TAX COMMISSIONERS, STATE BOARD OF: Barrett Law collections, whether expense of clerk hire to be paid out of county funds or by city; amendment of statute partially repealed by implication; effect of two statutes passed at same legislative session. October 20, 1939.

Mr. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you ask the following questions concerning second class cities:

"1. Shall the expense of clerk hire for the collection of Barrett Law assessments be paid out of the county funds or by the city, where such improvements have been made?
"2. Shall the expense, if paid by the city, be paid out of the general fund or from the special Barrett Law Fund?"

Attached to your letter is an inquiry which it is necessary to examine and answer before answering your questions. This inquiry reads as follows:

"** Chapter 112, page 412, of the Acts of 1935 specifically provides that this expense shall be paid out of county funds. This Act also repeals all laws in conflict therewith.
"Chapter 317, page 1526 of the Acts of 1935 amends certain parts of an Act of 1931 which were previously repealed by chapter 112 of the 1935 Acts.
"We are interested in an official opinion as to which of the two Acts takes precedence. Will you kindly let us hear from you as soon as possible?"

I call your attention to section 1, chapter 99, Acts of 1931, which recites as follows:

"That from and after the taking effect of this Act all special assessments which may have been heretofore, or which may hereafter be, levied by any city or
town directly against the various parcels of property benefited by any improvements, where the statute authorizing such improvements gives to the property owner the option to pay within a certain period after the confirmation of the final assessment roll, or to execute and file a waiver and thereby secure the right to pay such assessment in installments over a period of years and authorizes the issuance of bonds in anticipation of the collection of such deferred assessments, commonly referred to as Barrett law assessments, the duties of cities and towns relative to the collection and enforcement of said assessments and the payment of said bonds, shall be performed by the following named officers of such cities having a city controller and towns respectively: in cities where the county treasurer acts as the city treasurer, such duties shall be performed by the city controller; except that in cities of the first class and cities of the second class having a population not less than 104,000 and not more than 114,000; where the county treasurer acts as the city treasurer, such duties shall be performed by the county treasurer; in cities having no city treasurer other than the county treasurer, such duties shall be performed by the county treasurer; in cities having a city treasurer, other than the county treasurer, such duties shall be performed by such city treasurer; in towns, such duties shall be performed by the town treasurer.”

We know that when this statute was enacted cities of the second class had a city treasurer other than the county treasurer, and therefore, it was the duty of the city treasurer to collect these assessments.

We turn now to section 1, chapter 112, of the Acts of 1935, which recites as follows:

“* * * That in all second class cities the office of city treasurer is hereby abolished and all of the rights, powers and duties of such city treasurer in each of such cities, as now prescribed by law, are hereby conferred upon and shall be performed by the county treasurer of the county in which any such city or cities are located. In each such city as is not a county seat an office for the collection, disbursement and dis-
tribution of taxes and assessments and/or assessments commonly referred to as Barrett law assessments, shall be furnished by the city, either in the city hall or elsewhere, as shall be determined by the common council of such city, and such county treasurer shall there assume and perform all of the rights, powers and duties of the city treasurer, as now provided by law and the treasurer of the county in which such city or cities are located, shall appoint one deputy for each such city and such other assistants as shall be necessary to collect, disburse and distribute the taxes and assessments therein. Each of the deputies so appointed shall receive a salary of not less than three thousand dollars and not to exceed four thousand two hundred dollars per annum. Such deputies and other assistants shall be appointed and their compensation fixed and paid in the same manner as is prescribed by the provisions of chapter 21, Acts of 1933, of the General Assembly of the State of Indiana, approved February 16, 1933, except that each of the deputies so appointed shall receive a salary of not less than three thousand dollars and not to exceed four thousand two hundred dollars per annum as herein provided. For his services in performing the duties and exercising the rights and powers of city treasurers as now or hereinafter provided by law, the county treasurer shall be entitled to receive and retain the sum of twelve hundred dollars per annum from each such city or cities. Nothing contained in this section shall be construed to apply to any city of the second class wherein the city controller collects the special assessments of such city, commonly referred to as the Barrett law assessments."

It will be noted that section 3 of the above statute repeals all laws and parts of laws in conflict therewith, and section 4 declares an emergency. This Act was approved March 2, 1935.

