office of city-clerk is not an office under the State within the meaning and purview of Section 16 of Article 7 of the Indiana Constitution, it is my opinion that the person who was elected to the office of town clerk-treasurer at the regular election held November 2, 1943, is eligible to fill that office notwithstanding the fact that at the time of his election he was also serving as Justice of the Peace, the term of which office extends beyond the time for taking over the office of clerk-treasurer to which he was elected. There is no law or authority which permits me to ignore an express ruling of the Supreme Court of Indiana or to overrule a decision of the Supreme Court. This power and authority is vested exclusively in the Supreme Court and until such time as the Supreme Court of Indiana sees fit to modify its decision in the case of Mohan v. Jackson, supra, or holds that under the present statute a clerk-treasurer of a civil town is an officer within the State within the meaning of Section 16 of Article 7 of the Indiana Constitution, it is my opinion that the case of Mohan v. Jackson, supra, is decisive of the question presented by your letter.

In view of the fact that I have arrived at the conclusion that the clerk-treasurer elect is eligible to fill said office, it is unnecessary to answer your second question.

DEPARTMENT INSPECTION AND SUPERVISION OF PUBLIC OFFICES: Where no successor has been elected the incumbent holds over and is entitled to receive compensation provided by ordinance.

December 15, 1943.

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

Dear Mr. Jensen:

This will acknowledge receipt of your letter dated November 9, 1943, which reads as follows:
"We have the following situation arising in several towns of the State of Indiana.

"A salary ordinance was passed during the summer for the term beginning January 1, 1944. There was no petition filed on behalf of candidates for the office of town trustee or for clerk-treasurer—so, no election was held on November 2, 1943.

"Do the present officers hold over until their successors are elected and qualify? If so, are the present officers entitled to receive the compensation provided by the ordinance passed previous to the election for the term beginning January 1, 1944?"

Answering your letter, I call your attention to the provisions of Section 3 of Article 15 of the Constitution of Indiana, which reads as follows:

"Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean, that such officer shall hold his office for such term, and until his successor shall have been elected and qualified."

In the case of State ex rel. v. Ives, 167 Ind. 13 on page 19, the Supreme Court of Indiana holds:

"The language of Sec. 3, article 15, of the Constitution of this State is very broad. It ordains that, 'whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term and until his successor shall have been elected and qualified.' (Our italics.) While it is settled by the decisions of this court that some of the provisions of the Constitution relate solely to the state government, yet, under language as broad as this, referring to any officer who holds office under any law passed after the adoption of the Constitution, it is clear that the reference is broad enough to include
municipal offices, and it is our opinion that the provision does extend to them. * * *.*

Under the law as declared in the above case, it is clear that the present officers in the towns referred to in your letter will hold over until their successors are duly elected and qualified. See also:

State ex rel. Carson v. Harrison, 113 Ind. 434 on 447;
Spencer v. Knight, 177 Ind. 564 on 575.

Your letter states that in several of the towns of the state a salary ordinance was duly enacted by the Board of Town Trustees during 1943, fixing and designating the salary and compensation to be paid to the various officers who would be elected on November 2, 1943, and whose term of office would begin January 1, 1944. Upon such a state of facts, it is my opinion that the present officers in any such towns who will hold over until their successors are elected and qualified, are entitled to receive the compensation provided for by the ordinance passed previous to the election, for the term beginning January 1, 1944. This is not an increase in the salary of an officer during the term for which he was elected within the meaning and purview of Section 2 of Article 15, as amended November 2, 1926.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION:
Interpretation of Chapter 112 and Chapter 263 of the Acts of 1943, with respect to minimum teacher salary.

December 15, 1943.

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

Dear Dr. Malan:

Your letter of December 7, 1943, received as follows:

"Will you kindly give me an official opinion relative to the following questions:

..."