For further authority on the question of continuation of special meetings until finally adjourned, see Picayune v. Mississippi Power Co., 197 Fed. 2d 444 (1952) and Hodgen-ville v. Kentucky Utilities Co., 215 Ky. 195, 62 S.W.2d 1047 (1933).

Since only the business of electing a person to fill the vacancy which exists in the common council may be considered at the special meeting which was called pursuant to Burns' 48-1246, supra, and since Burns' 48-1220, supra, enjoins the duty on the common council to hold monthly meetings to conduct the legislative business of the city, it is my opinion that the council may meet in regular session while its special session stands in recess.

OFFICIAL OPINION NO. 13
May 19, 1965

Hon. William E. Wilson
Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

This is in reply to your request for an Official Opinion on the following questions:

"1. In the event a retired teacher working as a substitute teacher works fifty-nine days in a given school corporation prior to earning $1,500, may such teacher continue under contract until earning a total of $1,500 without losing annuity payments?

"2. In the event a retired teacher earns $1,500 in a given corporation, prior to completing 59 days of substitute service would such teacher be permitted to complete 59 days and earn in excess of $1,500 without loss of annuity payments?

"3. Does the $1,500 limitation mean a grand total of $1,500 earned by the retired substitute teacher in
Minimum salaries payable to teachers employed in the public schools of the state were established by Acts of 1945, ch. 231, as amended, Burns IND. STAT. ANN., § 28-4332 et seq. (1964 Supp.). Such minimum salaries for a school year of nine months are determined by reference to the number of years of professional training plus specified increments for the number of years' experience of each teacher. Acts of 1965, ch. 215, § 2, the most recent amendment of said minimum salary law provides:

"Should the school term, contract or appointment in any school corporation be more or less than nine [9] months the basic salary as above set out shall be proportionately increased or decreased: . . . ."

The only exception to such minimum salaries applies to "substitute teachers" in the third from the last paragraph of § 2 of the 1965 Act, supra, which provides:

"The established wage for substitute teachers, as defined herein, shall be fixed by the local school authorities at a figure not less than fifteen dollars [$15.00] per day. . . . ."

The term "substitute teacher" is defined in the last paragraph of § 2 to include:

". . . those teachers working in the public schools for not more than six [6] weeks or in the case of teachers on retirement, those working in the public schools for not more than fifty-nine [59] days during any one [1] school year and who hereafter may be employed without a written contract." (Emphasis added.)

Under the Teachers Retirement Act, Acts of 1915, ch. 182, as last amended by Acts of 1965, ch. 410, § 1 (f),
A teacher may return to teaching while on retirement and not lose his retirement status or benefits unless he earns more than fifteen hundred dollars ($1500) in any one school year...

A further restriction on employment of a teacher receiving retirement benefits under Acts of 1955, ch. 329, is found in § 18 of that Act, as amended, Burns IND. STAT. ANN., § 60-1929 (a), which reads as follows:

“(a) If a member who is receiving retirement income payments under this act becomes reemployed in a position covered by this act, his retirement benefit payments shall cease after thirty [30] consecutive school days or working days of such reemployment. During such period the member shall also make contributions under section 13 (a) of this act.”

From a reading of the last two quoted statutes, there appears to be a conflict as to whether a retired teacher will lose his retirement status or benefits after thirty consecutive school days of reemployment or after earning fifteen hundred dollars [$1500] in such employment.

Section 12 of the 1955 Act, supra, Burns IND. STAT. ANN., § 60-1923, provides, in part, as follows:

“. . . The benefits provided under this act shall be in lieu of all benefits to which such employees would or might have become entitled as members of any existing retirement system, and the contributions required under this act shall be in lieu of all contributions heretofore required with respect to such retirement system. Each such retirement system shall nevertheless continue to be a separate retirement system and its affairs shall continue to be administered by the board which has previously administered the affairs of such system, subject to the same terms and conditions as heretofore except insofar as the same are inconsistent with the terms and conditions of this act. . . .” (Emphasis added.)
It is clear that the 1955 Act, supra, did not repeal or supersede the 1915 Teachers' Retirement Act, supra, but continued it in full force and effect except as to any provisions inconsistent with the 1955 Act. However, the language in the 1965 amendment which is inconsistent with the above-quoted language of the 1955 Act [§ 60-1929 (a), supra] can not be said to be invalid, since the 1955 General Assembly could not by any enactment limit the rights and duties of the 1965 General Assembly, or any succeeding General Assembly, Hamilton County Council v. State ex rel. Groff, 227 Ind. 608, 613, 87 N.E.2d 810 (1949). And the later of two statutes covering the same subject matter is controlling as to any conflicting provisions. Hamilton County Council v. State ex rel. Groff, supra; Selby v. Brenton, 75 Ind. App. 248, 260, 130 N.E. 448 (1921).

