STATE BOARD OF ACCOUNTS: PUBLIC OFFICERS—
Emergency deputy sheriffs; appointment; pay.

October 27, 1944.

Opinion No. 91

Hon. Otto K. Jensen, State Examiner,
Department of Inspection and Supervision
of Public Offices,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of September 25th in which you submit the following questions:

"1. Does Chapter 255, Acts of 1921, authorize the appointment of full time deputy sheriffs as emergency deputy sheriffs?

"2. Is the board of county commissioners in fixing the compensation of emergency deputy sheriffs appointed under authority of Chapter 255, Acts of 1921, required to fix such compensation within any minimum or maximum limits?

"3. If your answer to question No. 1 is in the negative, and if, in any county, an appropriation is made by the county council for emergency deputy sheriffs at a rate of pay in excess of the maximum amount provided for other deputies and assistants by chapter 261, Acts of 1943, would such appropriation constitute a fixing of the salaries of additional deputies and assistants at the maximum rate of pay provided for by such act?

"4. Does the provision contained in Chapter 261, Acts of 1943, fixing a minimum and a maximum limit for the salaries of deputies and assistants in counties having a population in excess of twenty-five thousand apply to the deputies and assistants of all county officials therein named, except as provided for in counties having a population of over 95,000, 130,000 or 250,000?"

With your letter you enclose a copy of a part of the order of the Board of Commissioners of Vanderburgh County and
also a part of the ordinance of the County Council of said county.

Section 1 of Chapter 255 of the Acts of 1921 is as follows:

“For the purpose of promoting the public safety and more properly conserving the peace, repressing, preventing and detecting crime and apprehending criminals, the board of commissioners of each county in the state of Indiana shall hereafter have the authority (to appoint), and they shall provide compensation and necessary expenses for, any number of deputy sheriffs or assistants, which may, in any emergency, be required for such purposes. Such deputy sheriffs or assistants shall be selected and appointed by the several sheriffs of the counties of the state of Indiana, subject to the approval of said boards of commissioners as to the number thereof, and such deputies or assistants, when so appointed, shall have the same power and authority as is (are) now possessed by sheriffs under the laws of the state of Indiana, provided that such deputy sheriffs or assistants shall have been bona fide residents of the county for at least one (1) year previous to such appointment. The salaries of such deputy sheriffs or assistants shall be fixed by the several boards of commissioners of each county and such boards of commissioners shall pay such salaries, together with all traveling expenses, transportation expenses, or other necessary expenses of such deputies or assistants, upon the sworn voucher filed with said boards by such persons incurring such expense or performing such services, out of the general funds of the county, without specific appropriation therefor. When such emergency shall have ceased to exist, such boards of commissioners may reduce the number of such deputy sheriffs or assistants as the circumstances may require in the interest of the public safety, to such number as, in their discretion, is required for the public welfare.”

Section 49-504, Burns’ R. S. 1933.

Section 2 of Chapter 21 of the Acts of 1933 as last amended in 1943 is in part as follows:
In counties having a population in excess of twenty-five thousand (25,000) according to the last preceding United States census each of the following county officials, to-wit: The county auditor; county treasurer; the clerk of the circuit court; county sheriff; county recorder; and the county school superintendent shall without the approval of the board of county commissioners designate and appoint one (1) deputy and in addition thereto he shall appoint such other deputies and other assistants as may be necessary to discharge the duties imposed upon such officials. The number of such other additional deputies and assistants shall be determined by each of such county officials as hereinabove named, subject to the approval of the board of county commissioners, both as to full time and part time employment and said commissioners shall make recommendations to the county council as to the amount of salary that each of said deputies and assistants shall receive. In counties having two (2) or more courts located therein, the clerk of the circuit court shall be allowed to appoint at least one (1) deputy for each such court: Provided, however, That the salary paid to each of said deputies and assistants shall not be less than seventy-five dollars ($75.00) per month nor more than two hundred dollars ($200) per month: * * *

Section 49-1002, Burns' R. S. 1933, Pamphlet Part.

I note from the above referred to enclosures in your letter that the deputy sheriffs in question are referred to as "emergency deputies" in the record of the county commissioners and also in the appropriation made by the county council. The answer to your question calls for a consideration of the definition of the term "emergency" as used in the 1921 Act quoted. A similar question was before the Supreme Court in the case of State ex rel. Kautz v. Board of Commissioners of Howard County (1933), 204 Ind. 484, and the court, at page 491, used the following language:

"* * * This brings us to the question of whether or not an emergency actually existed or was shown to exist."
"Webster defines an emergency: '1. Act of emerging; sudden or unexpected appearance or occurrence.' '2. An unforeseen occurrence or emergency which calls for immediate action or remedy; pressing necessity; exigency.'"

