leaders of the General Assembly for their office supply expense incurred as officers of the General Assembly between sessions.

OFFICIAL OPINION NO. 27

August 7, 1967

OFFICERS—MUNICIPAL CORPORATIONS—Power to Fix Compensation of Employees of Municipally Owned Public Utilities—Authority of Board of Public Works or Board of Public Works and Safety.

Opinion Requested by Mr. Richard L. Worley, Chief Examiner, State Board of Accounts.

Your recent letter requests advice concerning the fixing of compensation of municipal utility employees which I have taken the liberty of restating in the form of a question as follows:

> Is the Board of Public Works (or the Board of Public Works and Safety, as the case may be) of a city of the third, fourth or fifth class which operates a municipal utility for such city, authorized to fix the compensation of the employees of the city who perform the work of maintaining and operating the utility, or is the mayor the officer so authorized?

Your question concerns the relationship between two separate statutes concerning the salary of city employees. The first, Section 109 of the Public Utility Act (Acts 1913, ch. 76), which was completely rewritten by Section 19 of Acts 1933, ch. 190 (which Act also amended the title of the Public Utility Act to embrace the material contained in the rewritten Sec-

tion 19 and surrounding sections), as amended by Acts 1959, ch. 326, § 1, and by Acts 1961, ch. 125, § 1, the same being Burns § 54-613, provides in part:

> "In the operation of any utility now owned by any municipality in this state, except cities of the first and second class . . . the common council . . . may provide for the operation thereof by a utility service board created in the manner as hereinafter provided. . . ."
>
> ". . . The board shall fix the number and the compensation of all employees, including the manager, such compensation to be submitted to the municipal council for approval; the council shall have authority to lower such compensation but not to raise it. . . ."

The second statute, Section 20a of Acts 1933, ch. 233, as added by Acts 1959, ch. 107, § 6, and amended by Acts 1965, ch. 437, § 1, the same being Burns § 48-1233, provides in part:

> ". . . (b) The salaries of each and every appointive officer, employee, deputy, assistant and departmental and institutional head shall be fixed by the mayor subject to the approval of the common council: Provided, That the provisions of this subsection shall not apply to the manner of fixing and the amount of compensation paid by any city to the members of the police and fire departments. The common council may reduce but in no event is the common council authorized to increase any salary so fixed by the mayor. . . ."

There thus appears to be a conflict between two acts, one basically written in 1933 purporting to provide for the fixing of compensation for employees of a municipally owned utility, and one basically written in 1959 purporting to provide for the fixing of compensation for all municipal employees other than policemen or firemen.

Your letter also accurately states that 1959 O.A.G., p. 328, advised a former State Examiner that, as between the two acts, the 1933 Act, being a special statute dealing with utility employees, was not superseded by the subsequent adoption of a general statute relating to all municipal employees. That opinion, on page 338, specifically held:

> "A utility service board operating pursuant to Acts of 1913, Ch. 76, *supra,* has the authority to fix the compensation of all employees of such board and such compensation may be lowered but not raised by the city council."

Your question, however, is concerned with the Board of Public Works (or the Board of Public Works and Safety) rather than with a utility service board.

The statute authorizing the creation of a utility service board (Burns § 54-613, *supra*) contains this proviso:

> ". . . Provided, That if such municipality [authorized to create a utility service board] has a board of public works, or a board of public works and safety, such board may operate and manage such utility with the same powers and authority as provided herein for a utility service board unless and until such utility service board shall be created as hereinafter provided." (Bracketed material added.)

If a utility service board has the power and authority, by virtue of the provisions of the statute known as Burns § 54-613, to fix the salaries of its utility employees, then it would seem to be beyond question that the same statute, by the proviso quoted above confers that same power and authority on a board of public works or a board of public works and safety. Certainly such power and authority would be one of "the same powers and authority as provided herein for a utility service board." No clearer expression of legislative intent to include in the power conferred on works boards all of the powers conferred on utility boards could have been devised by the drafters of the proviso. So far as the proviso itself is concerned, there is no room for construction. "The most common rule of statutory interpretation is the rule that a statute clear and unambiguous on its face need not and cannot be interpreted by a court and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory interpretation." 3 Sutherland, Statutory Construction, § 4502, p. 316.

Therefore, the only basis on which it could logically be held that a works board operating the utility of a third, fourth, or fifth class city did not have the power and authority to fix the compensation of the utility's employees would be that 1959 O.A.G. No. 64 was in error. But before proceeding to examine that opinion to decide whether it reaches an erroneous result with respect to the power of a utility service board to fix employees' salaries, it would be well to note that it is my policy not to overrule a prior Official Opinion of any predecessor *merely* because I may feel that I would have reached a different result had I been called on to render the initial opinion. I feel that the same considerations which render judges of courts reluctant to overrule decisions of their predecessors apply with equal force to Attorney General's opinions. Certainty, stability and predicability of the law are among the reasons cited by courts for following precedent when they may have preferred a different rule. 20 Am. Jur. 2d 520, *Courts,* § 184 (1965). And when an Attorney General's Official Opinion has been the guide for official action for several years, certainty and stability are promoted by continuing to follow it. Our own Indiana Supreme Court has recognized the force of Attorney General's opinions as precedent in the case of *State ex rel. McClure v. Marion Super. Ct.,* 239 Ind. 472, 483, 158 N.E. 2d 264 (1959). It cited and quoted a 1951 opinion of the Attorney General (1951 O.A.G. No. 312), a table of appointments by Governors Schricker, Craig and Handley, and *Taylor v. State ex rel. Ogle,* 168 Ind. 294, 80 N.E. 849 (1907) (holding a statute including "county clerks" was not applicable to clerks of the circuit court) and stated:

> "With the foregoing precedents before us we have no alternative but to hold that the clerk of the circuit court is not a county officer but rather a circuit officer, and that the appointive power to fill vacancies therein resides in the Governor of the State. To hold otherwise would reverse long standing precedent in this State, observed by the legilsative and executive divisions of the government, as well as the judicial."

