the two statutes, I believe that this Opinion contains the only variations which are of material importance.

OFFICIAL OPINION NO. 2

January 5, 1960

Honorable Harold W. Handley
Governor of Indiana
206 State House
Indianapolis 4, Indiana

Dear Governor Handley:

This is in reply to your request for an Official Opinion in which you ask whether the provisions of Acts of 1959, Ch. 107, apply to “recreation personnel employed and working under a Municipal Board or Commission.”

Acts of 1959, Ch. 107, is an amendatory act which amends and adds to the Acts of 1933, Ch. 233, as amended. The 1933 Act is an act concerning the classification and government of civil cities, and Acts of 1959, Ch. 107, supra, concerns, in the main, the elective officers of a city, their salaries, and the creation of city courts. However, there is a provision in the Acts of 1959, Ch. 107, supra, which is pertinent to your question. A new section numbered 20a was added to Acts of 1933, Ch. 233, supra, by the Acts of 1959, Ch. 107, Sec. 6. Subsection (b) of this new section, as found in Burns’ (1959 Supp.), Section 48-1233, subsection (b), reads as follows:

“(b) The salaries of each and every appointive officer, employee, deputy, assistant and departmental and institutional head shall be fixed by the mayor subject to the approval of the common council: Provided, that the provisions of this subsection [section] shall not apply to the manner of fixing and the amount of compensation paid by any city to the members of the police and fire departments. The common council may reduce but in no event is the common council authorized to increase any salary so fixed by the mayor. All such salaries shall be fixed on or before the first day of August of each year for the next succeeding fiscal year
and shall not be increased or reduced during such fiscal year. Wherein the provisions of this subsection are in conflict with the provisions of section 10 of chapter 233 of the Acts of the Indiana General Assembly of 1933, as the same has been amended, such provisions shall be deemed to amend the provisions of section 10."

The effect of the above subsection (b) was discussed in 1959 O. A. G., page 331, No. 64, with relation to Acts of 1933, Ch. 233, Sec. 10, as amended, and as found in Burns' (1950 Repl.), Section 48-1222. In that Opinion, I pointed out that our courts have held that, at the time of its passage, Burns' 48-1222, supra, vested in the mayor full power to hire, discharge and fix the compensation of all appointive officers and employees of the administrative and executive branches of the city with the exception of certain employees specifically excepted by its provisions. With respect to the present power of fixing the amount of compensation of appointive officers and employees in executive and administrative departments, operating under special acts enacted prior to Burns' 48-1222, supra, I concluded as follows:

"* * * Inasmuch as Burns' 48-1233, subsection (b), supra, is a later expression of the legislative intent and contains but the two general exceptions to the authority of the mayor to fix salaries of all appointive officials and employees, rather than the several exceptions contained in Burns' 48-1222, supra, it is my opinion that the mayor's power to fix the salaries of such officials and employees is subject only to the exceptions with regard to members of the police and fire departments and his power is no longer limited by the other exceptions as stated in Burns' 48-1222, supra."

However, as a further limitation on a mayor's authority to fix such salaries, it was pointed out that both Burns' 48-1222, supra, and Burns' 48-1233, subsection (b), supra, contain general provisions concerning the fixing of salaries, and I concluded that specific provisions contained in acts passed subsequent to Burns' 48-1222, supra, prevail over the general provisions of both Burns' 48-1222, supra, and Burns' 48-1233, subsection (b), supra.
Therefore, the answer to your question must necessarily relate to the time of the passage of the act under which the governing board of a park and/or recreation department or district is created. If such governing board was created under an act passed prior to the passage of Burns’ 48-1222, supra, the power to fix the salaries of appointive officers and employees of such department or district rests with the mayor, subject to the approval of the common council. Such salaries must be fixed at the time prescribed in Burns’ 48-1233, subsection (b), supra, and shall not be increased or reduced during the fiscal year. However, if specific provisions in acts passed subsequent to Burns’ 48-1222, supra, give the authority to fix salaries of appointive officers and employees to the governing board of a park and/or recreation department or district, then these specific provisions prevail over both Burns’ 48-1222, supra, and Burns’ 48-1233, subsection (b), supra.

