struction, the unchanged portions of the section continue in force with the same meaning and effect after the amendment as they had before.

> Thompson *et al.* v. Mossburg *et al.* (1923), 193 Ind. 566, 139 N. E. 307;
>
> Worth v. Wheatley (1915), 183 Ind. 598, 108 N. E. 958.

Moreover, any attempt by the Legislature, by an original or amendatory act, to provide qualifications for the office of justice of the peace in addition to those prescribed in the Indiana Constitution would be beyond its constitutional power under the ruling in In re Petition of Justice of the Peace Assn. of Indiana, Inc., *supra.*

Therefore, in answer to your question, it is my opinion, based on the above-cited ruling of our Supreme Court, that the qualifications for the office of justice of the peace, as re-enacted by the 1959 Legislature and found in Burns' 5-132, *supra,* are unconstitutional and void and it is not necessary for any person to have one of such qualifications to be eligible for appointment as a justice of the peace.

OFFICIAL OPINION NO. 52

December 14, 1960

Hon. William P. Birchler
State Representative
Armistice Hill
Cannelton, Indiana

Dear Representative Birchler:

Your letter requesting an Official Opinion construing Burns' (1956 Repl.), Section 9-726 and (1959 Supp.), Section 9-2227 and Burns' (1946 Repl.), Section 4-2402, has been received. The specific question you ask is:

> " 'At what rate per day are fines imposed by Justice of the Peace Courts and City Courts, to be laid out by imprisonment in the County Jail.' "

The answer to this question requires a comparative reading and construction of the above three sections, as well as of certain other enactments relating to the same subject matter. It is advisable, therefore, that I set forth the statutory provisions to be considered.

In 1905, a comprehensive act concerning public offenses was enacted, being Acts of 1905, Ch. 169. This act contains certain general provisions relating to the imprisonment of persons for failure to pay fines. It also contains specific provisions relating to the same subject matter, but as applied to justices of the peace.

In the same year, the General Assembly enacted as Acts of 1905, Ch. 129, Sec. 215 *et seq.*, legislation creating city courts and conferring jurisdiction and powers upon such courts.

The pertinent provisions of the above mentioned acts are set out below. The Acts of 1905, Ch. 169, Sec. 84, as found in Burns' (1956 Repl.), Section 9-724, provides in part:

> "Whenever judgment shall be rendered for a fine it shall be a part of such judgment that the defendant stand committed until such fine be paid or replevied. * * *"

Section 85 thereof, as found in Burns' (1956 Repl.), Section 9-725, provides in part:

> "Whenever a person is adjudged guilty of a misdemeanor or felony, and his punishment is by fine or by fine and imprisonment, the judgment shall be that he stand committed until such fine is paid or replevied; * * * Provided, That any defendant imprisoned under the provisions of this act may be released therefrom as now provided by law. * * *"

Section 86 thereof, as found in Burns' (1956 Repl.), Section 9-726, provides as follows:

> "If such defendant do not immediately pay or replevy such judgment and costs the justice shall commit him to jail, there to remain one [1] day for each dollar of such fine and costs so adjudged against him."

The above provisions appear in the original act under a subheading entitled "Examination or Trial by Justice of the Peace." It can be noted that although Section 86, being Burns' 9-726, *supra,* mentions only justices of the peace, it is applicable to city court judges by virtue of Section 216 of the Acts of 1905, Ch. 129, as found in Burns' (1946 Repl.), Section 4-2402, hereinafter noted.

The provisions of Acts of 1905, Ch. 169, relating to the subject matter in a general way, are found in the original act under a subheading entitled "Judgment." Section 297 of this Act, as found in Burns' (1956 Repl.), Section 9-2222, provides in part:

> "When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed to the jail of the county until the same are paid or replevied. * * *"

Section 302, as amended and as found in Burns' (1959 Supp.), Section 9-2227, as originally passed in 1905, provided that:

> "Any person imprisoned for failure to pay or replevy any fine or costs may be ordered to be discharged by the court, or by the judge thereof, after being imprisoned one [1] day for every dollar of the fine and costs, if it appear by satisfactory proof that such person is unable to pay or replevy the same; but execution may issue against the property of the defendant, as in case of other judgments."

The Acts of 1959, Ch. 20, Sec. 1, amended the above section, insofar as the dollar amount is concerned, changing the words, "one [1] day for every dollar" to read "one [1] day for every five dollars [$5.00]," but leaving the remainder of the section unchanged.

