and goods imported for use by such importer. Such distinction would be applicable to all of the various categories of goods enumerated by you in your second question. Thus, the applicable tests to determine the taxability or nontaxability of goods which have been imported, as set out above in answer to your first question, would also be applicable to each of the items included within the categories of goods enumerated in your second question. The taxability or nontaxability of any specific item would, of course, depend upon the precise status of such item, and this opinion is not to be construed as determining the taxability or nontaxability of any particular item or group of items, including the items encompassed within the categories of goods enumerated by you in your second question.

OFFICIAL OPINION NO. 21

April 15, 1964

Hon. Richard C. Bodine
State Representative
208 First National Bank Building
Mishawaka, Indiana

Dear Representative Bodine:

You have requested my Official Opinion on the following questions:

"1. Can a man who had completed twenty years of service on police department retire on physical disability due to series of heart attacks?

"2. Can this man be reinstated to the police department without a physical examination?

"3. If the city involved in the above circumstance comes under the civil service law as applied to the City of Evansville, can this man, if reappointed be made chief of police?"

In answering these questions it is necessary to note that when there is a specific statute on any subject it will control over a general statute on the same subject. This rule was
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adopted in Kingan & Co., Limited v. Ossam (1921), 190 Ind. 554, 131 N. E. 81, where the court stated on page 557:

"Concerning the construction of statutes, the rule of law obtains in this state that general statutes give way to special statutes upon the same subject-matter * * *"

This rule of construction becomes involved in arriving at the answers to your questions as a result of a special statute enacted by the Legislature which affects only the cities of Evansville and Michigan City. This is the Acts of 1957, Ch. 161, as amended and as found in Burns' (1963 Repl.), Sections 48-6250 through 48-6259, and is an act concerning the administration and regulation of police departments and where the provisions of said act are pertinent to your questions, the sections thereof will prevail over any general statute on the same subject.

The Acts of 1925, Ch. 51, as amended and found in Burns' (1963 Repl.), Section 48-6401 et seq., is a general law governing the police pension fund and is applicable to all cities other than cities of the first class.

Section 3 of the Acts of 1925, supra, as found in Burns' (1963 Repl.), Section 48-6403, relates to retirement of policemen and reads, in part, as follows:

"(2) To the payment of a pension in such sum, not in excess of fifty per cent [50\%] of the salary received by a first-class patrolman, as may be decided by the board of trustees as to any member of such police force who may be retired from active service upon physical examination by the police surgeon or other surgeon to be appointed by said board of trustees, where it is found that such member has suffered or contracted any disease, mental or physical, or any disability which renders such member unfit for active duty on such police force, or for any duty in such police department, such disability to be determined solely by said board of trustees after examination and hearing, and after due notice to such member, as provided in this clause for reinstatement in the service of such police force of any such retired member, and such members shall be re-
tained on active duty with full pay until so retired by said board of trustees because of such disability, as aforesaid: Provided, however, That after any such member shall have been so retired upon pension, the board of trustees shall have the right, at any time, to cause such retired member again to be brought before it and examined by the police surgeon or other surgeon to be appointed by said board of trustees and thereupon to determine whether such disability still exists and whether such retired member shall remain on the pension roll, but such retired member shall be retained on the pension roll until reinstated in the service of the police force, except in case of resignation. If upon such examination and hearing such retired member shall be found to have recovered from his disability and to be again fit for active duty, then such member shall again be put on active duty with full pay and from that time he shall cease to be entitled to any payments out of such pension fund * * *

"(3) To any member of the police department of such city who retires from active service after twenty [20] or more years of such active service by such member, an annual pension equal to fifty per cent [50%] of the salary of a first grade patrolman in such police department, plus two per cent [2%] of such first grade patrolman's salary for each year of service of such retired member over twenty [20] years, provided, that such pension shall not exceed in any year an amount greater than sixty per cent [60%] of the salary of a first-class patrolman. Such pensions shall be computed on an annual basis but shall be paid in twelve [12] equal monthly instalments. At any time that the salary of a first grade patrolman is increased or decreased, the pension payable hereunder shall be proportionately increased or decreased.

