sistent with the salary schedule adopted by the School Board and in force and effect.

The later amendments to the statute, above referred to, only concerned the number of days, increasing the sick leave for the first year from seven (7) days to ten (10) days and increasing the accumulative sick leave from sixty (60) days to ninety (90) days. The ten (10) days' sick leave provision was the subject of a further Official Opinion of this office, being 1959 O. A. G., page 244, No. 52, which is in accord with the earlier Official Opinion above referred to on the question here presented.

I reaffirm the conclusions reached in the two foregoing Official Opinions, and I am of the opinion the sick leave provisions of said statute only constitute a minimum and that additional sick leave, both as to number of days per year or total accumulative days, may be increased by proper official action of the school corporation, which must be consistent with the salary schedule adopted by the school board.

It would not be proper for this office to express an opinion as to how many additional days of sick leave could be granted. This is an administrative problem to be resolved in the discretion of the school officials. Like any other exercise of discretionary power by a public official, it is only subject to review by a court in the event of an abuse of such discretionary authority.

OFFICIAL OPINION NO. 4

January 4, 1962

Hon. Charles O. Hendricks
Secretary of State
201 State House
Indianapolis, Indiana

Dear Mr. Hendricks:

This is in answer to your recent request for an Official Opinion on four questions pertaining to the method of obtaining service of process for actions growing out of an accident or collision on nonresident operators and owners of motor vehicles using Indiana streets and highways. Your questions,
as indicated in your letter, involve a consideration of the Acts of 1881 (Spec. Sess.), Ch. 38, Sec. 61a, as added to by Acts of 1961, Ch. 342, Sec. 1, and found in Burns’ (1961 Supp.), Section 2-808a and the Acts of 1943, Ch. 145, Sec. 1, as amended and found in Burns’ (1961 Supp.), Section 47-1043.

“1. Since the 1961 Act does not specifically repeal the former Act, does it supersede it in all matters of conflict between the two, but leave the 1959 Act in full force and effect as to the rest of its provisions?

“2. If the answer to Query 1 (one) is in the affirmative, does this office have any duty other than to accept and record the receipt of summons and complaints?

“3. Under the previous Act, all summons, notices and papers were issued to the Marion County Sheriff, who served them to this office. Does the new Act set up a different procedure in that clerks of courts simply mail the summons and complaints to this office, or the attorney for the plaintiff delivers it to this office, and in both instances, accompanies said papers with a $2.00 fee? If your answer to this query is in the affirmative, when is a case commenced, with reference to the statute of limitations?

“4. Does this office accept and record the receipt of any such summons purportedly served under the authority of the 1961 Act, if the same are served by the Sheriff of Marion County or any other County? If such process is so served, does this office, under the 1961 Act, have any duty other than to record the receipt of the same?”

Each of the foregoing statutes, namely, Burns’ 2-802a, supra, and Burns’ 47-1043, supra, pertain to the method to be employed in obtaining service of process for actions growing out of an accident or collision on nonresident operators and owners of motor vehicles who have used and/or are using, Indiana streets and highways. A line by line examination and comparison of these two sections shows that they not only concern the same subject matter and are similar in expression,
but that Burns’ 2-808a, supra, as added in 1961 is almost a paraphrase and elaboration of Burns’ 47-1043, supra, as amended by the 1959 Legislature.

An examination of the Engrossed Senate Bill No. 74 (which eventually became Burns’ 2-808a, supra), reprinted March 2, 1961, and the Journals of the Senate and House of the General Assembly, will show that the Senate Bill Digest recited:

“This bill provides for the amendment of the law providing for service on nonresident motorists, by providing for service through the Secretary of State or the Administrator of the Estate of a nonresident, deceased tort feasor.”

The same sources of information will reveal that House Judiciary Committee “A” reported the said Senate Bill No. 74 back to the House with the inexplicable recommendation that the bill be amended by striking out the last six (6) lines thereof, and when so amended, that the bill do pass, the said last six stricken lines which read as follows:

“The provisions of this section shall also apply to residents of this state who depart from the state subsequent to an accident or collision and remain absent therefrom for thirty days continuously, whether such absence is intended to be temporary or permanent, and to any executor or administrator of such residents.”

From the foregoing considerations it may initially be assumed that, as introduced, and as passed by the Senate, Senate Bill No. 74 was intended to entirely supersede, improve, and broaden the applicability of the subject matter provisions of Burns’ 47-1043, supra, passed in 1959. However, the recommended provisions were so struck.

It is, however, fundamental that statutes relating to the same thing or general subject matter are in pari materia and should be considered together, although they have been enacted at different times, and by different Legislatures.

