OPINION 27

provided that such affidavit is accompanied by an agreement to hold the State of Indiana and its Highway Commission harmless in the event the existence of an irrevocable oral license is questioned by any landowner who might be adversely affected.

OFFICIAL OPINION NO. 27

June 28, 1968

INDIANA GIRLS’ SCHOOL—INDIANA WOMEN’S PRISON—Status of Respective Parole Boards.

Opinion Requested by Mr. Anthony S. Kuharich Commissioner, Department of Correction.

I am in receipt of your request for an opinion on the following questions:

“1.) What is the current legal status of the Parole Boards at Indiana Girls’ School and Indiana Women’s Prison?

“2.) In the event that the Parole Boards at Indiana Girls’ School and Indiana Women’s Prison have no legal status — what legally constituted means may the Department of Correction use to implement a parole system at these institutions?”

The Parole Boards of Indiana Girls’ School and Indiana Women’s Prison were created by Acts 1953, ch. 266, § 27, the same being Burns IND. STAT. ANN. § 13-1527, which provides:

“There is hereby created a separate Board of Parole for each of the following institutions: The Indiana
State Prison, the Indiana Women's Prison, the Indiana Reformatory, the Indiana Boys' School and the Indiana Girls' School. Each of such board shall consist of four members appointed by the Governor. Not more than two of the members of each board shall be adherents of the same political party. The Chairman of the Board of Correction, or a member thereof designated by him, shall serve ex officio as a member of each of such Boards of Parole, except the Board of Parole for the Indiana Women's Prison, the Board of Parole for the Indiana Boys' School and the Board of Parole for the Indiana Girls' School. The appointed members of each of such Boards of Parole shall serve at the pleasure of the Governor and shall be paid an annual salary of Six Hundred Dollars ($600.00), plus reasonable and necessary expenses incurred in the performance of their duties. Each of such Boards of Parole shall elect a Chairman from among its members. Each of such Boards shall adopt an official seal of which Courts shall take judicial notice, and there shall be no administrative review of a decision of any such Board in any matter concerning parole. Each of such Boards shall meet at least monthly to hear cases of all prisoners eligible for parole consideration.

The 1961 General Assembly passed what is known as the "Department of Correction Act of 1961" (so named by its first section), the same being Acts 1961, ch. 343, as found in Burns §§ 13-1601 to 13-1642. Section 43 of that Act specifically repealed a number of prior statutes, including chapter 266 of the Acts of 1953. Thus it would appear that the Parole Boards at the two institutions for females were abolished.

However, "[a] repealing clause is subject to construction the same as any other provision of statute. Arnett v. State, ex rel (1907), 168 Ind. 180, 8 L. R. A. (N.S.) 1192, 26 Am. & Eng. Ency. Law (2d ed.), 720." Indianapolis Union Ry. v. Waddington, 169 Ind. 448, 453, 82 N.E. 1030, 1032 (1907). A discussion on the effect of specific repealers may be found in 1967 O.A.G. p. 158, in which opinion it was con-
OPINION 27

cluded that a 1965 act intended to provide that the beneficiaries of a legislator who dies prior to the end of his term are to receive the salary he would have earned during the remainder of his term did not repeal a 1953 act providing that the salary of deceased or resigned legislators was to cease upon such death or resignation insofar as the 1953 act concerned resignation, even though the later act specifically repealed the earlier act.

It is proper, then, to examine the Department of Corrections Act of 1961, to determine whether the specific repeal contained in section 43 of that Act should be construed as abolishing the Parole Boards at the Indiana Girls' School and the Indiana Women’s Prison.

The authorities cited above (and the further authorities cited therein) develop the principle to be applied in the interpretation of a repeal provision in relation to any one of the many statutes repealed: does an examination of the act as a whole, including the title and the several sections, show that the attention of the Legislature was focused upon that particular statute and its contents and indicate that it was the intent of the Legislature to make new and different provisions for the matters contained in that statute. In the instant situation, specifically, the question is whether a legislator reading the proposed bill for the Department of Correction Act of 1961 could and would know that that bill, if enacted, would abolish, terminate or otherwise affect the status of the Parole Boards at the Indiana Girls' School and the Indiana Women’s Prison.

The repeal section itself would not readily supply that information. Acts 1961, ch. 343, § 43, provides:


While the statute above would advise the legislator which acts would be repealed, it would not advise him of the content of those acts. Only by reading those acts would the legislator
be able to discover that the Parole Boards in female penal institutions might be affected.

