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See State v. Springfield Twp. (1854), 6 Ind. 83;
Todd v. Citizens Gas Co. of Indianapolis (1931), 46 F. 2d 855;
General Board v. Robertson (1913), 115 Va. 527, 79 S. E. 1064;
Malone et al. v. Peay et al. (1929), 159 Tenn. 321, 17 S. W. (2d) 901.

It is therefore my conclusion that the State Highway Department is legally obligated to pay for right of way required across lands owned by the Trustees of Purdue University, whether such right of way is acquired by voluntary conveyance from the Trustees or by condemnation proceedings authorized by Burns' 36-2958, supra.

OFFICIAL OPINION NO. 48

August 28, 1959

Mr. Edwin Steers, Sr.
Member, State Election Board
108 E. Washington Street
Indianapolis, Indiana

Dear Mr. Steers:

This is in reply to your letter of August 19, 1959, concerning the establishment of a utility service board pursuant to Chapter 326 of the Acts of 1959, and the applicability of said chapter to "towns" in the State of Indiana. Your letter states:

"The people of the Town of Greendale would like to know whether or not it would be legal under this statute to submit the matter to a vote at the Town Election this fall or whether it will be necessary under the statute for them to wait until the next general election which will be in 1960, which necessarily would be a special election for the town since towns do not hold regular elections in 1960. Further, after reading the Act, there is a question as to whether or not this Act applies to towns."
Chapter 326 of the Acts of 1959, as found in Burns’ (1959 Supp.), Section 54-613, is an amendment to the original Shively-Spencer Act of 1913, which act concerned the establishment and control of all public and municipally owned utilities. Section 1 of said original Act contained a definition section which, with subsequent amendments, is applicable to Burns’ 54-613, *supra*.

The Acts of 1913, Ch. 76, Sec. 1a, as added by Acts of 1955, Ch. 37, Sec. 1, as amended and as found in Burns’ (1959 Supp.), Section 54-105, contains the following definition to be used throughout the act:

“The term ‘municipal council’ as used in this act shall mean and embrace the common council, the board of trustees, or any other governing body of any town or city in the state of Indiana wherein the property of the public utility or any part thereof is located.

“The term ‘municipality’ as used in this act shall mean any city or town of the state of Indiana.”

Burns’ 54-613, *supra*, provides in part as follows:

“In the operation of any utility now owned by any municipality in this state, except cities of the first and second class, or any utility that may hereafter be constructed or acquired by any municipality in this state, except cities of the first and second class, the common council of any such municipality may operate such utility, or it may provide for the operation thereof by a committee of its own members, or it may provide for the operation thereof by a utility service board created in the manner as hereinafter provided: * * *”

In substituting the words “town” and “board of trustees” in the above section of said act, it becomes apparent that said statute is applicable not only to cities but also to any town in the State of Indiana.

In regard to the submission to the voters of the town the question as to whether the board of trustees shall adopt and enact an ordinance providing for the appointment of a utility service board, Burns’ 54-613, *supra*, further provides as follows:

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“* * * At the next general election held thereafter (after sufficient petition), a vote shall be taken in the several precincts of the city on the above question.
* * *” (Our emphasis)

The Indiana Election Code, being the Acts of 1945, Ch. 208, Sec. 2, as found in Burns’ (1949 Repl.), Section 29-2802, defines the term “general election” as follows:

“The words ‘general election’ shall mean and include the election provided to be held in the state on the first Tuesday after the first Monday of November in every even-numbered year.”

This same section also defines the term “town election” and “special election.”

The use of the term “general election” in Burns’ 54-613, supra, rather than the term “town election” or “special election” when such latter terms have been distinguished from a “general election” by definition, indicates a legislative intent to restrict the term used to its expressed meaning, i.e., as defined in the Indiana Election Code.

Furthermore, an examination of the statutes of this state indicates there has been almost a studied effort on the part of the Legislature by appropriate language to specify what kind of an election it intends in certain circumstances. The following are just a few examples of this:

Acts of 1931, Ch. 120, Sec. 3, as found in Burns’ (1950 Repl.), Section 48-7803, regarding the maintaining of a municipal band or orchestra, calls for a “city or town election”;

Acts of 1905, Ch. 129, Sec. 249, as amended, as found in Burns’ (1950 Repl.), Section 48-7201, concerning the establishment of a new municipal utility and the sale of bonds therefor, calls for submission of the question at a “special or general election.”

There are many other statutory provisions like those above, the import being that had the Legislature intended other than the commonly accepted meaning of “general election” in the creation of a utility service board, it would have done so
by the use of a term denoting another type of election as shown above.

It is the county election board and the clerk of the circuit court of the county who are responsible for the procedural aspects of the vote provided for in Burns' 54-613, supra. The county election board and the clerk of the circuit court are not election officials in town elections. See Acts of 1945, Ch. 208, Sec. 161, as amended, as found in Burns' (1959 Supp.), Section 29-4401. This further substantiates the legislative intent that the term "general election" as used in Burns' 54-613, supra, meant the election held in even-numbered years as heretofore set out.

In conclusion, it is my opinion that Ch. 326 of the Acts of 1959, as found in Burns' (1959 Supp.), Section 54-613, supra, does apply to towns; and that the use of the term "general election" in said section refers to the election to be held the first Tuesday after the first Monday of November in every even-numbered year, and does not refer to the next town election or a special election.

OFFICIAL OPINION NO. 49
September 1, 1959

Honorable William E. Babincsak
Indiana State Representative
1856 South River Drive
Munster, Indiana

Dear Representative Babincsak:

This is in reply to your letter requesting my Official Opinion concerning election of town officers and mileage fees of the clerk of the circuit court.

Your first question asks whether the Acts of 1957, Ch. 168, Sec. 1, as it amended the Acts of 1945, Ch. 208, Sec. 165, as amended, and as found in Burns' (1959 Supp.), Section 29-4405, had the effect of requiring that elections of town officers, as well as certain town primary elections, be conducted by the county election board.