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toward recording the individual votes in view of Section 6 of the Act, Burns § 57-606, which provides in part:

“. . . and any public official who, under the guise of participating in an executive session of the administrative body or agency of which he is a member, attempts to defeat the purposes of this act as set forth in Section 1 hereof, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than \$50.00 nor more than \$500.00 to which may be added imprisonment in the county jail for a term not to exceed 30 days.”

Therefore, in answer to the question which you presented and based upon the authorities quoted herein it is my opinion that the Department may not withhold from the public or the Department records the count of votes or the identity of the Member casting the vote on the official acts of the Department.

OFFICIAL OPINION NO. 20

July 12, 1967

**OFFICERS—INDIANA STATE POLICE—Duty of Police
Officers to Inspect School Buses—Duty of
State School Bus Committee.**

Opinion Requested by Mr. Robert A. O'Neal, Superintendent,
Indiana State Police.

I am in receipt of your recent inquiry concerning the construction and effect of Acts 1967, ch. 317. Your specific questions were:

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- “1. To what extent, if any, is the duty of the Indiana State Police to annually inspect school buses affected by the Acts of 1967, Chapter 317?”
- “2. To what extent, if any, is the rule-making power of the State School Bus Committee concerning rules adopted for the construction and equipment of school buses, affected by the Acts of 1967, Chapter 317?”

Both the duty of the State Police to inspect school buses and the power of the School Bus Committee to adopt rules concerning school buses were created by Acts 1965, ch. 260, the same being Burns §§ 28-3901 through 28-3967, and specifically by the following sections thereof:

Section 502; Burns § 28-3929:

“The state school bus committee shall have the power and authority to perform the following functions:

“(a) Prescribe, by official rules and regulations, standards for the construction of school buses;

“(b) Prescribe, by official rules and regulations, standards for the equipment of school buses;

“(c) Provide for the inspection of all school buses, both new and used, which are offered for sale, lease or contract;

“(d) Provide for the annual inspection of all school buses;

“(e) Prepare and maintain an approved list of school buses which have passed inspection tests as required in subsections (c) and (d) of this section; and

“(f) Prescribe standard forms for school bus contracts, subject, however, to the approval of the state board of accounts.”

Section 701; Burns § 28-3931:

“The Indiana state police shall annually inspect all school buses, including school buses operated by any

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private school used for the transportation of school children, to determine whether the bus complies with the safety requirements prescribed for the construction and equipment of school buses in the official rules and regulations of the state school bus committee; and, upon inspection, if the bus is found to meet all such prescribed safety requirements, the inspecting officer shall issue a certificate to the owner of the bus stating thereon that the bus has been inspected and has been found to comply with the prescribed safety requirements. Such certificates shall be prepared in the manner as prescribed by the Indiana state police.

“The bureau of motor vehicles shall not issue an annual registration plate for any school bus unless the owner of the bus, along with the application for registration, presents to the bureau a certificate, issued by the Indiana state police, stating thereon that the bus has been inspected and has been found to meet all prescribed safety requirements.”

The 1967 Act which gives rise to your queries (ch. 317) creates a Department of Vehicle Inspection and the office of administrator of that Department, and establishes “a program of periodic vehicle inspection.”

The newly created Department, like the School Bus Committee, is given the power to promulgate rules and regulations. Section 9 of the Act provides in part:

“(a) The administrator, subject to the approval of the board and the Superintendent of the Indiana State Police Department, is hereby authorized and empowered to adopt, in accordance with the applicable law concerning making, promulgating, filing and publishing rules by state agencies, all necessary rules and regulations to govern a vehicle inspection program, so as to carry out the administration and enforcement of this act. . . .”

Two sections of the 1967 Act provide for the annual inspection of motor vehicles by licensed inspection stations:

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Section 7 provides in part:

“(e) The administrator shall once each year, and at the time of transfer of registration, require that every vehicle subject to inspection be inspected and that an official certificate of inspection and approval be affixed to each such vehicle. . . .”

Section 8 provides in part:

“(a) The administrator shall license privately-owned establishments as official inspection stations after appropriate inquiry and investigation, and only when he is satisfied that the station is properly equipped, has proper space, competent personnel, and that such inspections will be properly conducted, will such license be issued. The administrator, before issuing any license, shall require the applicant to file a bond conditioned that it will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of such applicant or its employees.”

An indication of the intended coverage of Acts 1967, ch. 317, is found in Section 2, which contains this definition:

“(g) ‘Vehicle subject to inspection’ shall mean a vehicle required to be registered with the Indiana Bureau of Motor Vehicles and required to have brakes except that farm tractors, farm tractors used in transportation, and mobile homes (house trailers) shall not be included in said term. To avoid duplicate inspections, any vehicle required by law to be registered, or proportionally or otherwise registered in this and any other state shall be exempt from inspection in this state, provided said vehicle bears a valid inspection sticker issued by such other state and/or meets the safety standards as presently established by the Interstate Commerce Commission or its successor in establishing such standards: Provided that this act shall not affect the provisions of the Acts of 1957, Chapter 253, concerning the initial inspection of vehicles prior to the registration as Antique motor vehicles. After a vehicle

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is registered as an Antique motor vehicle, the provisions of this act shall apply, but only as to general safety and no higher standard of equipment or performance shall be required of such vehicle than as originally manufactured.”

Thus the 1967 Act does not specifically exclude school buses from the category “vehicle[s] subject to inspection,” and would perforce appear to require school buses to be inspected annually by licensed inspection stations in accord with the rules of the Department of Vehicle Inspection.