Section 303 of the 1905 Act, as amended and as found in Burns' (1956 Repl.), Section 9-2228, provides in part:

> "Whenever a person is adjudged guilty of a misdemeanor or felony, and his punishment is by fine, or by fine and imprisonment, the judgment shall be that he

stand committed until such fine is paid or replevied; * * *"

This section originally contained a proviso that any defendant imprisoned under its provisions could be released as provided by law which was deleted from the section by Acts of 1927, Ch. 132, Sec. 15.

The Acts of 1905, Ch. 129, Sec. 215 *et seq.*, created the city courts. Section 216 thereof, as found in Burns' (1946 Repl.), Section 4-2402, provides in part:

> "* * * He shall have and exercise within the county in which such city is located the powers and jurisdiction now or hereafter conferred upon justices of the peace in all cases of crimes and misdemeanors, except as otherwise herein provided. He shall have exclusive jurisdiction of all violations of the ordinances of such city. In all cities of the first and second and third class he shall have exclusive jurisdiction of the trial of all misdemeanors constituting violation of highway traffic ordinances of such city, and of violations of the highway traffic laws of the state of Indiana; but this act shall not abridge the right of appeal from the judgments of said court to either the circuit or criminal courts of the state, as such right of appeal now exists in law. He shall also have original concurrent jurisdiction with the circuit court or criminal court in all cases of petit larceny and all other violations of the laws of the state where the penalty provided therefor can not exceed a fine of five hundred dollars [$500] and imprisonment in the jail or workhouse not exceeding six [6] months, or either or both: * * *"

Section 217, as found in Burns' (1946 Repl.), Section 4-2403, contains a provision relating to the penalty imposed for violation of city ordinances and imprisonment by a city court judge for failure to pay same. It reads in part as follows:

> "* * * Any person having been adjudged guilty of a violation of an ordinance of such city, and committed therefor, may be discharged by such court or judge after such defendant has been imprisoned, in addition

> to the term of imprisonment, if any, adjudged against him as a part of the sentence, one day for every dollar of such fine and costs, if it appear to such court or judge that such defendant is unable to pay or replevy such fine and costs, but an execution may issue against the property of the defendant as in the case of other judgments. * * *"

With the exception of cases involving municipal ordinance violation, therefore, it is clear that by virtue of Burns' 4-2402, *supra,* the powers of a city judge are the same as those held by justices of the peace, insofar as the subject here considered is concerned.

A law or a provision specifically covering the same subject that is covered in a general law, or any part of a general law, may create an exception to the general law or provision.

> Northern Indiana Power Co. v. West (1941), 218 Ind. 321, 32 N. E. (2d) 713.

In this regard, a comparative reading of the above noted sections makes it apparent that the Legislature in 1905 intended Burns' 9-2222, 9-2227 and 9-2228, *supra,* to be inapplicable to justices of the peace and city courts. This premise is substantiated by the fact that the Legislature duplicated much of the language in the sections considered. The provisions applicable to justice of the peace and city courts are in many material places virtually identical with some of those covering the subject matter in general. Had the 1905 General Assembly intended the general provisions to apply to justice of the peace and city courts, it would not have treated such subject matter other than generally. In my opinion, therefore, Burns' 9-2222, 9-2227 and 9-2228, *supra,* as originally enacted, applied only to courts of superior jurisdiction, such as circuit, superior and criminal courts, whereas Burns' 9-724, 9-725 and 9-726, *supra,* applied to courts of inferior jurisdiction, such as justice of the peace and city courts, except insofar as municipal ordinance violations were concerned. Jurisdiction of such violations was and is exclusive in city courts and imprisonment for failure to pay penalties for such violations is specifically covered by Burns' 4-2403, *supra.*

It is further clear that as originally passed, Burns' 9-2227, *supra,* could not apply to justices of the peace or city court judges, because after having served one [1] day for every dollar of a fine imposed by such inferior courts, except as to municipal ordinance violations in the case of city courts, a person was entitled to discharge as a matter of right under Burns' 9-726, *supra,* whereas under Burns' 9-2227, *supra,* as originally passed, the person after having served time at the same rate, could be released only after a showing of financial inability and only then in the court's discretion.

