

records of the Justice of Peace. On the other hand, if the cause of action is dismissed then there is no judgment.

Therefore, in answer to your question, it is my opinion that if the transcript of the record certified to you discloses that the appeal was dismissed in the Superior Court, or stricken from the docket, the judgment of the Justice of Peace would be reinstated under and pursuant to the express provisions of Section 5-1007, *supra*, and on the other hand, if the transcript of the record affirmatively discloses that the cause of action was dismissed instead of the appeal, then and in that event, it is our opinion that the judgment would not be reinstated under the provisions of Section 5-1007. If the transcript of the record is vague, indefinite, or ambiguous, and it is impossible for you to determine whether it was the appeal or the cause of action which was dismissed, then, and in that event, it would be proper for you to request a new transcript specifically stating the facts with reference to the dismissal so that you will have no difficulty in determining whether it was the appeal or the cause of action which was dismissed.

STATE EXAMINER: Construction of Chapter 139 and Chapter 129 of the Acts of 1943 to determine which of two acts applies to the City Hospital of Indianapolis.

INDIANAPOLIS: City Hospital, whether such hospital is governed by Chapter 139 or 129 of the Acts of 1943.

September 29, 1943.

Hon. Otto K. Jensen,
State Examiner,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter pointing out certain conflicts between Chapter 139 of the Acts of 1943 and Chapter 129 of the Acts of 1943. You request an official opinion upon the question as to which Act is controlling in making purchases for the City Hospital in the City of Indianapolis. Chapter 129 of the Acts of 1943 appears as Section 53-501 to and including Section 53-510 of Burns' Indiana Statutes Annotated, June

1943 Cumulative Pocket Supplement. The title of this Act is as follows:

"An act concerning purchases of materials, equipment, goods and supplies with public funds of the state, county, township, city or town; prescribing the method therefor; providing penalty for violation thereof; providing that this act shall take precedence; repealing all laws and parts of laws in conflict therewith; and declaring an emergency."

This Act was approved March 5, 1943, and went into effect by reason of a declared emergency on May 1, 1943. This is a general law setting up the procedure governing the purchase of materials, equipment, goods, and supplies to be paid for out of public funds, prescribing when notice is necessary, and when competitive bidding is required. Section 12 of this Act, appearing as a footnote to Section 53-510, *supra*, provides as follows:

"The provisions of this act shall prevail over any and every act of the general assembly of the state of Indiana passed at the eighty-third regular session of the general assembly of the State of Indiana, notwithstanding the specific provisions of any act of the eighty-third regular session of the general assembly of the State of Indiana, which may by its terms conflict with the provisions of this act. It being the intent of the general assembly that this act shall take precedence and have supersedence over any and all other acts of the regular session of the eighty-third general assembly of the State of Indiana."

Chapter 139 of the Acts of 1943 appears in the June, 1943, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated, 1933, as Section 48-7518 to and including Section 48-7528. The title of this Act is:

"An act supplemental to an act entitled 'An act concerning municipal corporations' approved March 6, 1905, creating a division of hospitals within departments of health and charities in cities of the first class and repealing all laws or parts of laws in conflict therewith."

The Act was approved on March 6, 1943, but is not yet in effect.

The occasion for your letter arises in consequence of the provisions of Section 48-7521 embraced in Subdivision (d) of said section which reads as follows:

“Said board of directors for hospitals shall have the following exclusive powers and duties.

“(d) To purchase materials and supplies needed for the operation of any such hospitals and clinics or dispensaries in accordance with such rules and regulations as may be adopted by such board of directors and without the necessity of advertising for bids or without any other restrictions such as are now imposed by the laws of the state of Indiana with reference to the letting of contracts for work, materials or supplies by municipal bodies or of governmental agencies.”

Without quoting extensively from the provisions of Chapter 129, *supra*, from what has already been said it is quite apparent that the authority conferred upon the board of directors of such hospital, by Subdivision (d) (Chapter 139, *supra*) is in conflict with the provisions of Chapter 129. The question which you have submitted arises respecting such conflict as to which Act governs.

In the consideration of the question submitted, I think it is important that certain dates should be carefully kept in mind. First, it should be kept in mind that Chapter 129 was approved on March 5, 1943 and went into effect on May 1, 1943, while Chapter 139 (the hospital act) was approved on March 6, 1943, and is not yet in effect. With reference to such a situation, the rule seems to me to be well settled that, when two conflicting acts are passed at the same session of the legislature, the later of the two inconsistent statutes will prevail. As said by the Court in the case of *Newbauer v. State*, 200 Ind. 118 at page 122:

“Should there be an irreconcilable conflict between two statutes, a later expression of the legislature will prevail against a former one.” Citing authorities.

The Court continued:

"When two acts are passed at the same session of the legislature, the presumption is strong against implied repeal, and effect must be given to each if possible; but if the two are irreconcilable, the one which was approved last will prevail." Citing authorities.

The Court continued:

"Generally the later of two inconsistent statutes will prevail although the prior one is not to take effect until a time subsequent to the passage and taking effect of the later one."

Justice Martin disagreed with the holding of the majority opinion that irreconcilable conflict existed as to the Acts under consideration, but suggested that if the two sections of the acts there considered are in irreconcilable conflict the court should follow the rule laid down in *Holle v. Drudge*, 190 Ind. 520. In that case the rule was applied that where two acts passed at the same session are in irreconcilable conflict, the act last to take effect would be deemed the latest expression of the legislative will. It makes no difference in this case, however, as to which case is followed since the one last to be approved is also the one last to take effect. So whether the rule in *Holle v. Drudge* is followed, or the rule in *Newbauer v. State* is followed, the result is the same. An examination of the authorities, I think, reveals the fact that the holding in *Newbauer v. State*, *supra*, is well sustained. Thus, in the case of *Stiers v. Mundy*, 174 Ind. 651, at page 656, the Court said:

"It is a rule of statutory construction that if there is a conflict in the provisions of the same act, or between two acts passed at different times, the earliest in position or enactment is repealed by the later."

See also the case of *Long, Mayor v. Kinney*, 210 Ind. 192, where the Court at page 198 said:

"Of course, if there is conflict between the two acts, the last one passed must prevail."

See also City of Gary v. Cosgrove, 211 Ind. 294, where the Court said, at page 300:

"It is true, as contended for by the appellants, that repeals by implication are not favored, but if there is an irreconcilable conflict between two Acts, then the latter (later) Act will prevail." (Our parentheses.)

Reference has been made to the provisions of Section 12 of Chapter 129 whereby it is provided that the provisions of this Act, that is Chapter 129, shall prevail over any and every act of the general assembly of the State of Indiana passed at the eighty-third regular session. In my opinion such a provision is effective only as to acts passed during such session prior to the passage of Chapter 129. In this connection, it should be remembered that Section 12, *supra*, is itself in irreconcilable conflict with certain provisions of Chapter 139 and to that extent, under the rules which have been stated, would itself fall because of such conflict and because it is a part of the earlier of the two acts.

In my opinion Chapter 129 is in effect and will prevail until Chapter 139 becomes effective. But upon the authorities above cited, when Chapter 139 does become effective, it will then prevail.

STATE EXAMINER: Police pension fund, whether under facts stated in the opinion a named policeman is eligible for appointment.

September 29, 1943.

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

Dear Sir:

Your letter of September 16, 1943, received as follows:

"I am in receipt of a request from the Police Pension Board of Trustees of the City of Bloomington,