on problems coming before the board. The powers herein granted the county board of education, however, shall in no wise be construed as granting such board any authority whatsoever over the selection and/or employment of any of the personnel or employees or the purchase of supplies in any of the schools of the individual townships.

“The county board of education shall enter into written contract with such *additional employees* who shall serve in all the township schools of the county as shall, in the judgment of two-thirds of the members of said board, be necessary for the proper administration and supervision of the county school system. Funds for the salaries of *such persons* and supplies for such persons' use shall be provided in the same manner as now provided by law for the fixing and appropriation of the salary of the county superintendent of schools. Such *additional persons* as are employed for the necessary administration of the county school system shall be selected and voted upon by a vote of at least two-thirds of the members of the County Board of Education. The county superintendent of schools together with such *other persons* employed for supervisory or administrative duties shall be deemed to be supervisors of

instruction and as such eligible, subject to the rules that have been or shall be adopted by the state board of education, to qualify for teaching units in accordance with the terms of Chapter 263 of the Acts of 1943.  
\* \* \* ” (Our emphasis.)

Chapter 156 of the Acts of 1945, *supra*, amends Section 28-801 Burns' 1933, same being Chapter 1, Acts 1865, as amended by Chapter 25, Section 8, Acts 1873, as amended by Section 1, Chapter 79, Acts 1877. Section 8 of Chapter 25 of the Acts of 1873, *supra*, entirely dealt with the creation and authority of the county board of education. Section 2 of the said Act provided for the manner of election of county superintendents of schools. However, Section 2 of Chapter 25 of the Acts of 1873, as amended, was superseded by Section 1, Chapter 143, Acts 1899, as amended by Section 1, Chapter 16, Acts 1911, as amended by Section 1, Chapter 71, Acts 1913, same being Section 28-702 Burns' 1933, which provides for the election of county superintendents of schools, and reads as follows:

“The township trustees of each county of this state shall meet at the office of the auditor of their county on the first Monday in June, 1917, at ten o'clock a. m., and every four (4) years thereafter, and elect by ballot a county superintendent for their county. Such county superintendent shall enter upon the duties of his office on August sixteenth following and, unless sooner removed, shall hold his office until his successor is elected and qualified. Before entering upon the duties of his office, he shall subscribe and take an oath to perform faithfully such duties according to law; which oath shall be filed with the county auditor. He shall also execute a bond, to the approval of the county auditor, payable to the State of Indiana, in the penal sum of five thousand dollars (\$5,000), conditioned upon the faithful discharge of his duties according to law, and faithfully to account for and pay over to the proper persons all moneys which may come into his hands by virtue of such office. As soon as such bond be filed, the county auditor shall report the name and post-office of the person so elected to the state superintendent of public instruction. Whenever a vacancy may occur in

the office of county superintendent, the said township trustees, on at least three (3) days' notice given by the county auditor, shall assemble at ten o'clock a. m., on the day designated in such notice, at the office of such auditor; and fill such vacancy by ballot for the unexpired term. In all elections of a county superintendent, the county auditor shall be the clerk of such election; and in case of a tie vote, the auditor shall cast the deciding vote. In case any one (1) candidate shall receive a number of votes equal to one-half of all the trustees of the county, the county auditor shall then and at all subsequent ballots cast his vote with the trustees until some candidate shall receive a majority of all the votes in the county, including the county auditor. Such auditor shall keep a record of such election in a book kept for that purpose."

Chapter 156 of the Acts of 1945, *supra*, is subject to the following well known rules of statutory construction:

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. Ritter's Estate (1943), — Ind. —, 48 N. E. (2d) 993, 998.

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.

Applying the foregoing rules of construction to Chapter 156 of the Acts of 1945 it is clear the Legislature did not intend thereby to provide for the election of a county superintendent of schools, but only intended to provide for the selection of such "additional employees" by the county board of education by vote of two-thirds of the members thereof.

Moreover, Chapter 156 of the Acts of 1945 does not specifically deal with the election of a county superintendent of schools.

In the case of *Million et al. v. Metropolitan, etc., Co.* (1933), 95 Ind. App. 628, where the court, in holding that a special statute dealing with improvement of state highways, which statute determined the notice to be given sureties on the general contractor's bond, was a special statute and was not repealed by a later general statute covering the notice to be given by sub-contractors and material men to sureties on bonds, said on page 637 of the opinion:

“\* \* \* The above act was a special act, creating the highway commission and defining its powers, etc., and it is a fundamental rule of construction that ‘special acts’ are not repealed or modified by ‘general acts,’ by implication. It is held that a general act ‘repealing all laws inconsistent therewith,’ refers to general laws, and does not change or repeal ‘special laws.’ (Citing Cases) \* \* \*.”

Also see:

*Knox County Council v. State ex rel. McCormick* (1940), 217 Ind. 493, 514;

*Straus Brothers Co. v. Fisher* (1928), 200 Ind. 307, 316.

In the case of *State, ex rel. v. International Harvester Co.* (1940), 216 Ind. 463, the court, in applying the foregoing rules of statutory construction to two apparently inconsistent Acts passed by the same session of the Legislature, on page 467 of the opinion interpreted such “special” statutes to mean the statute dealing with the common subject in a more “minute way.”

When the foregoing authorities are applied to a construction of Chapter 156 of the Acts of 1945 in *pari materia* with Section 1, Chapter 143, Acts 1899, as amended, *supra*, it is at once apparent Chapter 156 of the Acts of 1945 only refers to the office of the county superintendent of schools in a general way, in fact as a basis of comparison, while Section 1, Chapter 143 of the Acts of 1899, as amended, *supra*, deals with the office of the county superintendent of schools in a detailed and

“minute way,” in that: The election of such county superintendent of schools is authorized by ballot of the township trustees of the county. The date of election, the date of the superintendent entering upon the duties of his office, the taking of an oath and the execution of a bond, together with the amount thereof, the filling of vacancies in office, and the manner of voting in case of a tie vote, are all specifically and in detail set out therein. Therefore, Section 1, Chapter 143, of the Acts of 1899, is a special Act, on the question of the election of a county superintendent of schools, and could not be repealed or modified by Chapter 156 of the Acts of 1945, being a general law, in the absence of an express repealing clause therefor. The express provisions with reference to breaking a tie vote clearly indicate a majority vote elects the county superintendent.

I am therefore of the opinion Chapter 156 of the Acts of 1945 has no application to the election of a county superintendent of schools but that the election of such county superintendent of schools is solely controlled by the provisions of Section 28-702 Burns' 1933, *supra*, and that a majority vote elects the county superintendent of schools.

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OFFICIAL OPINION NO. 45

May 21, 1945.

Hon. Clement T. Malan,  
State Superintendent of Public Instruction,  
State House,  
Indianapolis 4, Indiana.

Dear Dr. Malan:

Your letter of April 3, 1945, received requesting an official opinion on the following questions with reference to Chapter 231 of the Acts of 1945:

“1. Upon what date does the following provision become effective?

“(Sec. I) ‘and each teacher shall be entitled to be absent from work on account of personal illness for a total of five days in each year without loss of compensation.’