Swinney v. Fort Wayne, etc., R. Co., 59 Ind. 205, 217;
See also: People v. Wabash Ry., 276 Ill. 92, 114 N. E. 552;
Also: State v. Marion County, 170 Ind. 595.

It is a rule also that of two conflicting statutes passed at the same session of the Legislature, the one with an emergency clause will prevail over one which does not contain such a clause.

59 C. J. p. 1056;
Spokane County v. Certain Lots, etc., 279 Pac. 724.

Moreover, a statute dealing with an especial subject will take precedence over one more general in its terms.

New Albany v. Lemon, 198 Ind. 127.

It is my opinion, therefore, that the provisions of chapter 115, amending section 10 of the Public Service Commission Law, must give way so far as it is inconsistent with the provisions of the Rural Electric Membership Corporation Act of 1935, as amended in 1937.

This does not require any different answer to your questions than the answers I have indicated above.

CITIES AND TOWNS: Municipally owned utilities. Right to borrow money for improvements on plant.

May 18, 1937.

Hon. Charles A. Lowe,
Attorney-at-Law,
Lawrenceburg, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 13, in which you submit the following questions:

"(1) Can the City of Lawrenceburg legally pledge the revenues of the municipal light and water plants as security for a loan from the Disaster Loan Corporation?

"(2) Would it be necessary to secure the consent of the Public Service Commission of Indiana for the

making of such loan and the pledging of the revenues as aforesaid?"

In answer to your first proposition your attention is invited to section 54-610, Burns Indiana Statutes, 1933 Revision, which provides that:

> "Any municipality which may hereafter construct or acquire by purchase or condemnation any utility as herein authorized, shall, through its municipal council, provide for and secure the payment of the cost of purchasing, constructing, or otherwise acquiring, extending and improving any such utility by making and pledging, assigning or otherwise hypothecating the property so purchased or acquired, together with the net earnings or profits derived or to be derived from the operation of such utility or utilities, and any contracts, warrants, debentures or pledges entered into by any municipality for the purposes herein set forth shall not be, nor be deemed to be, an indebtedness of such municipality."

This statute clearly authorizes the pledging of the profit, together with the net earnings or profits derived therefrom, to the payment of the cost of constructing, extending and improving such municipally owned utilities. In addition to this statute our Supreme Court in the case of Underwood v. Fairbanks, Morse Company, 205 Ind. 316, has held that ordinances and contracts entered into by a municipality which operate to pledge the revenues of a municipally owned utility to the payment of a debt, does not operate to violate Article 13 of the Constitution of the State of Indiana, and does not create a debt against the municipality which is forbidden by any constitutional provision.

This proposition is further announced by the Supreme Court of Illinois in the case of Ward v. The City of Chicago, 173 N. E. 810, which authority holds that:

> "Proposed certificates of indebtedness for waterworks improvement payable solely from revenue did not create 'indebtedness' within the constitutional limitation."

The last expression of the Supreme Court of the State of Indiana on the subject appears in the case of Lotz Manufac-

turing Company v. Public Service Company of Indiana, 4 N. E. (2nd) 194. This authority reviews the former decisions of our Supreme Court on this subject and again reasserts the principle in the following language:

> "Since the contract entered into by the town of Oxford, as discussed in Underwood v. Fairbanks, Morse & Co., *supra,* was executed, special statutes have been enacted explicitly authorizing municipalities to enter into contracts for the purchase of waterworks equipment, the extension and repair thereof, and to issue bonds payable from the revenues thereof, kept in a separate fund expressly for that purpose. Even without these statutes this court consistently held that municipalities had inherent authority to make such improvements as those contemplated in the instant case, and to provide for the general welfare and health of their citizens. Such powers are not strictly confined, but are liberally construed for the purpose of permitting a municipality to provide for the welfare, health, comfort, and protection of its inhabitants."

It is my opinion, therefore, that your first question should be answered in the affirmative.

In answer to your second question, beg to say that section (b) of the statute above quoted contains the following provision that:

> "Any municipality within this State shall have the power to construct, acquire, purchase, condemn, operate and/or manage any utility, or make extensions or replacements to such municipally-owned utility without the approval or consent of the Public Service Commission or the intervention of such Commission in any way whatsoever; * * *"

From a reading of this statute and on the authority of Underwood v. Fairbanks, Morse and Company, *supra,* it would seem that the consent of the Public Service Commission is not required as a condition precedent to the right of the municipality to enter into the proposed contract. However, your attention is invited to a special Act of the legislature, the same being chapter 235, Acts of the Indiana General Assembly, 1933, on municipal waterworks plants. Section 19

of said Act, the same being 48-5319, Burns Indiana Statutes, 1933 Revision, provides that if bonds are issued pledging the revenue of the waterworks system such bond issue shall be approved by the Public Service Commission.

Section 48-5340, Burns Indiana Statutes, 1933 Revision, and sections following, deal entirely with the issuance of bonds by municipally-owned waterworks as a means of providing funds with which to provide or enlarge said plants. I have been unable to find any provision of the statute which requires the approval of the Public Service Commission to negotiate a loan for the repayment of which loan revenues of the utility are pledged.

It is my opinion, therefore, that unless you contemplate the issuance of bonds the consent of the Public Service Commission is not required.

SECRETARY OF STATE: Patent deed to Lake Michigan submerged lands—Universal Atlas Cement Company.

May 21, 1937.

Hon. August G. Mueller,
Secretary of State,
State House,
Indianapolis, Indiana.

Honorable Sir:

Your letter of May 20, 1937, received, the contents of which reads as follows:

> "We are attaching hereto Land Patent covering Lake Michigan Borderlands reclaimed by Universal Atlas Cement Company according to Petition and Survey filed in this office, which have been examined and have been ascertained to be sufficiently accurate and in compliance with the law.
>
> The department respectfully requests your authentication of the patent hereto annexed as to form and sufficiency before presenting same to the Governor for execution thereof."

The patent accompanying your letter has been examined as to form and sufficiency and in my opinion it is regular in form and constitutes a lawful conveyance of the lands described, in accordance with the statute governing such matters.