it would, therefore, appear that the court fixes or determines the rate of interest to be charged, but the treasurer computes the amount of interest to be charged, based upon such rate.

In view of the above and foregoing it is my opinion that your questions should be answered as follows:

1. After the Order Determining Value of Estate and Amount of Tax has been entered, interest should be charged on any unpaid inheritance tax at the rate of 10 per cent per annum, provided eighteen months have elapsed from date of decedent's death.

2. When both inheritance tax and interest thereon are due, any partial payment made must be applied first to the satisfaction of interest before any part of such payment is applied to principal.

3. It is the duty of the county treasurer to compute the interest due on the tax.

________________________

OFFICIAL OPINION NO. 18

March 9, 1962

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in answer to your request for an Official Opinion concerning a contract between a county and a consulting engineering firm in connection with highway improvement.

Your questions are stated as follows:

“1. Would the specific instance, namely a contract at 8 per cent under date of 2-11-60 be superseded by the contract at 5 per cent dated 2-23-60?

“2. Can there be two valid contracts covering the same subject matter at different rates of compensation?”

79
OPINION 18

Your questions arise from the following fact situation as indicated by your letter of December 18, 1961, to this office. The Clay County Commissioners executed an agreement for engineering services with an engineering firm on February 11, 1960. The agreement bore the following provision pertinent to the compensation:

"* * * we hereby state that the fee for such services on the above named project shall not exceed 8% of actual construction cost for plans and specifications * * *. The 8% fee to include the 5% fee shown on the contract form for the State and the extra 3% to cover cost of extra services in connection with the design not covered by the State Contract * * *.”

On February 23, 1960, the commissioners executed another contract with the engineering firm upon a form agreement supplied by the State of Indiana Highway Commission, and used on all occasions when the county seeks the federal government’s participation in the cost of public road or bridge construction. This agreement is subject to the State Highway Commission’s approval. It was concerned with the same subject matter as the agreement of February 11, 1960, to wit: consulting engineering services for the proposed construction of a county road bridge over Billy Creek in Clay County. The pertinent clause concerning the compensation in this second agreement of the parties reads as follows:

"* * * The COUNTY for and in consideration of the rendering of the engineering services, herein enumerated, agrees to pay to the ENGINEER a fee in an amount, as set out below, for the following items of work expressed in percentage of the contract bid price of the construction contract as awarded by the STATE. * * *

"Item 1. (If Survey furnished by ENGINEER) Fee 5% * * *.”

Additional information has been received that the 3 per cent fee not included or contemplated in the second contract, which is approved by the state, is payment for services in connection with the acquisition of right of way.
To aid in answering your first question, I submit from 17 C. J. S. Contracts, § 395, the following:

"A contract complete in itself will be conclusively presumed to supersede and discharge another one made prior thereto between the same parties concerning the same subject matter, where the terms of the latter are inconsistent with those of the former so that they cannot subsist together. However, deviations or changes in a contract do not necessarily abrogate it or imply its abandonment, and where it is claimed that by reason of inconsistency between the terms of a new agreement and those of the old the old one is discharged, the fact that such was the intention of the parties must clearly appear. Where the contracts may stand together a subsequent will not supersede a prior one. A new contract with reference to the subject matter of a former one does not supersede the former and destroy its obligations, except in so far as the new one is inconsistent therewith, when it is evident from an inspection of the contracts and from an examination of the circumstances that the parties did not intend the new contract to supersede the old, but intended it as supplementary thereto * * *.”


In an attempt to ascertain the intent of the parties to a contract, the courts have consistently applied the rule that the intent is "* * * gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed * * *.” 17 C. J. S. Contracts, § 296.

See: Spickelmier Fuel and Supply Co. v. Thomas et al. (1924), 81 Ind. App. 604, 144 N. E. 566.

In order to hold that the first contract of February 11, 1960, was superseded by the later contract of February 23, 1960, it
must be determined from the language of the two contracts, that the clauses of said contracts setting the fee to be charged, are inconsistent and that a clear repugnancy exists. However, from the contracts involved here, it is apparent that the parties intended the writings to express different percentage fees, and it is also apparent that the parties did not intend for this differential to imply an inconsistency. In fact, the parties expressed in the first agreement that, "* * * The 8% fee to include the 5% fee shown on the contract form for the State and the extra 3% to cover cost of extra services * * * not covered by the State Contract * * *." Here, the parties were cognizant of the fact that there was to be a second contract on a state form and only the 5 per cent fee would be expressed on said form. They acknowledged the fact that the 3 per cent fee to cover the cost of extra services would not be expressed in the second contract upon the state form, but only in the first.

Where several writings or instruments are made as part of one transaction, an applicable general rule of construction states:

"* * * they will be read together, and each will be construed with reference to the other. This is true, although the instruments do not in terms refer to each other. So if two or more agreements are executed at different times as parts of the same transaction they will be taken and construed together."

17 C. J. S. Contracts, § 298.

See also: Wallace v. Mertz, Administrator et al. (1927), 86 Ind. App. 185, 156 N. E. 562.

In answer to your first question, it is my opinion that the execution of the contract of February 23, 1960 was contemplated as being a part of and supplementary to the contract of February 11, 1960, which would not be superseded by the later contract.

I am further of the opinion that the answer to your first question also answers the second question.