Similarly, the title of the 1961 Act would give the legislator little reason to suspect that those Parole Boards are involved. That title reads:

"AN ACT creating a Department of Correction, a commissioner of the Department of Correction, and advisory council, and various divisions within the department; defining their powers and duties, providing for the management of correctional institutions and the custody and control of persons committed thereto; providing regulations for parole and probation of persons convicted of crimes; abolishing the State Board of Correction and transferring appropriations for such board and the various correction agencies and institutions to the Department of Correction."

Admittedly, "a title need not be a complete index or a compendium. . . it sufficiently expresses a subject when upon a liberal construction it gives such notice as to apprise the legislators and the public of the general subject matter of the legislation." Lurie v. City of Indianapolis, 245 Ind. 457, 471, 198 N.E. 2d 755, 761 (1964). The above title would advise the legislator that "regulations for parole", and thus probably parole boards, are considered in the act; it would not advise the legislator which, if any, parole boards are involved. The legislator, like the public, would need to read the body of the act to obtain that specific information.

The most noteworthy feature of the body of the 1961 Act in relation to Parole Boards is that the Act purports to create a single Parole Board to regulate the paroling of prisoners in all institutions. Section 7 of the Act, as amended by Acts 1967, ch. 79, § 1, the same being Burns § 13-1607, provides in part:

"There is hereby created a division of the department of correction of the State of Indiana to be known as the Indiana Parole Board, such parole board shall be composed of five (5) members to be appointed by
OPINION 27

the commissioner with the approval of the governor. The Indiana Parole Board shall have the exclusive power to parole prisoners sentenced under the criminal laws of the State of Indiana. . . .”

Similarly, section 9 of the Act, Burns § 13-1609, provides in part:

“The Indiana Parole Board is hereby authorized to release on parole, pursuant to the laws of the State of Indiana, any person confined in any penal or correctional institution in this state except persons under sentence of death. It shall conduct hearings at each correctional institution at such time as may be necessary for a full study of the cases of prisoners eligible for release on parole and to determine when and under what conditions and to whom parole may be granted. All paroles shall issue upon order of the board, duly adopted.”

From the above sections alone it would appear that the 1961 Act is intended to abolish the Parole Boards at the female institutions and place female prisoners under the jurisdiction of the Parole Board created by that Act. However, section 15 of the Act, Burns § 13-1615, provides:

“The Boards of Parole of the Indiana State Prison, The Indiana Reformatory and The Indiana Boys’ School are hereby respectively abolished and all powers vested in said boards are hereby transferred to and invested in the Indiana Parole Board of the Department of Correction of the State of Indiana.”

The Act makes no similar specific provision for the Parole Boards at the Indiana Women’s Prison and the Indiana Girls’ School, nor are those Boards even mentioned in the Act. The Act, when it uses specific language in relation to then existing Parole Boards, appears to be concerned only with institutions for male offenders. (In line with this thought, all those sections dealing with the parole of prisoners use the masculine pronouns “he,” “his” or “him” when referring to
1968 O. A. G.

a prisoner. While this procedure would be grammatically correct even if the parole provisions pertained to prisoners of both sexes, it is an indication that the thoughts of the legislators were not directed toward female prisoners during the drafting and passage of this Act.)

Thus, the legislator who, alerted by the title, carefully read the proposed bill to ascertain its affect on various parole boards would find specific language abolishing the boards at male penal institutions but no mention of the boards at female penal institutions. The legislator who might be especially concerned with the boards at female institutions would probably apply the principle of *expressio unius est exclusio alterius* when interpreting the proposed bill and conclude that such boards would be unaffected. (The maxim of *expressio unis est exclusio alterius* is used by courts in construing statutes. When a statute specifically states that it applies to or concerns one or more of a group of related factors or matters, then it is assumed that the statute is not intended to apply to the factors or matters not specified. See *Highland Sales Corp. v. Vance*, 244 Ind. 20, 186 N.E. 2d 682 (1962); *Duda v. New Prairie United School Corp. of LaPorte and St. Joseph Counties*, — Ind. App. —, 224 N.E. 2d 327 (1967).

Since the Department of Correction Act of 1961 both omits any specific provisions relating to the parole boards at penal institutions for female prisoners and includes specific abolition of the parole boards at penal institutions for male prisoners the inevitable conclusion is that the Legislature did not intend that the former boards be affected by that Act.

Therefore, in answer to your first question, it is my opinion that the Parole Boards presently existing at the Indiana Girls’ School and the Indiana Women’s Prison are authorized by Acts 1953, ch. 266, and should continue to operate in accord with that Act. In view of the answer to your first question there is no need to consider your second question at this time.