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recipient is irresponsible, a spendthrift, a drunkard, or otherwise unable to manage his affairs or money, the Court may appoint a guardian for the recipient (if he is aged or disabled), or the county department may make the payments to some responsible person to be used for the benefit of the recipient (if he is aged or blind). Certain kinds of expenses, such as medical care, hospitalization, and burial allowances are paid directly to the individual or corporation which has provided the services.

OFFICIAL OPINION NO. 10

April 17, 1967

ELECTIONS—Compensation for Precinct Board Members in City Primary.

Opinion Requested by Mr. Edwin Steers, Sr., Member, State Election Board.

Your letter of March 21, 1967, reads as follows:

“Pursuant to our telephone conversation I request your assistance in determining the amount the Marion County Election Board as well as the election boards in other counties may pay for precinct board members consisting of clerks, assistant clerks, judges and inspectors in the oncoming city primaries. The law seems to be conflicting. Section 29-4317, Burns’ Indiana Statutes, as amended in 1959, is as follows:

“Each judge, each clerk, and each assistant clerk of any city primary election or election shall be allowed and paid the sum of eight dollars (\$8.00); and each Sheriff shall be allowed and paid the sum of five dollars (\$5.00); and each inspector shall be allowed and

paid the sum of eight dollars (\$8.00) for the performance of all the duties of his office imposed on him by this act, which are performed by him on election day and eight dollars (\$8.00) for his services in calling at the office of the clerk of the circuit court for the precinct election supplies and the return of same to the clerk's office after the election, whether the same is rendered before, on the day, or after such election: Provided, however, that the board of county commissioners of the county in which such city or cities are located may, by order duly made not less than fifteen (15) days prior to the date of any primary election or election, provided (provide) for allowances and pay not to exceed the following amounts: Each judge, each clerk and each assistant clerk, the sum of twelve dollars (\$12.00) in cities using voting machines, and fifteen dollars (\$15.00) in cities using paper ballots; each sheriff the sum of nine dollars (\$9.00); and each inspector, the sum to (of) twelve dollars (\$12.00) for the performance of all the duties of his office imposed on him by this act which are performed by him on election day, and twelve dollars (\$12.00) for his services in calling at the office of the clerk of the circuit court for the precinct election supplies and the return of same to the clerk's office after the election.'

“The Acts of 1965, page 687, Section 4, being Burns' Indiana Statutes, Section 29-3215, is as follows:

“‘Each judge, each clerk and each assistant clerk of any primary or general election may be allowed and paid the sum of fifteen dollars (\$15.00); and each sheriff of any such election may be allowed and paid the sum of fifteen dollars (\$15.00); and each inspector of such election may be allowed and paid the sum of twenty dollars (\$20.00) for the performance of all the duties of his office imposed on him by this act, which are performed by him on election day and ten dollars (\$10.00) for his services in calling at the county clerk's office for the precinct election supplies and the return

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of same to the clerk's office after the election whether the same is rendered before, on the day of or after such election: Provided, however, That the county commissioners in any county may, by order of such board made and filed with the auditor of any such county not less than fifteen (15) days prior to the date of any primary or general election, provide (d) for allowances and pay not to exceed the following amounts: Each judge, each clerk and each assistant clerk, the sum of twenty dollars (\$20.00) in counties using voting machines, and twenty dollars (\$20.00) in counties using paper ballots; each sheriff, the sum of twenty dollars (\$20.00); and each inspector, the sum of twenty-five dollars (\$25.00) for the performance of all the duties of his office imposed on him by this act, which are performed by him on election day, and fifteen dollars (\$15.00) for his services in calling at the office of the clerk of the circuit court for the precinct election supplies and the return of same to the clerk's office after the election: Provided, further, That in school, district and elections other than those above specified, except town elections, the county commissioners may fix the compensation of the precinct election officers at any determinate amount not to exceed the pay schedule first provided in this section. In town elections the compensation shall be fixed by the board of town trustees not in excess of the first above mentioned schedule.'

"Our question is what the minimum and maximum amounts that can be paid by the Election Board of Marion County and other counties where city and primaries are being held for such above described services in the oncoming city primaries, also what the minimum and maximum salaries that can be paid for such above described services where primaries are being held in towns and we would respectfully request that you let us have an opinion as soon as possible so that we can have the same not less than seventeen days prior to May 2, 1967."

The second statute you quote is section 39 of the Indiana Election Code, Acts 1945, ch. 208, § 39, as last amended by Acts 1965, ch. 261, § 4, and as published in Burns § 29-3215.

The Indiana Election Code became effective on passage (by reason of an emergency clause) on March 6, 1945. Its section 455 specifically repealed all or part of 139 separate Acts relating to elections and left it, the Election Code, virtually the only law governing elections. It also provided for the holding for all city primary elections and all primaries for the nomination of township, county and district candidates on the same date, and for the election of all township, city, county, district, state and federal officers at the same time. Acts 1945, ch. 208, §§ 86, 150, 151 and 187, Burns §§ 29-3604, 4301, 4302 and 4801. Thus, there was need for but one precinct election board for both the city primary and the primary to nominate candidates for the general election. Therefore, there was but the one statute, section 39 of the Indiana Election Code, Burns § 29-3215, which fixed a scale of pay for precinct election board personnel.

That uniformity did not last until the next election. The same 1945 General Assembly which enacted the Indiana Election Code, enacted a wholly separate bill which was approved March 7, 1945, the day after the Code was approved. This Act became chapter 229, Acts 1945, effective on promulgation December 12, 1945. It fixed the date of holding city primaries as the first Tuesday after the first Monday in May, 1947, and every four years thereafter (§ 2, Burns § 29-4313) and the time for holding city elections as the first Tuesday after the first Monday in November of 1947, and every four years thereafter (§ 1, Burns § 29-4312). This is sometimes called "The 2nd Skip Election Law" (as distinguished from a 1933 "Skip Election Law"). *Swank v. Tyndall*, 226 Ind. 204, 209, 78 N.E. 2d 535, 537 (1948). Before the 1947 city primaries and fall elections were held, the 1947 General Assembly added a new section, section 3b, to this 2nd Skip Election Law (by Acts 1947, ch. 29, § 4) which, as amended by Acts 1959, ch. 183, § 1, is the first statute you quote, Burns § 29-4317. Thus, for the past twenty years we have had one statute governing compensation of precinct election board personnel at general elections and at the primaries preceding general elections (§ 39, Indiana Election Code, Burns § 29-3215) and another statute governing the compensation of precinct boards at city elections and city primaries (§ 3b of the 2nd Skip Election

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Law, Burns § 29-4317). Only during the six years between the 1959 amendment of the second Skip Election Law (Acts 1959, ch. 183, § 1) and the 1965 amendment of the Indiana Election Code (Acts 1965, ch. 261, § 4) have the two pay schedules been identical. 1959 and 1963 are the only years in which the maximum possible pay for all city election board members was the same as that of general election board members in the years immediately preceding or following the city elections.

In 1946 the maximum compensation which could be paid an inspector at the primary or general election was \$16.00, while at the 1947 city primaries and elections, the maximum was \$20.00. At the 1948, 1950, 1952, 1954, 1956 and 1958 primaries and general elections, by reason of Acts 1947, ch. 170, § 2, having amended section 39 of the Election Code, inspectors at the primary or general election could be paid a maximum of \$24.00, but the \$20.00 maximum still governed the city primaries and elections of 1951 and 1955. In the 1946, 1948, 1950 and 1952 primary and general elections and the 1947 and 1951 city primaries and elections the maximum compensation that could be paid judges, clerks and assistant clerks was \$9.00. Then Acts 1953, ch. 239, § 9, again amended section 39 of the Election Code so that in the general elections and primaries of 1954, 1956 and 1958, judges, clerks, and assistant clerks could be paid a maximum of \$12.00 where voting machines were used and \$15.00 where paper ballots were used, while city election judges, clerks and assistant clerks in 1955 were still entitled to a maximum of only \$9.00. The compensation allowed sheriffs during this period also varied, though not in as great a degree. Acts 1959, ch. 183, § 1, by amending section 3b of the second Skip Election Law to its present form, made the pay schedules of the two statutes identical for the first time so that, as before stated, the 1959 and 1963 city elections are the only city elections in two decades conducted under statutes establishing precinct election board pay schedules identical to general election pay schedules.

In 1965, by Acts 1965, ch. 261, § 4 which again amended section 39 of the Election Code, both the maximum and the minimum pay schedules for general elections and the pri-

maries preceding them were increased very substantially, but neither the 1965 Legislature nor its 1967 successor made any attempt to amend section 3b of the second Skip Election Law. Consequently the minimum schedules in the Election Code now exceed the maximum schedules in the second Skip Election Law.

It is somewhat surprising that in all these years, this is the first request for an Attorney General's Opinion on which of these two statutes governs city primaries. The language of section 3b of the second Skip Election Law (Burns § 29-4317) has never been changed. It has always commenced: "Each judge, each clerk, and each assistant clerk of any *city primary election or election* shall be allowed and paid. . . ." Only the amounts which follow these words have been changed, and then only in 1959 to bring city election pay up to the scale which had been adopted for general elections six years earlier. At the time of the 1955 city primary election and city election it would seem that no one had any difficulty in reading the words "city primary election or election" as applying to the primaries and elections which sections 1 and 2 of the second Skip Election Law (Burns §§ 29-4301 and 29-4302) required to be held in every city in 1955. No one apparently had any great difficulty understanding that the language of section 39 of the Indiana Election Code, (Burns § 29-3215) "any primary or general election" did not include a "city primary election or election" when that specific type of election was already specifically provided for by the previously cited statute (Burns § 29-4317). It was apparently realized at that time that the General Assembly, and not the Attorney General, had the power to alter, amend, or change the clear and plain meaning of either of these statutes. Hence, the Act of 1959, ch. 183, § 1, which, for the first time in their history, brought the pay scales of the two statutes into total conformity.

If it be conceded, *arguendo*, that the language of section 39 of the Indiana Election Code (Burns § 29-3215) "any primary or general election" is sufficiently broad enough to include "any city primary election or election," or if some other provision of the Election Code appears to make section 39 cover city primaries and elections along with all other elections, then it may be said that the two statutes are on the same

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subject matter, or *in pari materia*. 2 Sutherland, Statutory Construction § 502, p. 535. It is also obvious that if both of these statutes relate to city primaries and city elections, section 39 of the Election Code (Burns § 29-3215), relating also to other elections, is general, while section 3b of the 2nd Skip Election Law (Burns § 29-4317) is specific, relating only to city elections and city primaries.

“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 two should be harmonized if possible, but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute. . . .” 2 Sutherland, Statutory Construction § 5204, p. 541.

In *City of New Albany v. Lemon*, 198 Ind. 127, 149 N.E. 350 (1925) the court had under consideration the circuit court's jurisdiction of an appeal from an order of the city board of works. The circuit court had jurisdiction if the appeal was judged by one statute, but it had no jurisdiction if judged by another. At page 134 of 198 Ind. the court said:

“It is an established rule of statutory construction that so far as specific provisions contained in an act having special reference to a limited and definite part of the subject-matter of a general act passed at the same time are inconsistent with provisions of such general act which purport to embrace the entire subject, the specific provisions of the act covering only a limited part of such subject will control. *Kingan & Co. v. Ossam* (1921), 190 Ind. 554, 557 . . . [cases from other jurisdictions].

“Applying this rule to the facts of this case, we find that ch. 143, *supra*, purports to embrace all appeals from any action or decision of the board of public works or park commissioners of any city, while ch. 140, *supra*, applies only to appeals from final orders modifying or confirming assessment rolls levying special benefits to meet the cost of certain kinds of public improvements. Therefore, the latter must control within its sphere. . . .”

There can be no question but that the statute which is a part of an act relating only to city elections and city primaries (The title of Acts 1945, ch. 229, "The Second Skip Election Law" is: "An Act concerning the holding of elections and primary elections for the election of the elective officers of the several cities of the state, fixing the time for holding such elections and primaries, and the procedure with reference thereto, and repealing all laws in conflict therewith.") and the words of which purport to limit it to "any city primary election or election" are controlling over a general statute relating to elections (The title of Acts 1945, ch. 208, the Indiana Election Code is: "An Act concerning elections; providing penalties for the violation thereof, and repealing all conflicting laws.") with regard to questions concerning city primary elections and city elections. The compensation of judges, clerks, assistant clerks, sheriffs and inspectors at any primary election held May 2, 1967, in any city in the State of Indiana must be in conformity with the provisions of Acts 1945, ch. 229, § 3b, as added by Acts 1947, ch. 29, § 4, as last amended by Acts 1959, ch. 183, § 1, Burns § 29-4317, the statute last quoted in your letter. The statute first quoted, Burns § 29-3215, Acts 1945, ch. 208, § 39, as last amended by Acts 1965, ch. 261, § 4, has no application.

Your question concerning primary elections which may be held in towns on May 2, 1967, requires slightly different considerations for its answer. Primary elections to nominate candidates for election as town officers are permissible (and required) only in towns which have a population of three thousand or more and whose boundaries coincide with the boundaries of precincts. Acts 1945, ch. 208, § 165, as last amended by Acts 1961, ch. 259, § 1. 1958 O.A.G., pp. 247, 248. (In all other towns nominating conventions are mandatory. *Ibid.*) Because that statute requires such town primaries (and town elections in such towns) to be held "pursuant to the laws of the state concerning the nomination of officers of cities," it was stated in 1959 O.A.G., pp. 224, 227: "Therefore, pursuant to Acts 1945, Ch. 208, Sec. 155, as found in Burns § 29-4306, the county election board shall perform all of the duties in connection with such town primary as they perform in county primaries and elections." This was the correct result, but the

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writer of that opinion overlooked the fact that that section (§ 155) of the Indiana Election Code had been repealed (or superseded, if you will) by Acts 1945, ch. 229, § 2, the second Skip Election Law, (Burns § 29-4313) which put city primaries under a city election board. Acts 1947, ch. 29, § 1, amended this last cited section to put city primaries back under the supervision of county election boards. Such amendment was in effect at the time Acts 1957, ch. 168, § 1, amended section 165 of the Election Code to require town primaries and was in effect at the time 1959 O.A.G., p. 59 was written and the authority therein for the statement that county boards conduct city primaries should have been such amendment (Burns § 29-4313) rather than section 155 of the Indiana Election Code (Burns § 29-4306).

Since the statute which authorizes and requires primaries in some towns requires them to be conducted "pursuant to the laws of the state concerning the nomination of officers of cities," it follows that precinct election personnel for town primary elections are to be compensated under the same law as city primary precinct election personnel. Therefore, town primary election precinct personnel, judges, clerks, assistant clerks, sheriffs and inspectors are to be compensated pursuant to the provisions of Acts 1945, ch. 229, § 3b, as added by Acts 1947, ch. 29, § 4, and amended by Acts 1959, ch. 183, § 1, Burns § 29-4317.

OFFICIAL OPINION NO. 11

April 18, 1967

CONSTITUTIONAL LAW—DUAL OFFICE HOLDING— Holding of Such Policy as Against Public Policy.

Opinion Requested by Mr. Leslie Cale, President, State Egg Board.

I am in receipt of your recent inquiry as to the legality of the appointment as Executive Secretary of the State Egg