The above discussion is not determinative of your question, however, since the original Burns' 9-2227, *supra,* was amended in 1959 as above noted. The question then is whether the Legislature thereby brought justice of the peace and city courts within the scope of Burns' 9-2227, *supra.*

It is well established that statutes must be held to mean what their language plainly expresses. Supposed defects in a statute cannot, under the guise of construction, be remedied by supplying omissions or annexing new or different provisions so as to limit or extend the operation of its language, no matter how desirable the results so produced may be.

> Meade Electric Co. v. Hagberg (1959), — Ind. —, 159 N. E. (2d) 408;
>
> Taelman v. Board of Finance of School City of South Bend *et al.* (1937), 212 Ind. 26, 6 N. E. (2d) 557.

Unless it is clearly shown, therefore, that the 1959 General Assembly intended to broaden the scope of Burns' 9-2227, *supra,* and that it did so pursuant to law, that section may not be held to apply to justice of the peace or city courts. It appears that the Legislature did not so intend, since the title of the 1959 amendatory act restricts its effect to Burns' (1959 Supp.), Section 9-2227, as follows:

> "AN ACT to amend section 302 of an act entitled 'An Act concerning public offenses,' approved March 10, 1905."

Article 4, Section 21 of the Indiana Constitution requires that in order to effect amendment of a section of an act, the title of the amendatory act must refer to the section to be

amended and the section, as amended, must be set out in full in the amendatory act. In O'Donnell v. Krneta (1958), — Ind. —, 154 N. E. (2d) 45, this constitutional provision is treated at length and the court there pointed out that the purpose of the provision is to prevent surprise or fraud, by including in the body of an enactment matter not referred to in the title. The title, therefore, is required to apprise members of the Legislature and the public of the subject matter contained in the body of the act. In this regard the Supreme Court of Indiana in this case quoted from People *ex rel.* Drake v. Mahaney (1865), 13 Mich. 481, as follows:

> " 'The mischief designed to be remedied was the exactment(sic) of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect; and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phrase for another, in an act or section which was only referred to, but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation.' * * *"

In view of the above, it would seem clear that the title of the 1959 amendatory act limited itself solely to the amendment of Burns' 9-2227, *supra,* as originally passed. To now hold that the section, as amended, applies even by implication to other sections in the 1905 Act, which sections were not mentioned in the 1959 Title, would be to violate the spirit, as well as the letter of the constitutional provision. Such construction would be to confer discretionary powers upon justices of the peace and city court judges, which powers, except as to city ordinance violations in the case of city judges, did not exist before the amendment. Such a change in the law should, and must be accomplished in the manner prescribed by Article 4, Section 22 of the Constitution. If the powers of city judges and justices of the peace are to be altered by

amendment it must be done by amendment of the sections specifically applicable to those inferior courts. Otherwise, the public and members of the Legislature might be misled as to the application of the provisions here considered.

Amendments by implication are possible in certain instances, but only if the amendatory act fulfills all constitutional requirements as to title and subject matter.

> State v. LaRue's, Inc. (1958), — Ind. —, 154 N. E. (2d) 708.

Further, as the O'Donnell case, *supra,* points out, amendments such as that above considered can effect amendment by implication only where the provisions in question are brought irreconcilably into conflict by virtue of such amendment. No conflict exists between the amended general provision here under consideration and the specific provisions relating to justice of the peace and city courts for the reason that they existed in their original form independent of each other. The 1905 General Assembly saw fit to separately designate and circumscribe the powers of the courts, distinguishing between those of superior and those of inferior jurisdiction. The 1959 General Assembly did not expressly or impliedly effect any change in the powers theretofore conferred upon the respective courts.

I am of the opinion, therefore, that city court judges may order a person committed for failure to pay a fine and costs assessed for violation of a city ordinance until same is paid or replevied, but that such judge may order the person discharged after such person has served one [1] day for every dollar of such fine and costs, if it appear to the court that such person is unable to pay or replevy them. In all other matters relating to imprisonment for failure to pay fines, the powers of city judges are identical with those of justices of the peace. Such justices and judges must, therefore, order a person convicted of a criminal offense, who does not immediately pay or replevy a fine and costs imposed therefor, to be imprisoned, which imprisonment may not exceed one day for every dollar of such fine and costs. As pointed out in 1951 O. A. G., page 121, No. 42, such confinement is not restricted to the county jail, but may be ordered to be served in the Indiana State Farm.