In each of these instances the power to regulate has been expressly stated and detailed standards have been prescribed for accomplishing the regulation.

The only provisions of the Indiana statutes from which any power to regulate flight or commerce could possibly emanate are those set out and discussed above. In light of the preceding discussion these provisions must be regarded as limited, if not by their own express terms, then certainly by necessary implication, to those expressed powers contained elsewhere in the act.

Therefore, it is my opinion that the answers to your questions are as follows:

1. The Aeronautics Commission of Indiana has no authority to regulate the flight of aircraft in or over the State of Indiana.

2. The Commission has no statutory authority to license or regulate intrastate air carriers.

OFFICIAL OPINION NO. 7

April 2, 1963

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

Dear Representative Bodine:

This is in response to your request of March 11, 1963, which reads as follows:

> "As a member of the Indiana General Assembly, I respectfully request an Official Opinion be given on whether each political party in the City of Mishawaka may nominate seven candidates for city councilman-at-large."

The "Roster of State and Local Officials, State of Indiana 1962," page 69, shows that your city is a city of the third class.

The Acts of 1933, Ch. 233, Sec. 9, as amended by the Acts of 1935, Ch. 276, Sec. 1, as found in Burns' (1950 Repl.), Section 48-1220, reads, in part, as follows:

> "The number of members of the common council in cities of the second class, as herein defined, shall be nine [9] and no more; in cities of the *third* and fourth class, as herein defined, shall be seven [7] and no more; and in cities of the fifth class, as herein defined, shall be five [5] and no more; *and such members of the common council shall be known as Councilmen-at-Large, and shall be elected by the electors of the entire city except in cities of the second class,* as herein provided, and such councilmen shall not be elected by wards: Provided, That in cities of the second class there shall be elected in each of the councilmanic districts herein provided one councilman, and the whole city shall elect three [3] councilmen-at-large. *Any city coming within the provisions of this act, for the purpose of carrying out the same, shall by the common council of such city, be divided into districts, to be known as Councilmanic Districts.* The number of councilmanic districts of cities of the second class shall be six [6]; in cities of the *third* and fourth class of five [5] and in cities of the fifth class, shall be four [4]. Each district shall contain, as nearly as possible, an equal number of electors, *and in elections in cities of the second class not more than one [1] councilmanic candidate of any political party or organization shall be named or nominated from either or any one of said districts.*
>
> "On or before March 27, 1934, the common council of *cities* of the second, *third,* fourth and fifth *classes, shall, by ordinance, establish councilmanic districts as herein provided and the nomination of candidates and the election of members of the common council in the year 1934 and each election thereafter shall be in accordance with the provisions of this act and the laws governing primary and general elections.*
>
> "In cities of the *third* and fourth classes each and every legal voter shall have the right to vote for any seven [7] candidates for the office of councilman, and

> the seven [7] who shall receive the largest number of votes of those cast for candidates for the office of councilman shall be declared elected * * * " (Our emphasis)

It must be noted that the phrase "Councilmen-at-Large" is susceptible of two meanings and this will become evident in this Opinion. Burns' 48-1220, *supra,* provides that all councilmen shall be known as "Councilmen-at-Large" and such usage refers merely to the title of the office. Such phrase has a different meaning when used to define the geographical area from which such councilman is selected.

It will be noted that when the Acts of 1933, Ch. 233, Sec. 9, *supra,* was enacted, the following provision was contained at the end of the first paragraph of said Section 9, namely:

> "Each district shall contain, as nearly as possible, an equal number of electors, and in elections not more than one councilmanic candidate of any political party or organization shall be named or nominated from either or any one of said districts."

It is emphasized that the above proviso in the 1933 Act applied to cities of the second, third, fourth and fifth classes. *However, the Legislature in the Acts of 1935, Ch. 276, Sec. 1, amended the 1933 Act and removed the restriction from cities of the third, fourth and fifth classes and left it in effect only for cities of the second class.* Thus, the law today is as shown in the provisions of Burns' 48-1220, *supra.*

The Attorney General in his 1947 O. A. G., page 42, No. 11, considered the 1933 Act, *supra,* as amended in 1935 and made the following statements as a part of his Opinion on the construction thereof:

> "* * * Thus a reasonable construction of this amendment would be that the legislature in 1935, was merely providing that in all cities of the second, third, fourth and fifth classes, a councilman should be elected from each of the councilmanic districts established in each of such cities, but that the method of election should be different in second class cities.

"This last construction is supported by the provisions of the Acts of 1933 as amended in 1935 (Section 48-1220, Burns' 1933, Pocket Supp.), which specifically provide that any city coming within the provisions of this act for the purpose of carrying out the same, shall, by the common council of such city, be divided into districts to be known as Councilmanic Districts. The number of councilmanic districts of the cities of the second class shall be six; in cities of the third and fourth classes, five; and in cities of the fifth class, four. Each district shall contain, as nearly as possible, an equal number of electors and in elections in cities of the second class not more than one councilmanic candidate of any political party or organization shall be named or nominated from either or any one of said districts. It is further provided that on or before March 27, 1934, the common council of cities of the second, third, fourth and fifth classes shall, by ordinance, establish councilmanic districts as herein provided and the nomination of candidates and the election of members of the common council in the year 1934 and each election thereafter shall be in accordance with the provision of this act and the law governing primary and general elections.

"By these last provisions of the statute in question, it seems evident that the legislature intended to continue the practice of declaration of candidacy for councilman by districts even though candidates are voted on at large in cities of the third, fourth and fifth classes. Otherwise, all of these provisions would be wholly meaningless and surplusage. It is a familiar rule of statutory construction that each provision and word of a statute must be given effect if possible, and it will not be presumed that the legislature intended to put into a statute words which are meaningless (Garvin, Rec. v. Chadwick Realty Corp. (1937), 212 Ind. 499)."

Note: The above 1947 O. A. G. No. 11, *supra*, has been cited in support of the text and form of listing

candidates for city councilmen on ballots by the State Election Board in 1951, 1955 and 1959.

In *"Election Laws of Indiana 1959,"* issued under the authority of the State Election Board, the following statements appear on pages 21 and 22:

> "In cities of the third * * * class there are five districts and seven councilmen to be elected. Five of the candidates are nominated as representing separate districts and two are nominated as representing the city at large, and *each political party may nominate seven candidates, one from each district and two at large,* but the voters of the entire city vote on the candidates from each of the districts and also on the two running at large * * *
>
> *"The names of candidates for each political party shall come on that party's official ballot in the following order where the offices are to be filled, depending on the number of councilmen and the class of the city:*
>
> "Mayor.
> "City Clerk.
> "City Treasurer.
> "City Clerk-Treasurer.
> "City Judge.
> "Councilman-at-large_____District.
> "Councilman-at-large_____District.
> "Councilman-at-large_____District.
> "Councilman-at-large_____District.
> "Councilman-at-large_____District.
> "Councilman-at-large_____District.
> "Councilman-at-large.
> "Councilman-at-large.
> "Councilman-at-large."
>
> (Our emphasis)

"Election Laws of Indiana" 1951 Edition, pages 17 and 18 and "Indiana City and Town Elections" 1955 Edition, pages

18 and 19, both of which were issued under the authority of the State Election Board, contain identical statements to those found in the 1959 Edition, *supra*, quoted above.

In answer to your specific question, it is my opinion that in a city of the third class, such as the City of Mishawaka, each political party has the authority to nominate seven (7) candidates for city councilman-at-large. It is my further opinion that to achieve the total of seven (7) candidates for councilman-at-large each political party in the City of Mishawaka, or any city of the third class, may nominate one (1) candidate for each of the five (5) councilmanic districts and two (2) candidates for city councilman-at-large and the voters of the entire city may vote for the candidates for each of the districts and also the two (2) running at-large.

OFFICIAL OPINION NO. 8

April 10, 1963

Mr. Eugene Garrison
Executive Secretary
Public Employes' Retirement Fund
501 State Office Building
Indianapolis 4, Indiana

Dear Mr. Garrison:

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

> "Chapter 285 of the Acts of 1961 provided for extending to the deputies of county sheriffs offices, in certain counties, a merit status and calling them county policemen. The same Act also qualified them for retirement benefits under a new retirement formula. As deputy sheriffs these employees were covered under the Social Security program and participation in this Social Security program preceded, by a considerable period of time, participation in the new retirement fund benefits.
>
> "Under these circumstances, are such deputies or county policemen entitled under State and Federal