Your inquiry breaks down into a consideration of, first, whether or not the 1967 Act impliedly repealed the 1965 Act, in which case the duties of both the State Police and the State School Bus Committee would be greatly affected, and, second, if there is no such implicit repeal and the two acts are to be read together, whether the 1967 Act should be construed to include school buses within its purview.

As to the first of these issues, my predecessor stated in 1953 O.A.G., p. 29:

“. . . Repeals by implication are not favored. . . . Where two acts relate to the same subject both are to be given effect if possible. The law does not favor the repeal of statutes by implication and when courts hold that a statute or any provision thereof is repealed by implication, it is done in obedience to the legislative will as manifested in the act. It *must* appear that the subsequent statute revises the whole subject matter of the former one and is evidently intended as a subsequent, or that it was repugnant to the old law that both can not stand. . . .”

But the answer to this issue does not depend solely upon that general principle of statutory construction. The first section of the 1967 Act provides in part:

“. . . This act shall in no respect be considered as a repeal of the provisions of the motor vehicle laws of this state unless specifically repealed herein, but shall be construed as supplemental thereto. . . .”

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The only specific repeal found in the Act is contained in section 14, which provides "Acts of 1939, Chapter 48, Sections 158 and 159, as amended, are hereby specifically repealed."

It should also be noted that Acts 1965, ch. 260, requires school buses to have certain characteristics (e.g., flashing red lights: Section 807; Burns § 28-3940) not required of other vehicles, and therefore necessitates a procedure of school bus inspection different from inspection of other vehicles. Similarly, the School Bus Committee is composed of persons especially aware of those problems inherent in transporting children (See Section 501; Burns § 28-3928), and is therefore better qualified to establish equipment and inspection requirements in relation to school buses.

Thus there is no reason to believe that the enactment of Acts 1967, ch. 317, was intended to abrogate the powers and duties given the Indiana State Police and the Indiana School Bus Committee in relation to school buses, and it is therefore my opinion that such powers and duties continue unchanged.

If, then, school buses are still required to be inspected annually by the State Police, and constructed and equipped in accord with the rules of the School Bus Committee, are they also to be subject to the rules of, and inspected by, the Department of Vehicle Inspection? That is, does Acts 1967, ch. 317, include school buses in the category "vehicle[s] to be inspected?"

It is my opinion that despite the Act's failure to specifically exclude school buses such vehicles are not subject to the Act.

That school buses are not to be considered within the purview of the 1967 Act can be seen by noting as a general rule that where one statute deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the latter will prevail, regardless of the sequence of enactment. *State v. LaRue's Inc.*, 239 Ind. 56, 59, 154 N.E. 2d 708, 710 (1958); 1959 O.A.G., p. 295.

The general rule has been concisely stated in the following words:

"... [W]here the general statute standing alone would include the same matter as the special act, and thus

conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment. Where the special statute is later it will be regarded as an exception to or qualification of the prior general one; and *where the general act is later the special statute will be considered as remaining an exception to its terms. . .*" (Citations omitted). Sutherland, *Statutory Construction*, 3rd Ed. Vol. 2, 1966 Cumulative Supp., pp. 211-212 (Emphasis added.)

The 1965 Act, therefore, referring specifically to school buses, must be considered an exception to the 1967 Act governing the general subject of motor vehicles. The two acts, consequently, are not in conflict and can be read together. It is submitted, further, that the construction of the 1967 Act that it be deemed not to include school buses is the more reasonable and the one the Legislature must have intended.

The Indiana Supreme Court has stated, with regard to legislative intent:

"In order to ascertain the intention of the legislature the court should look to the letter of the statute, to it as a whole, to the circumstances under which it was enacted, to the old law, if any, to the mischief to be remedied, to other statutes, to the rules of the common law, and to the condition of affairs when the statute was enacted." *State Bd. of Tax Comm'rs. v. Holliday*, 150 Ind. 216, 233, 49 N.E. 14, 19 (1898).

Courts would undoubtedly take judicial cognizance that there was no general dissatisfaction with, or public clamor for change in, the procedure for inspection of school buses. In relation to such vehicles there was no "mischief to be remedied" by the 1967 Act, although such mischief did exist in relation to practically all other vehicles. The purpose of that act, assuring safety of motor vehicles through inspection, was achieved insofar as school buses are concerned by the 1965 Act. In fact, school buses were subject to inspection even prior to the 1965 Act. (See Acts 1935, ch. 303, § 7, as found

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in Burns § 28-3911, repealed by Acts 1965, ch. 260, § 911.) It seems clear, therefore, that courts would not consider school buses to be within the intent of the Legislature when it adopted Acts 1967, ch. 317.

A further argument in support of this conclusion is the language found in subsection (g) of section 2 of Acts 1967, ch. 317, set out in full, *supra*, establishing a different procedure for vehicles registered both in Indiana and at least one other state, which procedure is specifically intended "to avoid duplicate inspections." Duplicate inspections of school buses would seem equally unnecessary.

This opinion does not consider the validity or the effect of any rule that may be adopted by the School Bus Committee requiring school buses to be inspected by an inspection station licensed by the Department of Vehicle Inspection.

In conclusion, it is my opinion that Acts 1967, ch. 317 has no effect upon either the duty of the Indiana State Police to inspect school buses or the power of the Indiana School Bus Committee to prescribe standards for the construction and equipping of school buses. It is my further opinion that the 1967 General Assembly did not intend to include school buses within the purview of ch. 317, nor to make school buses subject to the provisions of that Act.

OFFICIAL OPINION NO. 21

July 17, 1967

SCHOOLS AND SCHOOL CORPORATIONS—Formation of Schoolhouse Holding Corporation—How Organized.

Opinion Requested by Hon. Edgar D. Whitcomb, Secretary of State.

This is in reply to your recent request of an Official Opinion answering the following questions: