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of the president of the university, (b) shall be invoked only with the approval of the individual employee or employees concerned.

Section 10. Solicitation of memberships, dues, or other internal employee organization business shall be conducted during the non-duty hours of the employees concerned. Officially requested or approved consultations and meeting between management officials and representatives of recognized employee organizations shall, whenever practical, be conducted on official time but the president of the university may require that such meetings, including equal representation committees, be conducted during the non-duty hours of the employee organization representatives involved.

Section 11. (a) The university will not continue to employ any person who participates in, threatens, or encourages any strike, slowdown, work stoppage, or other interruption or interference with the activities of the university.

(b) A person separated from employment for knowingly violating the above conditions may, subsequent to such violation, be appointed or reappointed, employed or reemployed but only upon the following conditions: (1) such person shall be on probation for a period of two years following such appointment or reappointment, employment or reemployment, during which period he shall serve at the pleasure of the appointing officer or body without recourse to grievance procedures; (2) such person shall be considered a completely new employee for purposes of vacation allowance, sick leave accrual, and other benefits related to length of service, except retirement benefits as established from time to time by law.

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OFFICIAL OPINION NO. 23

November 2, 1966

**AUDITOR OF STATE—CITIES AND TOWNS—Appeal  
from Ordinance Incorporating Town—Distribution  
of State Funds.**

Opinion Requested by Hon. Mark L. France, State Auditor.

In your recent request for an Official Opinion, you stated that a town which has been incorporated by an ordinance of

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the county board of commissioners for the county in which the town is located has requested that you distribute funds to it pursuant to state law. However, during the thirty (30) days after the passage of the ordinance, a bond was filed with the auditor of that county for the purpose of appeal from the ordinance. You have also indicated that no complaint was filed with a court during the thirty (30) day period immediately succeeding the passage of the ordinance. You want to know whether the filing of the appeal bond prevents you from treating the area as a town for purposes of your distribution of state funds.

The appeal bond filed in this case with the county auditor may have been filed pursuant to 1 R.S. 1852, ch. 20, §§ 31, 32, as found in Burns IND. STAT. ANN., §§ 26-901, 26-902. That statute applies to appeals "from any decision of such commissioners." Section 32 provides that an appeal "shall be taken" within thirty days after the time the decision is made by filing a bond with the county auditor. Under that statute, an appeal from an order of the county commissioners incorporating a town was instituted when such appeal bond was properly filed with the county auditor, see *Harris v. Millege*, 151 Ind. 70, 51 N.E. 102 (1898).

However, towns are presently incorporated by county commissioners under the Town Incorporation and Annexation Act of 1959, Acts 1959, ch. 240, § 2, Burns § 48-102.

In regard to appeal from such an ordinance, § 9 of that Act, Burns § 48-110, provides:

" . . . The procedure for the passage of the ordinance provided for herein shall be that procedure which is used to govern the promulgation and passage of ordinances by cities and *may be appealed as provided in chapter 245 of the Acts of the Indiana General Assembly of 1933 as the same has been amended or supplemented. . . .*" (Emphasis added.)

Chapter 245 of the Acts of 1933 provides for the initiation of an appeal by filing an original complaint in the circuit court or superior court of the county, and that "Such complaint on appeal shall be filed within thirty days from the date

of the action or decision complained of. . . ." Acts 1933, ch. 245, § 1, Burns § 48-4501. Although the statute requires a bond when the ruling of the circuit or superior court is appealed to the Supreme Court of Indiana, Acts 1933, ch. 245, § 6, Burns § 48-4506, there is no provision for the filing of a bond in conjunction with the initial appeal to the circuit or superior court. Acts 1933, ch. 245, § 2, Burns § 48-4502, makes such an appeal subject to a motion to dismiss when the complaint has not been filed within the required time.

The 1933 statute, as indicated by its language, applies to all appeals from the various bodies referred to therein, and repeals by implication earlier statutes providing different procedures for appeal from the action of such bodies, *Leach v. City of Evansville*, 211 Ind. 444, 7 N.E. 2d 207 (1937).

The Town Incorporation and Annexation Act of 1959, in the same manner, provides the exclusive procedure by which appeals may be taken from ordinances of a board of county commissioners incorporating towns, and, in my opinion, repeals 1 R.S. 1852, ch. 20, §§ 31 and 32 to the extent to which they conflict.

Therefore, it is my opinion that, when no complaint has been filed with a proper circuit or superior court within thirty (30) days from the passage of the ordinance, the filing of a bond for the purpose of appeal with the county auditor would not affect in any manner the incorporation of the town. You may, in my opinion, treat the area as a town for the purposes of distribution of state funds.