Board of Commissioners of County of Marion v. Board of School Commissioners of City of Indianapolis (1960), 130 Ind. App. 506, 166 N. E. (2d) 880;
In 26 I. L. E. Statutes § 130, pp. 340, 341, it is said:

“All statutes relating to the same subject matter should be so construed with reference to each other that effect may be given to all the provisions of each, if this can be done by any fair and reasonable construction, so as to produce a harmonious system, if possible; the later of two statutes covering the same subject matter is controlling as to any conflicting provisions.”

The rule has been applied with particularity as to statutes whose subject matter concerns service of process against non-resident motorists.


It is therefore my opinion in answer to your first question that although the 1961 statute does not specifically repeal the 1959 provisions, it does supersede the 1959 provisions in all matters covered in both statutes and which are in conflict with each other. As to those matters which are contained in the 1959 Act, and not covered in the 1961 Act nor in conflict therewith, such provisions of the 1959 Act are still in force and effect.

In the consideration of your second question, Burns’ 2-808a, supra, appears to have provided a change of procedure in the service of process from that provided in Burns’ 47-1043, supra. While the Secretary of State is deemed to be the appointed attorney of the nonresident for purposes of service of process under both acts, under Burns’ 2-808a, supra, actual service on the defendant or the defendant’s representative may be made by or on behalf of the plaintiff by registered mail with return receipt requested, meaning by the plaintiff himself, or on plaintiff’s behalf as by plaintiff’s attorney. Burns’ 2-808a, supra, also allows for an alternative method of actual service upon such defendant personally, and such alternative method appears to anticipate actions taken thereupon by plaintiff or by plaintiff’s attorney upon plaintiff’s behalf. It is my opinion,
therefore, in answer to your second question, that the duty 
here of the Secretary of State is limited to the receipt and 
recording of such service, by any such method, upon him.

Turning to your third question, Burns’ 2-808a, *supra*, speaks 
in the second and fourth paragraphs, of service of summons 
upon the Secretary of State by *mailing* a copy thereof or by 
*personally delivering* a copy thereof to his office.

It is, therefore, my opinion, in answer to your third ques-
tion, that under Burns’ 2-808a, *supra*, it is immaterial whether 
such service upon the Secretary of State is had by mailing or 
personal delivery by the plaintiff or his attorney, or by the 
issuing clerk, or by a sheriff who can make lawful return 
thereon. The crux of the matter is that the plaintiff must be 
in a position to properly execute an affidavit of compliance 
with the statutory provision relating to service of process for 
filings with the court in which the action is pending. Burns’ 
2-808a, *supra*, specifically provides that the mailing or the 
personal delivery of a copy of the summons be accompanied 
with a fee of two dollars ($2.00).

In answer to your subordinate question relating to the run-
ning of the statute of limitations, under the circumstances of 
Burns’ 2-808a, *supra*, it would appear that the case would be 
commenced upon the issuance of summons, inasmuch as the 
statute does not anticipate service upon the Secretary of State 
or the nonresident defendant solely by means of a police officer, 
such as a sheriff.


In answer to your fourth question, as considered above, 
service of process by the Sheriff of Marion County or such 
other sheriff who can lawfully make due return thereon, should 
be received and recorded as are summons in the case of mail-
ing or such other personal delivery, each of which should be 
accompanied by the requisite fee of two dollars ($2.00).

In summary of the foregoing where the 1961 Act is in con-
flict with the 1959 Act the 1961 provisions control and where 
the 1961 Act fails to cover areas covered by the 1959 Act, such 
1959 provisions stand in full force and effect; that the duty of 
the Secretary of State under the 1961 Act is limited to the
receipt and recordation of service of summons however made upon him; that it is immaterial under the 1961 Act as to the method employed in obtaining service of summons upon the Secretary of State as long as such service is made with the filing fee of $2.00, and can be proven to the satisfaction of the court in which the action is filed; that service of process by the Sheriff of Marion County or such other sheriff who can lawfully make due return thereon should be received and recorded as summons in the case of mailing or by personal delivery.

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OFFICIAL OPINION NO. 5

January 5, 1962

Hon. Paul J. Bitz
State Senator
514 Lewis Avenue
Evansville, Indiana

Dear Senator Bitz:

This is in response to your recent letter requesting my Official Opinion upon the following questions:

1. May the Township Trustee arbitrarily pay an amount (below the normal rate charged by the hospital) for each day's hospitalization of a Township indigent or must he pay the established hospital rate?

2. If a person has been classified as a Township indigent and on the Township Trustee's Relief Roll, has that Township Trustee the authority to refuse such indigent hospitalization at the Township's expense?

3. Has the Township Trustee the authority, in cases of Township indigents, who were injured in that Township as a result of a fight or other misdemeanor on their part, such as injury resulting from being drunk, the right to refuse hospitalization at Township expense if the injured person was on that Township Trustee's Relief Rolls at the time of such injury? What if the injury should occur in some other Township?

4. May the Township Trustee contract at an agreed price per day that he will pay for each indigent during