STATE BOARD OF ELECTION COMMISSIONERS: Authority of deputy clerk and clerks of city or town to administer oath on voter's registration application.

December 8, 1943.

Hon. Edward H. Smith and
Fred C. Gause, Members,
State Board of Election Commissioners,
Indianapolis, Indiana.

Dear Sirs:

This will acknowledge receipt of your letter dated November 6, 1943, requesting my official opinion upon two questions submitted by you with reference to the proper interpretation of the Voters Registration Law as amended by chapter 33, Acts of 1943. Your letter states the following two questions, to-wit:

1. "The question presented is as to whether a regularly appointed and qualified deputy clerk can, in the name of and for the clerk administer the oath to a voter who executes an application for registration at the office of the Clerk, if such deputy has not been appointed a deputy registration officer upon recommendation of a County Chairman.

   "In other words, can a regularly appointed and qualified deputy clerk, not in his name as a deputy clerk or as a deputy registration officer, but in the name of and for the clerk, administer the oath required of a voter registering at the clerk's office?"

2. "Another question which has arisen is as to whether, under such Act as amended, a voter may register with the Clerk of a town or city of which he is a resident."

Referring to your first question, we find that section 1, of chapter 33, Acts of 1943, being Burns' R. S. 1943 Pocket Supplement, section 29-306, which amended section 6 of chapter 178, Acts of 1933, the original registration act, contains the following language which is new matter added and inserted in the 1943 Act, to-wit:
"Deputy clerks of the clerks of the circuit courts shall not by reason of their office be deputy registration officers or have authority to register voters and may only become such deputy registration officers upon appointment under the same recommendations and conditions as new required by law for the appointment of deputy registration officers."

The above quoted language is plain, definite and unambiguous, and under this language it is clear that a deputy clerk of the circuit court cannot act as a deputy registration officer unless the authority so to do is conferred upon a deputy clerk of the circuit court by the language and provision of some other statute.

The only other applicable statute is Burns' R. S. 1933, section 49-502, enacted by the legislature in 1852, which reads as follows:

"Such deputies shall take the oath required of their principals and may perform all the official duties of such principals, being subject to the same regulations and penalties."

Under the language of section 49-502, supra, a deputy clerk of a circuit court would have the authority to act in the name of and for the clerk and administer the oath required of a voter registering at the clerk's office. This being true, it is apparent that there is an irreconcilable conflict between the powers and rights of a deputy clerk of a circuit court as defined and conferred by section 49-502, supra, enacted in 1852, and the language contained in section 1, chapter 33, Acts of 1943, Burns' Pocket Supplement 1943, section 29-306. Both statutes cannot operate in full force and effect at the same time, according to the strict wording of each statute, in the matter of registration of voters.

It is a firmly established rule of statutory construction that where there is a conflict between the provisions of two acts passed at different sessions of the legislature, the latter act prevails and controls.

Stiers v. Mundy, 174 Ind. 651, 656;
Quick v. White Water, etc., 7 Ind. 570, 578;
State ex rel. v. Board, 170 Ind. 595, 621.
Another well established rule of statutory construction is that if the language contained in an act is plain, definite and unambiguous, it must be construed and held to mean what it plainly says and be given a literal interpretation.

Cheney v. State, 165 Ind. 121, 125;
Rogers v. Calumet, 213 Ind. 576;
Pabst, etc. v. Schuster, 55 Ind. App. 375.

Applying the above rules of statutory construction to the two sections of the statute under consideration, it is my opinion, in answer to your first question, that a deputy clerk of the clerks of the circuit courts of the state of Indiana has no right, power or authority, by reason of his office as such deputy clerk, to register voters or to administer the required oath to a person desiring to register as a voter, unless and until such deputy clerk has been appointed as a deputy registration officer in strict conformity to the requirements and provisions of section 1 of chapter 33, Acts of 1943.

Referring to your second question, we find that the original registration act, being chapter 178, Acts of 1933, Burns' R. S. 1933, section 29-306, contained the following language:

"The clerk of the circuit court of each county shall be ex officio the registration officer of such county and shall have full charge and control of the registration of voters within such county. The clerk of each city and town located wholly or partly within any county, and the assessor of each township shall be ex officio a deputy registration officer for such county. * * *

For the purposes of this act, the clerk of the circuit court, every city and town clerk, every township assessor and every deputy registration officer appointed by the clerk of the circuit court is hereby authorized to execute such affidavits and take such acknowledgments as may be required by any of the provisions of this act."

An examination of section 1, chapter 33, Acts of 1943, Burns' 1943 Pocket Supplement, section 29-306, discloses that all of the above language was entirely omitted by the legislature in the 1943 amendment.
It is a familiar rule of statutory construction that where a statute is amended at a subsequent session of the legislature by the omission of any previous provision of the act, by adding new matter, or by a change in the phraseology of the act, that the legislature intended to change the meaning, purpose and intention of the act.

Dept., etc. v. Muessel, 218 Ind. 250;
Chism v. State, 203 Ind. 241;
State ex rel. v. Board, 196 Ind. 472.

Therefore, it is my opinion that under the Act as amended by chapter 33, Acts of 1943, a clerk of a city or town is no longer an ex officio deputy registration officer for the county and that he has no right, power or authority to register or transfer the registration of any voter in the county either at the office of the clerk of the circuit court or at the office of the clerk of the city or town, notwithstanding the language which is found in Burns' 1943 Pocket Supplement, section 29-311, which is section 11 of chapter 178, Acts of 1933, as amended by section 2 of chapter 221, Acts of 1935. This is true for the reason that under the provisions of chapter 33, Acts of 1943, the legislature enacted a new procedure for the registration of voters and in section 1 of the act specifically provided that only certain designated persons could act as registration officials for the purpose of registering voters, and clerks of cities and towns are not included among the persons so authorized and empowered to register voters or perform any duties in connection therewith, and chapter 33, Acts of 1943, must be construed so as to give full force and effect to the legislative intent in enacting said chapter aforesaid.