With our highest court paying such deference to an Official Opinion of the Attorney General, a successor Attorney Gen-

eral should give great weight as binding precedent to the opinions of his predecessors.

A careful study of 1959 O.A.G. p. 328 reveals that it answers several questions concerning the fixing of salaries of various categories of city employees. The rationale of the answer with which this present opinion is concerned is that Burns § 54-613, *supra,* made special provisions for the fixing of salaries of municipal utility employees and was therefore controlling over Burns § 48-1233, *supra,* which dealt with the fixing of the salaries of city employees generally. Therefore, the utility board fixed utility employees' compensation under Burns § 54-613 and not the mayor under Burns § 48-1233. (The opinion also discussed Acts 1933, ch. 233, § 10, as last amended by Acts 1945, ch. 32, § 1, Burns § 48-1222, a general statute concerning salaries which, as the opinion points out, was superseded in most aspects by Burns § 48-1233 and so is not relevant here.)

This question of whether a general statute or a special statute controls, when the two seem to make conflicting provision for a particular matter, is one on which judges can, and do, disagree. This is illustrated by the case of *State v. LaRue's, Inc.,* 239 Ind. 56, 154 N.E. 2d 708 (1958), in which a unanimous Indiana Appellate Court held that the general provisions of the 1957 Time Act prevailed over the special time for tavern closing provisions of the Alcoholic Beverage Act of 1945; see 150 N.E. 2d 574. A divided (4-1) Supreme Court reached an opposite result and in so doing stated thus the rationale on which 1959 O.A.G., p. 328 is based (reading from 329 Ind. 56, 59, 154 N.E. 2d 708, 710) :

> "This is a specific provision of the statutes clearly providing that Central Standard Time shall now govern the permissible hours for the sale of alcoholic beverages. The 1957 Act is a subsequent general act on time. '. . . In the construction of statutes, specific provisions will prevail over general provisions with relation to the same subject-matter. And it is a rule of statutory construction that a general statute, without negative words, does not repeal the particular provisions of a former statute on a special subject to which the general language of the later act, if it stood alone, might be

> deemed to apply, unless the two statutes are irreconcilably inconsistent. *Walter v. State* (1886), 105 Ind. 589, 592, 5 N.E. 735; *Kingan & Co. v. Ossam* (1921), 190 Ind. 554, 557, 131 N.E. 81; *Monical v. Heise* (1911), 49 Ind. App. 302, 305, 94 N.E. 232.' *Straus Bros. Co. v. Fisher* (1928), 200 Ind. 307, 316, 163 N.E. 225. '. . . The reason for such rule is clear. In passing the special act, the minds of the legislators were necessarily directed to the details of the special case, and it is not probable that they should intend, by a general act, to derogate from that which they have carefully supervised and regulated. *Lewis v. Cook County* (1897), 72 Ill. App. 151; 36 Cyc. 1088. (7) Where a particular intention is expressed in an act, which conflicts with a general intention expressed in a later one, the particular intention shall be given effect, leaving the later act to operate only outside the scope of the former.' *Cleveland, etc., R. Co. v. Blind* (1914), 182 Ind. 398, 423, 424, 105 N.E. 483. See also *Morris, Auditor, v. The State, ex rel. Brown, Clerk* (1884), 96 Ind. 597, 600."

The conclusion reached in 1959 O.A.G. No., p. 328 appears to me to be entirely reasonable and well supported by authority. Its authority as a precedent and guide for municipal and state officers should not be disturbed.

The 1959 Opinion could have also used the argument that the same 1959 General Assembly that enacted the general statute also amended the earlier special statute in several respects, one of which suggests that the two statutes should be construed so as to give effect to both. While that amendment did not directly concern the fixing of compensation, it does show that the powers of a utility service board were considered. The amendment is pertinent to the instant question as it concerns the clause relating to boards of public works (set out above) which provides:

> ". . . Provided, That if such municipality has a board of public works, *or a board of public works and safety,* such board may operate and manage such utility with the same powers and authority as provided herein for a utility service board *unless and until such utility*

service board shall be created as hereinafter provided." (Emphasis added.)

The emphasized portion of the above proviso was added by the 1959 amendment, a clear indication that the Legislature intended the fixing of compensation for employees of municipally owned utilities (a power and authority of a utility service board) be an exception to the general statute concerning the fixing of compensation for municipal employees.

Your letter correctly anticipates my advice. The answer to your question is this:

In cities (except of the first and second class) in which municipally owned public utilities are operated by boards of public works or boards of public works and safety, such boards have the power and authority to fix the compensation of all employees of such utilities, which compensation may be lowered but not raised by the city council. The provisions of Burns § 54-613 govern.

OFFICIAL OPINION NO. 28

August 22

TAXATION—Warrants Issued by Department of Revenue for Collection of Adjusted Gross Income Tax—Assessability of Damages.

Opinion Requested by Mr. William L. Fortune, Commissioner of State Revenue.

This is in reply to your request for an Official Opinion in regard to the following question: