Thus the statute permits a justice of the peace to question the actions of the township trustee and the township advisory board when he feels that they have not complied with the provisions of the act.

Therefore, it is my opinion that, pursuant to Burns’ 5-137, supra, it is the duty of the township trustee and the township advisory board to furnish a justice of the peace with legal forms and books necessary to conduct his court. Further, it is my opinion that the township trustee and township advisory board have a duty to provide suitable facilities for the operation of this court including a courtroom appropriately furnished and conveniently located, and office supplies including postage stamps in a quantity as shown necessary by the justice of the peace. Law books are also an item necessary for the conduct of a justice of the peace court and should be furnished to the justice by the township. In the event these officers fail to perform the above duties, a justice of the peace may seek their enforcement by application to the judge of the circuit court of the county in which the township is located.

OFFICIAL OPINION NO. 44

December 1, 1960

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

Dear Mr. Hindman:

This is in reply to your request for an Official Opinion to clarify the interpretation of the Health and Hospital Corporation Act of 1951, Ch. 287, Section 26. Your letter presents the following question:

“Does this Act specifically permit the Corporation to establish its own retirement program, as well as permitting the Corporation to participate in the Public Employees' Retirement Fund?”

Your letter further states that the employees of the Health and Hospital Corporation of Marion County now participate in the Federal Social Security program.
The Health and Hospital Corporation of Marion County was created by the Acts of 1951, Ch. 287, as found in Burns' (1960 Supp.), Section 35-902 et seq., as "a distinct municipal corporation" with such usual powers of a municipal corporation as the powers to sue and be sued, contract, condemn real property, levy taxes, and issue bonds. In the case of City of Indianapolis, Clark, Mayor, et al. v. Buckner et al. (1954), 233 Ind. 32, 116 N. E. (2d) 507, the court determined that the creation of such additional municipal corporations for proper purposes was within the wisdom of the Legislature, and that the Legislature had power to create a municipal corporation for the purpose of protecting public health.

The first issue raised by your question is whether Section 26 of the Act (which is also found in Burns’ 35-927, supra) permits the Health and Hospital Corporation to establish its own retirement program. That section reads as follows:

"The Board shall by ordinance provide for a personnel system for compensated employees which contains standardized and orderly procedures common to a merit system. A single personnel system shall be provided and used throughout the Corporation. In establishing the personnel system the Board shall consider and may adopt modern developments in the solution of personnel problems, as illustrated by but not limited to,

1. The establishment of positions and homogeneous classes of positions for purposes of recruiting, personnel operations, and equalization of pay;
2. the establishment and adjustment of scales and rates of pay;
3. the filling of positions by promotion, by recruitment for original appointment, and by transfer;
4. the maintenance of attendance and performance records;
5. the establishment of working conditions, as illustrated by but not limited to, probationary appointments and in-service training, vacations and other leaves of absence with or without pay, and retirement programs;"
6. and, the regulation of temporary and permanent separations from the service.

“Such personnel system shall not include division directors, hospital superintendents, or casual or part-time employees, nor shall interns, residents or physicians and surgeons serving on the medical staff of a hospital be included.

“Nothing in this Act shall prevent the Corporation from participating in the public employees retirement fund under the provisions of Chapter 340 of the Acts of 1945 as amended.” (Our emphasis)

It is a well recognized rule that only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory construction.

Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4502.

As it is stated in 26 Indiana Law Encyclopedia, Statutes, § 101, page 308:

“The construction of a statute is necessary only where the statute is ambiguous and of doubtful meaning, and if the language of a statute is plain and unambiguous there is no occasion for construction to ascertain the meaning of the statute; it must be accepted as the solemn declaration of the sovereign.

“An unambiguous statute must be held to mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted.”

The language of the section in question appears to be clear and unambiguous, and therefore the only rule of construction it is necessary to apply to that section is the rule that words and phrases used in a statute shall be taken in their plain, or ordinary and usual, sense.

2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns’ (1946 Repl.), Section 1-201.

Section 26 of the Act requires the board of trustees of the Health and Hospital Corporation to provide by ordinance for
a personnel system for compensated employees other than
division directors, hospital superintendents, casual or part
time employees, interns, residents, staff physicians and staff
surgeons. The section provides that in setting up such a per-
sonnel system, the board "may adopt modern developments in
the solution of personnel problems, as illustrated by * * * 
the establishment of working conditions, as illustrated by
* * * retirement programs." It is therefore my opinion that,
if the Board so elects, it may adopt retirement programs as a
part of its personnel system. However, those persons excluded
by the statute from coverage by the personnel system would
of necessity not be eligible to participate in any retirement
program set up under the personnel system.

