upon conviction of or guilty plea to each offense charged by a separate count in an affidavit or indictment.

Since the language permitting the joining of several offenses in one affidavit is permissive, the taxing of the five dollar ($5.00) fee must be governed by the form of the affidavit.

If the separate offenses are charged in separate counts, then the fee should be assessed and collected in each instance where the judgment of the court finds the offender guilty of an offense charged by any single count of the affidavit or indictment. On the other hand, since the statute states the offenses disjunctively and provides the same penalty for each offense, it is possible that more than one offense may be charged conjunctively in one count. In such instances only one five dollar ($5.00) fee should be assessed upon a conviction or guilty plea to such conjunctive count.

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TAX COMMISSIONERS, STATE BOARD OF: Chapter 119 of the Acts of 1937 repeals Chapter 206 of the Acts of 1933 in providing for petition by fifty or more freeholders before bonds can be issued.

May 8, 1940.

Hon. Philip Zoercher, Chairman,

State Board of Tax Commissioners,

231 State House,

Indianapolis, Indiana.

Dear Sir:

I have before me your letter asking for an official opinion in answer to the following questions:

"1. Is Chapter 206 of the Acts of 1933 repealed by the Act of 1937, insofar as providing that fifty or more freeholders must petition for a bond issue before such can be issued?

"2. Does the expression 'incorporated town' as used in Chapter 206, supra, of the Acts of 1933, limit the provision of the law to a township having an incorporated town and does not include an incorporated city?"
When you refer to the Act of 1937 I assume you refer to Chapter 119 of the Acts of 1937 which is an Act entitled: "An Act concerning tax levies, rates and budgets and providing for the fixing thereof, limiting the amount of the same and repealing all laws in conflict therewith, and declaring an emergency."

Chapter 206 of the Acts of 1933 is an Act entitled:

"An Act authorizing any township having a population of not less than eighty-five hundred inhabitants and containing an incorporated town of not less than thirty-five hundred inhabitants, as shown by the last preceding United States census, to purchase or otherwise acquire lands for park purposes or accept lands for park purposes and to improve and maintain, operate, regulate and to demise, let or otherwise dispose of concessions, privileges and part or parts of lands acquired, which may be later found unnecessary for such parks or park purposes, and also concerning the method and procedure for the acquisition of such park or parks, and providing for rights of petition, notice and remonstrance, and also providing how such park or parks shall be paid for, maintained, approved and operated, and also granting such township the power of eminent domain for such purposes, and providing for procedure in condemnation proceedings, and also concerning the powers and duties of officials in respect thereto, and the issue and seals of bonds therefor, and also directing the improvement of such parks and the expenditure of funds therefor in such manner as to relieve, as far as possible, the expenditure of money by such township or townships for poor relief, and declaring an emergency."


The important part of this last Act, so far as concerns your first question is the section providing for the issuance of bonds to provide money for the purposes contemplated in the Act, and requiring the Township Advisory Board to annually levy a sufficient tax to pay at least the principal and interest of such bonds as will mature in the following
year, and requiring the Trustee to apply such annual tax to the payment of such bonds and interest.


Chapter 119 of the Acts of 1937 referred to by you, on the other hand, provides that no tax levies or rates to meet the principal and interest of any obligations thereafter issued under Clause (d) of Section 6 shall be made unless prior to the issuance of the obligations a petition or petitions shall be filed by at least fifty owners of taxable real estate in the municipal corporations desiring to issue such obligations, praying for the issuance of the same. The Act further provides for the right to file a remonstrance to the issuance of such bonds, and if the remonstrators exceed in number the petitioners, the right to issue the bonds fails.


The term “municipal corporation” as used in the 1937 Act includes counties, townships, school townships, cities, school cities, towns, school towns, school districts, sanitary districts, park districts, and all taxing units within the State.

Acts of 1937, p. 646.

Clause (d) of Section 6 above referred to, takes out of the taxing limitation provisions of the Act, levies “to meet the interest and principal upon any other obligations hereafter issued which, in their issuance, have been petitioned for and issued in accordance with the provisions of this Act,” which is the provision already referred to requiring a petition to be filed.

I think it is obvious that the provisions above referred to of the 1937 Act, are in opposition to those contained in Chapter 206 of the 1933 Act. For example, the 1933 Act makes it mandatory upon the Township Advisory Board to annually levy a sufficient tax to pay at least the principal and interest of such bonds as will mature in the following year. The 1937 Act, on the other hand, provides specifically that no levy or rate shall be made at all to pay such obligations unless prior to the issuance thereof the petition required by the 1937 Act shall have been filed and the procedure therein set out shall have been observed. A mandatory provision requiring the levy of a tax, without the prior procedure as set
out in the 1937 Act is, in my opinion, clearly contrary to the provision of the 1937 Act which makes it unlawful to levy such a tax without the procedure therein referred to having been observed. While implied repeals are not favored, where the inconsistency is irreconcilable as a matter of fact, the provision of the former Act must give way to the provision of the later Act for the very obvious reason that both cannot be given effect.

Stiers v. Mundy, 174 Ind. 651 at p. 656;
City of Gary v. Cosgrove, 211 Ind. 294 at p. 300.

I do not think, however, that it can be said that the 1937 Act repealed the 1933 Act in its entirety. I do think the mandatory provisions of the 1933 Act, as above referred to, are repealed as to all cases where the procedure set up in the 1937 Act has not been followed; and the 1933 Act is further modified by the 1937 Act to require that the procedure set up in the 1937 Act shall be followed before any tax levy can be made to pay the principal and interest upon bond issues thereafter made. I think, too, it is apparent that the provisions of Section 9 of the 1933 Act are impliedly repealed by the 1937 Act. Your first question is answered accordingly.

As to your second question: Notwithstanding the well recognized rule that the term “town” as used in the State Constitution includes cities, I think as used in the Act of 1933, supra, it has reference to only towns in their more restricted meaning. Your second question is answered in the affirmative.

HIGHWAY COMMISSION, STATE: State Highway employees are authorized to go upon private property to remove illegal signs.

May 13, 1940.

Honorable T. A. Dicus,
Chairman, State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Dicus:

I have your request of May 3, 1940 asking for an official opinion upon certain questions. You invite my attention to