The question now arises as to whether or not this statute repealed section 3, chapter 99, Acts of 1931, which recites as follows:

"It shall be the duty of the common council, or board of trustees, in every city and town, to anticipate and
provide for, in the budget adopted and tax levy made in the year 1931, the necessary expense to be incurred for the employment of additional clerks, the furnishing of suitable quarters, the obtaining of necessary records, books, forms and other supplies so as to enable the officers designated by this Act to fully take over and perform the duties herein specified. In the event funds for such purpose shall be necessary for use prior to the collection of the levy made on account hereof, such funds shall be supplied by appropriation from the general funds of such cities and towns not otherwise appropriated, or may be obtained from temporary loans, as now provided by law, in anticipation of the taxes theretofore levied. After the year 1931 suitable provision shall be made each year as in the case of any other department of said municipality."

It will thus be seen that since section 1, chapter 112, Acts of 1935, deals exclusively with second class cities and further since only conflicting laws are repealed, section 3, chapter 99, Acts of 1931, remained in force except as to the conflicting portions of the two Acts.

As pointed out in the letter attached to your inquiry, the legislature at a later date but at the same session, attempted to amend section 3, chapter 99, Acts of 1931, as follows:

"That section 3 of the above entitled Act be amended to read as follows: Sec. 3. It shall be the duty of the common council or board of trustees, in every city and town, to anticipate and provide for, in the budgets adopted and tax levy made in the year 1935, the necessary expense to be incurred for the employment of additional clerks, the furnishing of suitable quarters, the obtaining of necessary records, books, forms and other supplies so as to enable the officers designated by this Act to fully take over and perform the duties herein specified. That this additional help, when needed, and the budget and appropriation therefor shall be in addition to the amount now provided by law in counties having cities of sixty thousand population or over and the county treasurer is ex officio city treasurer, charged with the collection of what is known and commonly called Barrett law assessments. In the event funds for
such purposes shall be necessary for use prior to the collection of the levy made on account hereof, such funds shall be supplied by appropriation from the general funds of such cities and towns not otherwise appropriated, or may be obtained from temporary loans, as now provided by law, in anticipation of the taxes theretofore levied. After the year 1935 suitable provision shall be made each year as in the case of any other department of said municipality; Provided, however, That in all cities except cities of the first class such necessary expense shall first be paid out of the delinquency fund provided for in section 6 hereof, insofar as such funds will cover such expense, and it shall be the duty of the common council, or board of trustees, in every city and town, to ascertain from the proper officers, the amount of such delinquency fund, prior to and for consideration when they anticipate and provide for such necessary expense in their budgets as herein provided.”

Section 1, chapter 317, Acts of 1935.

The question now arises as to what effect, if any, should be given this last quoted section.

“It is only when a statute or section thereof has been wholly repealed, so that none of its provisions remain in force, that the legislature is without power to enact valid legislation within the scope of its title by way of amending it; not by reason of a mere partial repeal of some parts of it.”


It will, therefore, be seen that since a part of section 3, chapter 99, Acts of 1931, remained in force and was not repealed the section could be amended at a later date.

This being true to what extent shall these two statutes of 1935 be deemed to prevail?

“Statutes enacted at the same session of the legislature are to be construed in pari materia, so as to give effect to each if possible.”

Wayne Township v. Brown, 205 Ind. 437, 457;
It is my opinion that these statutes are not inconsistent and can be construed together, inasmuch as one deals with second class cities only, while the other deals generally with cities and towns.

It is, therefore, my opinion that in second class cities the city should furnish the office, the necessary records, books, forms and other necessary supplies, and pay to the county treasurer the sum of $1,200.00 per annum; and that the county should pay the deputy hire.

With regard to your second question, your attention is again directed to section 1, chapter 317, Acts of 1935, quoted above. However, the proviso of that section has been declared unconstitutional so far as it pertains to bonds issued prior to the effective date of the Act.

Read, et al., v. Beczkiewicz, — Ind. —, 18 N. E. 2d, 789, 796.

It is, therefore, my opinion that the expense which a city is required to pay, should be paid out of the general funds, on all of those bonds issued prior to June 10, 1935.

HIGHWAY COMMISSION, STATE: Contract to construct bridge superstructure may not be awarded to low bidder if he does not possess prequalification certificate for such work.

October 24, 1939.

Hon. T. A. Dicus, Chairman,
State Highway Commission of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that on October 2, 1939, proposals were opened by the State Highway Commission of Indiana for the construction of a number of bridges, among which was the bridge over the St. Mary's River, .06 of a mile north of Decatur, in Adams County, Indiana. You state further that this construction involved the construction of the substructure and also the superstructure of said bridge and that the superstructure requires the erection of a steel through truss 175 feet in length.