

sistent statutes will prevail, although the prior one is not to take effect until a time subsequent to the passage and taking effect of the latter one. However, there is no conflict between chapter 71 of the Acts of 1937 and chapter 126 of the Acts of 1937. It is my opinion that beginning at midnight December 31, 1937, chapter 71 will provide for the suspension of the license of a person who has been convicted of driving a vehicle while under the influence of intoxicating liquor, etc., only for that period of time fixed by the court who convicted the individual of such offense.

ELECTION COMMISSIONERS, STATE BOARD OF: Special elections, whether registration law applies. Dunkirk, city of, procedure for general election under chapter 273 of Acts of 1937.

July 24, 1937.

Hon. Fred C. Gause,
Member State Board of Election Commissioners,
1300 Fletcher Trust Building,
Indianapolis, Indiana.

Dear Judge:

I have before me your letter enclosing a copy of a letter to the State Board of Election Commissioners from Mr. Ernest L. Steed, Clerk of the Jay Circuit Court, making certain inquiries concerning a special election to be held in the city of Dunkirk, Jay County, Indiana, as provided in chapter 273 of the Acts of the General Assembly of 1937. You ask that the letter of Mr. Steed be treated as a request from the State Board of Election Commissioners for an official opinion in answer to the questions submitted by him.

It is stated that the City of Dunkirk, Indiana, became a town by virtue of the provisions of chapter 233 of the Acts of 1933, since its population as revealed by the last preceding U. S. census was less than three thousand. It is stated, however, that the town of Dunkirk did not hold a town election under this classification due to the issuing of an injunction and restraining order.

A written petition or petitions signed by twenty per cent or more of the legal voters of Dunkirk has been filed with the Board of Election Commissioners of Jay County within the time as prescribed and in conformity with section 1 of chapter 273 of the Acts of 1937.

Since Dunkirk did not accept its situation as a town under chapter 233 of the Acts of 1933, it was organized with four wards as provided by chapter 233 of the Acts of 1933 for a city of the fifth class.

Numerous questions are propounded by Mr. Steed based upon the foregoing statement of facts.

Section 1 of chapter 273 of the Acts of 1937 provides in part as follows:

* * * * * “any and all cities of the State of Indiana affected by this Act, which reverted to a town *and held a town election in the year 1933, under the provisions of chapter 233 of the Acts of the General Assembly of 1933, and which held no election either as a town or as a city since that date*, but which attempted to comply with the provisions of chapter 97 of the Acts of the General Assembly of 1935, and thereby became a civil city of the fifth class under said Act and the provisions of chapter 233 of the Acts of the General Assembly of 1933, shall, upon the filing with the Board of Election Commissioners of the county in which such city is located, on or before the first day of June, 1937, a written petition or petitions signed by twenty per cent or more of the legal voters of such city, praying for an election of all city officers in said city, on the first Tuesday after the first Monday in November, 1937, order such election and give all notices required, as provided for by law for general elections in cities of the fifth class in the State of Indiana, and shall hold such election in full conformity and in compliance with the primary and election laws of this State; such primary shall be ordered by the Board of Election Commissioners for the nomination of all candidates to be voted for at such election, at a time fixed by the board, and such city shall pay for all the expenses of such primary and election.”
(Our italics.)

Acts of 1937, p. 1271.

I think I should say in passing that while the City of Dunkirk did not hold a town election in the year 1933 and therefore does not come within the literal language above quoted, I do not think the omission of the town officers to hold such an election would preclude the city from now availing itself

of the above provisions. In my opinion, therefore, chapter 273 applies and the people of the city are entitled to have an election for the purpose of electing their officers pursuant to chapter 273, *supra*, upon the filing of the petition or petitions as therein described. There are, however, certain very obvious difficulties which justify the questions submitted by Mr. Steed, the first of which is as to the number of councilmen to be elected.

Section 2 of chapter 273 provides in part as follows:

“That there shall be nominated at such primary and be elected at such election, by the voters at such election, the following officers: City mayor, city clerk-treasurer and five city councilmen, one from each ward in such city and two at large and all shall be elected by the electors of the entire city, and the city councilmen shall not be elected by ward” * * *.

Acts of 1937, p. 1271.

The City of Dunkirk as presently organized has four wards. I do not think, however, that that fact would entitle the city to elect a councilman from each ward and two councilmen at large. In other words, I think the express statement that there shall be elected “five city councilmen” should be held to control. The provision for the election of two councilmen at large probably may have arisen out of the fact that in most towns there are only three trustees and the effort apparently was to provide for five councilmen as in the case of other fifth class cities. In my opinion, therefore, the proper procedure would be to nominate and elect four councilmen, one from each ward in the city, since there are four wards, and only one councilman at large could then be elected.

The next inquiry is as to whether the Voters' Registration must be used in the election as provided in chapter 273 of the Acts of 1937. I think this question should be answered in the negative. This subject is apparently governed by the Acts of 1935, page 6, which provides that the registration law shall be construed to apply to any special election at which all the qualified voters of the State may participate, but shall not apply to any other special election. I think the election provided for in chapter 273, *supra*, is a special election but it is not such a special election as may be participated in by all the qualified voters of the State.

The next question is, "Can the county commissioners change the boundaries of precincts at this time to meet an emergency," The answer is in the negative, although apparently the question becomes unimportant since the registration law does not apply.

Attention is next called to the fact that there are about eighty to one hundred voters in the corporation of Dunkirk who reside in Blackford County and the question is submitted as to whether the election commissioners of Jay County would have jurisdiction of that portion of the city in Blackford County in a special election of this nature. I think the answer is that the election commissioners of Jay County would have jurisdiction. The applicable law provides that "the board of county election commissioners of the county in which any such city is located shall perform all of the duties now required to be performed by city election commissioners in reference to such city elections."

Acts of 1933, p. 880.

The foregoing is a part of the general law for elections in cities and chapter 273 of the Acts of 1937 provides that the election therein provided for shall be held "in full conformity and in compliance with the primary and election laws of this State." Apparently where the major portion of a city lies within any particular county, the Board of Election Commissioners of that county would have jurisdiction. In other words, I think this is a practical way of approaching the subject.

Attention is called to the fact that no funds have been appropriated for the holding of this special election. An inquiry is made as to the necessary procedure to secure the funds with which to pay for it. An emergency appropriation, of course, would have to be made. The procedure to be followed is the same as is required in any other emergency appropriation.