The second issue raised by your question in effect asks
whether the Corporation may also participate in the Public
Employes' Retirement Fund if the Corporation establishes its
own retirement program.

Section 26 expressly provides that nothing in the Health
and Hospital Corporation Act shall prevent the corporation
from participating in the Public Employes' Retirement Fund
under the provisions of Chapter 340 of the Acts of 1945 as
amended, which is found in Burns' (1951 Repl., 1960 Supp.),
Section 60-1601 et seg.

Burns' 60-1619, supra, provides for participation in the
fund by municipalities. (The term "municipality" is defined
in terms broad enough to cover the corporation by Burns'
60-1604, supra, as added by Acts of 1957, Ch. 232, Sec. 1, and
as subsequently amended.) Burns' 60-1619, supra, provides as
follows:

"Any municipality may elect, by ordinance or reso-
lution adopted by the governing body as defined herein
to become a participant in the fund established by this
act.

"A copy of any such ordinance or resolution, duly
certified, electing to join the fund and to make the
required contributions thereto under the provisions of
this act, shall be filed with the board of trustees of the
public employes' retirement fund of Indiana. Such
ordinance or resolution shall designate by departmental,
divisional, occupational or other definable classifica-
tion, the employees who are to become members of the fund. * * *

Burns' 60-1604, supra, defines the term "employee," as it is used in that act, to mean "any person in the employ of a municipality or of any institution, board, commission, office, bureau or any other agency maintained by a municipality," but not to include:

"(d) Employees who are members of other pension or retirement funds or plans, excepting the federal social security program, maintained in whole or in part by appropriations by the state or municipality, or who are presently eligible for membership, or who by reason of their employment will become eligible for membership, in such other pension or retirement funds or plans;"

It would therefore appear that any employees of the Health and Hospital Corporation who are members of or eligible for membership in any pension or retirement fund or plan other than the Federal Social Security program, maintained in whole or in part by appropriations by the corporation, would not be eligible for membership in the Public Employees' Retirement Fund. In the event a retirement program established by the corporation was not maintained in whole or in part by appropriations by the corporation, employees covered by such a program would still be eligible for coverage by the Public Employees' Retirement Fund. Whether employees could participate in both the Public Employees' Retirement Fund and another retirement program adopted by the corporation would therefore be a question of fact to be determined in each particular instance.

Burns' 60-1624, supra, provides that where a municipality is maintaining a retirement fund or otherwise providing retirement benefits for its employees, such employees shall not become members of the Public Employees' Retirement Fund unless the members of such existing fund shall, by affirmative vote of seventy-five per cent of the members thereof, elect to be covered by the Public Employees' Retirement Act. That section further provides:

254
"In any such case, provision shall be made for the transfer of the moneys and securities in the retirement or pension fund or funds, in whole or in part, to the fund established by this act. * * *"

By way of summary I would state that it is my opinion that the Health and Hospital Corporation created pursuant to the terms of Acts of 1951, Ch. 287, supra, may adopt its own retirement program in establishing a personnel system for certain compensated employees, or such corporation may elect to participate in the Public Employes' Retirement Fund. If the retirement program established by the corporation is supported in whole or in part by appropriations of the corporation, then the employees of such corporation cannot also participate in the Public Employes' Retirement Fund.

OFFICIAL OPINION NO. 45

December 5, 1960

Mr. Harold F. Brigham, Director
Indiana State Library
140 N. Senate Avenue
Indianapolis, Indiana

Dear Mr. Brigham:

This is in response to your letter of November 2, 1960, wherein you request an Official Opinion as to whether an individual may simultaneously hold the office of Judge of the Knox City Court and serve as a member of the Knox-Center Public Library Board.

In any question pertaining to the legal right of one individual to hold more than one governmental position such as you have enumerated, the following tests should be applied, namely:

(1) Is each position a "lucrative office" within the meaning of the Indiana Constitution, Art. 2, Sec. 9?

(2) Is such holding in violation of the provision for the distribution and separation of powers provided in the Indiana Constitution, Art. 3, Sec. 1?