Thus, the 1965 amendment of the 1915 Act, supra, being the later of the two statutes containing inconsistent provisions would control to permit a teacher receiving retirement benefits under the 1955 Act, supra, to earn fifteen hundred dollars [$1500] in any one school year without losing his retirement benefits, though he would, under § 18 of the 1955 Act, supra, be required to make contributions under § 3 (a) of the Act, Burns IND. STAT. ANN., § 60-1924 (a), during the time he is "regularly employed" under the Act. Acts 1915, ch. 182, § 14 (a) as last amended by Acts of 1965, ch. 410, § 4.

Section 14 (a) of the 1915 Act, as amended, supra, providing that "members and beneficiaries of the fund shall include any legally qualified and regularly employed teacher . . ." was construed by the Attorney General in 1943 O.A.G., page 34, and again in 1962 O.A.G., pp. 160, 162, No. 33, the latter Opinion reaching the conclusion that a "substitute teacher" as defined by Acts of 1945, ch. 231, § 2, as amended, supra, is not an active, participating member of the Teachers' Retirement Fund, inasmuch as he is not a "regularly employed" teacher.

Since the pay scales vary throughout the various school districts of the State, it would be the unusual situation where a retired teacher would be employed in a substitute capacity for 59 days and then be employed under a contract for an
additional 30 days, earning during the full 89 days an exact total of $1500. In some instances a retired teacher might earn $1500 before completing 59 days as a substitute; in other cases she might be employed 59 days as a substitute teacher and earn a total of $1500 before completing an additional 30 days under contract; while in other instances she might not earn a total of $1500 after completing 59 days as a substitute plus 30 days under contract. Thus the conflict between the two above-cited sections of the 1915 Act, as amended, supra, and the 1955 Act, supra, should be resolved in favor of permitting the retired teacher to earn a total of $1500 in any one school year before any loss of retirement benefits.

In answer to your first question:

It is my opinion that a retired teacher who is receiving benefits under Acts of 1915, ch. 182, as amended, or Acts 1955, ch. 329, as amended may be employed as a substitute teacher, without a written contract, for a period of time not to exceed fifty-nine [59] days in any one school year if he earns no more than fifteen hundred dollars [$1500] during such period, without loss of retirement benefits. However, he must be employed under a written contract for any period in excess of fifty-nine [59] days of any one school year, and his right to receive retirement benefits will continue until he receives a total income from such successive employments of fifteen hundred dollars [$1500].

In answer to your second question:

It is my opinion that a retired teacher employed as a substitute teacher who earns fifteen hundred dollars [$1500] prior to completing fifty-nine [59] days in such capacity cannot continue in such employment without loss of retirement benefits and earn in excess of fifteen hundred dollars [$1500] in any one school year.

In answer to your third question:

I can conceive of no interpretation of § 9 of the 1915 Act, as amended, supra, which would permit a retired teacher to
1965 O. A. G.

earn in excess of fifteen hundred dollars [$1500] "in any one school year" whether he were employed in one school system during that school year or several systems. It is my opinion, therefore, that such retired teacher could earn no more than fifteen hundred dollars [$1500] during any one school year without losing retirement benefits, even if employed in more than one school system during that year.

OFFICIAL OPINION NO. 14
May 20, 1965

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana 46204

Dear Mr. McDonald:

In your letter of April 13, 1965, you ask the following question:

"What amounts may be taxed and charged to a defendant, upon judgment, in a magistrate court on and after March 13, 1965?"

Your letter further states that the aforesaid question arises because of three statutes which recently were enacted by the 1965 General Assembly: Chapters 270, 350 and 433 of Indiana Acts of 1965.

For the purpose of this Opinion we will summarize your questions as follows:

1. Does Chapter 270, Acts of 1965 require any costs or fees to be taxed by magistrate courts in criminal convictions in view of Acts of 1965, ch. 433, § 7(c)?