Mr. Edwin K. Steers, Sr.
Member, State Election Board
108 East Washington Street #1108
Indianapolis, Indiana

Dear Mr. Steers:

This is in response to your request of May 21, 1962, for an Official Opinion regarding the number of justices of the peace authorized in a township with a population of not more than 20,000 persons under the provisions of Acts of 1957, Ch. 322, Sec. 4, as found in Burns’ (1962 Supp.), Section 5-130. You include with your request a letter from the Clerk of the DeKalb Circuit Court stating that, at the last primary election, there appeared on both the Republican and Democratic ballots more than one candidate for the office of justice of the peace. The clerk must now certify as to the nomination of the candidates and desires to know whether he should certify one or two candidates for each party as nominated for the office.

The Acts of 1957, Ch. 322, supra, is an act concerning justices of the peace and its effect, among others, is to divide the townships of the state into three classes, basing the classifications on township population. For each class it specifies the number of justices, their salary and provides in some instances for clerical help. Section 4 of the Act, as found in Burns’ (1962 Supp.), Section 5-130, supra, concerns townships having a population, at the last preceding United States census, of not more than 20,000 and, with respect to the number of justices of the peace authorized therein, reads as follows:

“In all townships having a population according to the last preceding United States census of not more than twenty thousand [20,000], there shall not be more than two [2] justices of the peace chosen as now provided by law * * *”

No provision exists in the Acts of 1957, Ch. 322, supra, placing a limitation on the number of justices of the peace in the classification created by Burns’ 5-130, supra, because of
the existence in a particular township of a court of similar jurisdiction (e.g., a municipal or magistrate court). Therefore, my answer to your question is not affected by the existence of such courts.

The Indiana Constitution, Art. 7, Sec. 14, provides as follows:

"A competent number of Justices of the Peace shall be elected, by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law."

Our Supreme Court has held that the above constitutional provision leaves undetermined the number of justices of the peace for each township and therefore, the number is a matter for the determination of the Legislature.

Mosley et al., Justices of the Peace, v. Board of Commissioners of Marion County et al. (1929), 200 Ind. 522, 165 N. E. 244;

Caesar v. DeVault, Township Trustee, etc. et al. (1957), 236 Ind. 487, 141 N. E. (2d) 338.

Burns' 5-130, supra, as above quoted, provides that in the township in question "there shall not be more than two [2] justices of the peace chosen as now provided by law." The language of this section clearly fixes the maximum number of justices in such townships at two. The Supreme Court of Florida, in the case of Wilson v. Crews (1948), 160 Fla. 169, 34 So. (2d) 114, considered language similar to that found in Burns' 5-130, supra, and concluded as follows:

"The language of the amendment 'There shall be not more than five Justice Districts in each county' expressly fixed the maximum number of Districts permitted, but did not fix a minimum number. The expression 'not more than five' as used here means beyond or in excess of five. It does not within itself connote any requirement of a minimum number, nor is there anything in the context of the amendment implying that there shall be a minimum number * * *"
Therefore, I conclude that the language, "there shall not be more than two [2] justices of the peace chosen as now provided by law" appearing in Burns' 5-130, supra, authorizes the maximum number of two justices of the peace, but does not prohibit the establishment of but one office of justice of the peace in the township.

An examination of all of the provisions of Acts of 1957, Ch. 322, supra, discloses the maximum number of justices of the peace in the class created by Burns' 5-130, supra, but fails to place authority with any officer or governmental unit to regulate the number of such justices.

The Acts of 1913, Ch. 308, Sec. 1, as found in Burns' (1946 Repl.), Section 5-101, provides in part as follows:

"The number of justices of the peace in each township shall be regulated by the board of county commissioners of the county by proper order of record, but the number shall not exceed two for each township, and one in addition thereto for each incorporated town therein, and one in addition thereto for each incorporated city therein, and authenticated copies of such order shall be furnished by the auditor to the clerk of the circuit court * * *"

The remaining portion of Burns' 5-101, supra, concerns the number of justices of the peace in certain townships, depending on the location therein of a city of a certain population. Both that part of the quoted portion concerning the maximum number of the justices of the peace and the unquoted portion have been superseded by subsequent acts of the Legislature including the Acts of 1957, Ch. 322, supra. The first statement in Burns' 5-101, supra, respecting the regulation of the number of justices of the peace is the only existing expression of the Legislature relative to fixing the number of justices of peace for a township.

It should also be noted that Burns' 5-101, supra, was a statute which fixed the maximum number of justices of the peace and authorized the board of county commissioners to regulate the number. In so doing, the Legislature used the language "the number shall not exceed two." This language is almost identical to and of the same import as the language
in Burns' 5-130, supra, which states "there shall not be more
than two justices." This use of almost identical language by
the Legislature in an earlier statute to import the meaning of
a maximum number coupled with a power to regulate a lesser
number adds force to my conclusion previously stated that the
language in the statute in question creates a maximum num-
ber of two justices, and also authorizes the establishment of
only one justice.

In Mosley et al., Justices of the Peace v. Board of Commis-
sioners of Marion County et al. (1929), 200 Ind. 522, 165 N.
E. 244, the court stated as follows:

"In the act of 1913, (§ 1856 Burns 1926), providing
for the number of justices of the peace to be regulated
by the board of commissioners of the county by proper
order of record, certain statutory provisions are made
as to number. Chapter 117 of the acts of 1925 was
enacted in connection with the law providing for the
creation of municipal courts in certain counties. The
regulation by the board of county commissioners of the
county of the number of justices of the peace in each
township, by proper order of record, must be in accord
with the statutory provisions therefor."

In an Official Opinion of this office, which is 1951 O. A. G.,
page 14, No. 6, the Attorney General was asked his opinion as
to the number of justices of the peace to which New Albany
Township of Floyd County was then entitled. It was con-
cluded that the Acts of 1947, Ch. 319, which contained the
classification for which said township was included, had no
provision limiting the number of justices. The Opinion con-
cluded as follows:

"* * * Therefore, the number of Justices of the
Peace and Constables in New Albany Township is
determined by a general statute on that subject which
provides for two Justices of the Peace, plus one addi-
tional Justice for each incorporated city and town con-
tained in the township. The number of Justices of the
Peace and Constables are to be regulated by the Board
of County Commissioners pursuant to Section 1 of
Chapter 308 of the Acts of 1913, same being Burns
5-101."
In addition to the above authorities, which hold that the board of county commissioners has the power to regulate the number of the justices of the peace in a township where only the maximum number is specified by the Legislature, I should point out that the Acts of 1957, Ch. 322, supra, should be construed in connection and in harmony with the existing law and as a part of a general and uniform rule of jurisprudence.

26 I. L. E. Statutes, § 128.

The following general rule, as stated in 26 I. L. E. Statutes, § 130, is also applicable:

“Statutes which relate to the same thing or general subject matter are in pari materia and should be construed together, although they have been enacted at different times, and by different Legislatures, and contain no reference to one another, provided they are consistent with each other.”

Therefore, in answer to your question, it is my opinion that, in townships having a population of not more than 20,000 and where the number of justices of the peace is fixed at no more than two by the provisions of Burns’ 5-130, supra, the regulation of the number of the justices of the peace is fixed in the board of county commissioners pursuant to Burns’ 5-101, supra. Applying this conclusion to your question, it is my opinion that it is the duty of the Clerk of the DeKalb Circuit Court to determine the number of justices of the peace fixed by the board of county commissioners for the township in question and certify as nominated a candidate from each party for each office of justice of the peace so created.