In the case of Frank v. Board of Education of Jersey City, 90 N. J. L. 273, it was held that an emergency is a sudden or unexpected occurrence or condition calling for immediate action. In the case of State ex rel. Parks v. Tucei, 175 Miss. 218, it was held that an emergency is an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; a pressing necessity.

In a number of cases the term "emergency" as used in a statute has been held as being synonymous with "pressing necessity" or "exigency."

Mallon v. Board of Water Commissioners, 144 Mo. App. 104;

There are many decisions defining emergency as signifying some sudden or unexpected occurrence requiring immediate or at least quick action.

Colfax County v. Butler County, 83 Neb. 803;
Parker v. City of Monroe, 128 La. 951;
First State Bank of Sulphur Springs v. Becker, 78 Colo. 436;
City of Glendale v. Dixon (Ariz.), 75 Pac. (2d) 42, 44;

It is true that the word "emergency" in recent years has been used in certain statutes, particularly federal statutes, with a meaning different than that given it by the lexicographers and has been used with reference to more or less permanent conditions of insufficiency of service or of facilities, resulting in social disturbance or distress.

However, it is my opinion that the term must be construed as used in the 1921 Act in question as having the meaning assigned to it by our Supreme Court in the Howard County case in 204 Ind. referred to above and in the list of cases cited. I also call attention to the quotation from the case of State ex rel. Johnson v. Wayne County Council, 157 Ind. 356, given in the Howard County case, 204 Ind. 484, supra, at page 491, where it is pointed out that "emergency" must arise after the close of the regular annual meeting of the common council. It is further pointed out at page 492 of the opinion in 204 Ind. that where the condition which it is claimed gave rise to the alleged emergency existed prior to the meeting of the common council that it would not be an emergency which would justify a special meeting for emergency appropriations thereafter.

Under the facts outlined in your letter it is apparent that it was known that the thirteen deputy sheriffs in question would be needed at the time of the regular annual meeting of the County Council and that they would be needed for the entire ensuing year. The same situation existed at the time of the meeting of the Board of Commissioners. Therefore, there was full and adequate authority in the Act of 1933 as amended, above quoted, for the appointment of said deputy sheriffs and the making of appropriation for their pay. To hold that they could under these circumstances be appointed under the emergency statute of 1921 would mean that both statutes covered the same subject-matter. This would call for application of the rule that where two statutes cover the same subject-matter the one last in point of time supersedes the former. However, I do not believe that this rule is applicable here as an emergency might exist requiring the appointment of deputy sheriffs to meet a sudden exigency or situation where the time required to obtain the same in the 1933 Act as amended would not be adequate. I am therefore of the opinion that the Act of 1921 is not superseded by the Act of 1933, but that the 1921 Act applies only to emergencies and to meet situations where the 1933 Act would not be adequate or its procedure available. This construction permits both statutes to stand.

However, your letter and its enclosures disclose that there was a substantial compliance with the 1933 Act. The deputy sheriffs were appointed by the sheriff, the appointments were approved by the Board of Commissioners and an appropria-
tion was made by the County Council. I am therefore of the opinion that their appointment is valid under the 1933 Act, but that they are limited by the salary provisions of said Act. I do not think that the use of the term "emergency" in the records of the Board of Commissioners or of the County Council would destroy the validity of the procedure although they were not in fact emergency appointments under the provisions of the 1921 Act. In this connection we point out that where emergency deputies are appointed under the provisions of the 1921 Act no appropriation is necessary as they are paid from the general fund without specific appropriation. Specifically answering your questions:

1. I do not believe that Chapter 255 of the Acts of 1921 authorizes the appointment of full time deputy sheriffs as emergency deputy sheriffs where the need for said deputies is known at the time of the regular annual meeting of the common council. I think that said Act of 1921 applies only to an emergency of the kind as defined above in this letter.

2. In my opinion the Board of County Commissioners in fixing the compensation of the emergency deputy sheriffs appointed under the authority of Chapter 255 of the Acts of 1921 is not required to fix such compensation within the minimum or maximum limits.

3. I believe your third question is answered by what has already been said herein. In my opinion the deputy sheriffs in question are entitled to draw salary up to the maximum amount fixed by the Act of 1933 as amended; and that if the appropriation exceeds that amount such excess would become an unexpended balance of that appropriation at the end of the year.

4. The provision contained in Chapter 261 of the Acts of 1943 (amending Chapter 21, Acts of 1933) fixing a minimum and a maximum limit for the salaries of deputies and assistants of the county officials therein named applies to all such deputies and assistants who are appointed under the provisions of that Act. As pointed out, deputy sheriffs who are properly appointed as emergency deputies under the 1921 Act are not appointed under this act, and they are not subject to the salary provisions in said Chapter 261 of the Acts of 1943.