Research discloses that the salaries of appointive officers and employees of the following are fixed by the mayor with the approval of the common council:

1. *Department of public parks in a city of the first class.*—Acts of 1919, Ch. 144, as amended, and as found in Burns’ (1950 Repl.), Section 48-5501 et seq. (Acts of 1945, Ch. 32, Sec. 1, amended Burns’ 48-1222, supra, and gave the power to the board of park commissioners in cities of the first class to fix the salaries of employees of such department. However, this exception to Burns’ 48-1222, supra, was omitted in Burns’ 48-1233, subsection (b), supra, and therefore that power now again rests with the mayor subject to the approval of the common council. See 1959 O. A. G., page 328, No. 64.)

2. *Department of public parks in cities of the second class.*—Acts of 1923, Ch. 67, as amended, and as found in Burns’ (1950 Repl.), Section 48-5602 et seq.

3. *Park districts in cities of the second class.*—Acts of 1917, Ch. 68, Sec. 1, as found in Burns’ (1950 Repl.), Section 48-5628.

4. *Public parks in cities of the fourth and fifth classes.*—Acts of 1905, Ch. 129, Sec. 140, as found in Burns’ (1950 Repl.), Section 48-5701.
5. Board of trustees for public parks in cities of the third and fourth classes.—Acts of 1909, Ch. 58, Sec. 1, as found in Burns’ (1950 Repl.), Section 48-5703.

6. Playgrounds and recreation centers in cities of the third, fourth and fifth classes.—Acts of 1925, Ch. 172, as amended, as found in Burns’ (1950 Repl.), Section 48-5901 et seq.

The employees of park and recreational departments created by acts passed subsequent to Burns’ 48-1222, supra, and whose salaries are fixed as noted, are as follows:

1. The board of park trustees in a city of the third class.—Acts of 1937, Ch. 155, as found in Burns’ (1950 Repl.), Section 48-5719 et seq. Salaries are fixed by the board of trustees pursuant to Sec. 7 of said Act, which is Burns’ (1950 Repl.), Section 48-5724.

2. Park districts in cities of the fourth and fifth classes.—Acts of 1939, Ch. 43, as amended, and as found in Burns’ (1959 Supp.), Section 48-5731 et seq. Salaries of employees are fixed by the board of park commissioners pursuant to Sec. 5 of said Act as found in Burns’ (1950 Repl.), Section 48-5735.

3. Department of parks and recreation in cities of all classes.—Acts of 1955, Ch. 311, as found in Burns’ (1959 Supp.), Section 48-5851 et seq. Salaries of all employees are fixed by the board of parks and recreation pursuant to Sec. 216 of said Act, as found in Burns’ (1959 Supp.), Section 48-5852. (This statute was also discussed in 1959 O. A. G., page 328, No. 64.)

4. Auditorium and recreation buildings, grounds and works, in cities of all classes.—Acts of 1933, Ch. 85, as found in Burns’ (1950 Repl.), Section 48-2601. Salaries are fixed by the board of directors pursuant to Sec. 7 of said Act as found in Burns’ (1950 Repl.), Section 48-2607. The specific provisions of this act concerning fixing of salaries prevail over the general provisions in Burns’ 48-1222, supra, although both acts were passed at the same session of the Legislature. See 1959 O. A. G., page 328, No. 64.

Therefore, in conclusion and in answer to your specific question, it is my opinion that the provisions of Acts of 1959,
Ch. 107, Sec. 6, subsection (b), concerning the power of the mayor to fix salaries of city employees subject to the approval of the common council, apply to certain recreation personnel employed by the city depending, as hereinbefore noted, upon the provisions and the time of passage of the Act under which the board or department employing such personnel was created.

OFFICIAL OPINION NO. 3
January 7, 1960

Mr. T. M. Hindman
State Examiner
Indiana State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Hindman:

I am in receipt of your letter requesting my Official Opinion pertaining to a county’s liability in respect to payment of interest on cemetery funds deposited with the county pursuant to Acts of 1915, Ch. 142, Sec. 1, as last amended by Acts of 1959, Ch. 112, Sec. 1, as found in Burns’ (1959 Supp.), Section 21-214. Your letter reads as follows:

"By the provisions of Section 1, Chapter 112, Acts of 1959, which governs the deposit of cemetery funds with a county, the county commissioners are not authorized nor required to expend for the purposes specified in that act more than the interest ‘earned from the loan or investment of such funds.’ This wording was substituted for the former wording found in Section 1, Chapter 142, Acts of 1915, as amended (Burns’ 21-214) which limited expenditures to not more than the interest ‘accruing from such funds.’

"In connection with the wording contained in Chapter 112, Acts of 1959, your official opinion is requested on the following question:

"What will be the county’s future liability for payment of interest on those funds deposited