"In case of voluntary retirement, upon application, after twenty [20] or more years of service, such member shall be entitled to such retirement and the pension, hereinabove provided, without reference to his physical condition at the time of application, but he shall thereupon and thereby relinquish all right to any other bene-
fits or pensions as for temporary disability upon being so retired. After such retirement he shall not be required to render further service on such police force, nor shall he be subject to the rules of the department, nor be deprived of the other benefits by this act provided, which may thereafter accrue to him or his dependents * * *"

Section 4 of the Acts of 1925, supra, as found in Burns' (1963 Repl.), Section 48-6404, reads, in part, as follows:

"Any member of such police force placed on the retired list, except such as have served on such force for twenty [20] years or more and have been retired for that reason, shall report for duty to the chief of police or marshal, from time to time, as may be provided for in the by-laws of the board, and shall be subject to the orders and discipline of such chief or marshal, and shall perform such duties as may be required of him, and for which, in the opinion of the police surgeon he may be fit, and for which he shall be allowed full pay; and for any refusal to obey such orders and for a breach of such discipline, the said chief shall report such member at once to the board of public safety for such action as by it may be deemed proper for the good of the service; and member[s] shall be subject to punishment and dismissal in the same manner as officers in active service. Any pension such retired member may have received shall cease in case of his expulsion; and such pension, for any refusal to obey orders or other breach of discipline, as aforesaid, shall be subject to whatever orders may be deemed proper by the board of public safety. It shall be the duty of the police surgeon of such city to make all examinations of the members of the police force of such city whenever requested by the board of trustees of the police pension fund, or whenever any such member requests him to do so for the purpose of certifying to his physical or mental condition to such board, or whenever he deems it proper to do so; and he shall thereupon certify to such board the true physical or mental condition of such person * * *"
Reading the above sections together it becomes apparent that two types of retirement are provided for. One of these is an involuntary retirement caused by physical conditions. The other is a voluntary retirement at any time after twenty years of service although there is no requirement that a policeman retire at the end of twenty years of service. Burns' 48-6254, supra, does require retirement at the age of 65, but this age factor is not involved in this question.

In answer to your first question, it is my opinion that an officer who continues in service after twenty years may be retired for physical reasons although he would have the right to elect to be retired on the basis of years of service. If retired for disability reasons, he remains a member of the department, subject to its orders and regulations and may be required to perform duties commensurate with his physical condition.

In answer to your second question, I believe that the return of a policeman retired for physical reasons is a subject for administrative discretion on the part of the board of trustees. They may require the policeman to be examined by the police surgeon in order to determine his physical fitness if they have reason to believe his condition has improved, or the retired member may request such an examination if he so desires. The board could not force the retired member to return to full duty without such an examination against his wishes, but I find no prohibition against such a return without an examination if it is agreeable with all parties. It is true that the law requires a physical examination of an applicant, prior to becoming a member of the police pension fund but the reason for such an examination does not extend to a member who has already acquired rights under the pension fund.

As heretofore indicated the provisions of the special act supersede those of a general act, and therefore Burns' 48-6252, supra, provides for qualifications or appointment of a chief of police in Evansville and Michigan City, exclusive of any general statute on the same subject. Subsection (d) of Burns' 48-6252, supra, reads as follows:

"(d) The commission shall have the power and authority to appoint or remove any member of the police department, but the mayor of such city shall have
the sole power of appointing and removing any mem-
ber of the department as chief of the department: Pro-
vided, That such appointment shall be made by the
mayor from the personnel of said department having
had at least five [5] years' service in said department:
Provided further, That the removal of any member of
the police department as chief of said department shall
be deemed as removal from rank only, and not from the
department: Provided, further, That the office of [chief
of police and the office of] superintendent of police shall
be considered as one and the same office.”

This section only requires that the person appointed chief
of a police department have had at least five years' service in
said department and since your question indicates that the
person in question has more than twenty years' service as a
member of the department, he would meet this qualification.

In summary hereof, it is my opinion that:

1. A man who has completed twenty years of service as a
member of the police department may be retired because of
physical disability;

2. Such man, if it is agreeable with both himself and the
board of trustees, may be returned to active duty without a
physical examination;

3. The only qualification for a chief of police in either
Evansville or Michigan City is five years' service in said de-
partment, and this requirement is met according to your
question.

OFFICIAL OPINION NO. 22

April 16, 1964

Hon. Earl F. Landgrebe
State Senator
State Road 130
Valparaiso, Indiana

Dear Senator Landgrebe:

This is in answer to your recent letter wherein you re-
quested my Official Opinion concerning applications for re-