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.
Your second question asks whether the clerk of the circuit court may receive mileage for duties performed as an *ex officio* member of the county election board pursuant to the provisions of Acts of 1957, Ch. 319, Sec. 14, as found in Burns’ (1959 Supp.), Section 49-1066.

In order to answer your first question it is necessary to examine the statute concerning town elections which is Acts of 1945, Ch. 208, Sec. 161 *et seq.* Prior to Acts of 1957, Ch. 168, *supra,* the nominees of the two largest political parties were selected at separate town conventions pursuant to Acts of 1945, Ch. 208, Sec. 165, as amended by Acts of 1949, Ch. 25, Sec. 12. This Act reads, in part, as follows:

“The town chairman of each such two [2] parties shall issue a call for a town convention to be held in the town, before the last Saturday in August in each year in which a town election is to be held for the purpose of selecting the nominees for all town officers to be elected at the ensuing town election * * *.”

The Acts of 1957, Ch. 168, Sec. 1, *supra,* as found in Burns’ (1959 Supp.), Section 29-4405, added the following provisos to the above section:

“* * * Provided, That towns of this state having a population of three thousand [3,000] and over, according to the last preceding United States census, shall nominate all officers of such town, pursuant to the laws of the state concerning the nomination of officers of cities, at a primary election, if the boundaries of such towns coincide with the boundaries of precincts in which such town is located: Provided further, That each town of three thousand [3,000] or more population, according to the last preceding United States census, shall pay all the expenses incurred in holding such primary in said town as fixed by law for city primary elections: Provided further, That the above provision for holding a primary to nominate officers in a town having a population of three thousand [3,000] or more, according to the last preceding United States census, shall not be construed to change or modify the laws now governing the holding of conventions and the nomination of officers in towns having a population of
less than three thousand [3,000] according to the last preceding United States census.”

It is apparent that towns having a population of 3,000 or more and coinciding town and precinct boundaries, are, by Burns’ 29-4405, *supra*, required to have primary elections for the nomination of town officers; but that all other towns are still required to select nominees of the two major parties in party conventions, as was the requirement for all towns prior to enactment of the Acts of 1957, Ch. 168, *supra*.

The election of town officers is held every four years on the first Tuesday after the first Monday in November in the odd-numbered years pursuant to Acts of 1945, Ch. 208, Sec. 163, as found in Burns’ (1949 Repl.), Section 29-4403. This election is not held at the same time as a general election and therefore is controlled by the special provisions of Acts of 1945, Ch. 208, Sec. 161, as amended, as found in Burns’ (1959 Supp.), Section 29-4401. This section reads as follows:

“Where any town shall hold an election at any time other than the time of a general election, such election shall be held in conformity with the provisions of this act, except the duties herein required of the county clerk shall be performed by the town clerk; the duties herein required of the board of county commissioners shall be performed by the town trustees; the duties of the county sheriff shall be performed by the town marshal and the rights of nomination of election officers by political parties shall be exercised by the chairman of the town committees of such parties, if any such there be. Town officers are hereby required to perform the various duties herein prescribed for the county officers in whose stead they act, subject to the same penalties and provisions herein prescribed as to such county officers. The town election boards shall provide the necessary stamps and ink pads for such elections, and shall cause as many classes of ballots to be printed as there are precincts or districts entitled to separate officers, ballots of each class having printed uniformly on the back of the same, the name or number of the precinct or district in which it is to be used, and containing the names of all lawfully nominated candidates for all
officers that the voters of such precinct or district are entitled to vote for at such election. The county election board and trustees of townships in which such towns are situated shall furnish what is necessary for use in such elections of the election furniture, ballot boxes, chutes, booths, and receptacles for ballots in their custody: Provided, That such town shall pay the expense of moving such furniture to and from the polling places, and also for any damage to or loss of such furniture. The town election boards shall perform all the duties in providing and preparing polling places that are required of county election boards in county elections, subject to the same provisions and penalties.”

Subsequent sections of the Acts of 1945, Ch. 208, supra, make provisions concerning the composition of the town election board and the appointment of precinct officials. The act further provides that the opening and closing of the polls and all other matters pertaining to town elections shall be conducted in conformity with the general election laws applicable thereto.

It is apparent from the above that the county election board has no duties to perform in conducting the election of town officers other than furnishing certain furniture and equipment, but that such election is conducted by the town election board and other town officials. There being no reference to the election of town officials in Acts of 1957, Ch. 168, Sec. 1, supra, such election must still be conducted by the town election board in compliance with Burns’ 29-4401 to 29-4411, supra. However, primaries in towns having a population of three thousand and over and the boundaries of which coincide with the boundaries of precincts in which such town is located, shall be conducted pursuant to the laws of the state concerning nomination of officers of cities. Therefore, pursuant to Acts of 1945, Ch. 208, Sec. 155, as found in Burns’ (1949 Repl.), Section 29-4306, the county election board shall perform all of the duties in connection with such town primary as they perform in county primaries and elections.

In so replying to your question, I realize the effect of my answer is that a particular town might conduct its primary elections under the control of the county election board while
the same town must conduct its election of officers under the control of the town election board and town officials. This result is wholly within the control of the Legislature.

Your second question asks whether the clerk of the circuit court may receive mileage, pursuant to Acts of 1957, Ch. 319, Sec. 14, as found in Burns' (1959 Supp.), Section 49-1066, for the performance of his duties as an *ex officio* member of the county election board. The clerk of the circuit court is an *ex officio* member of the county election board by virtue of the provisions of Acts 1945, Ch. 208, Sec. 17, as amended, as found in Burns' (1959 Supp.), Section 29-3102.

Acts of 1957, Ch. 319, as found in Burns' (1959 Supp.), Sections 49-1053 to 49-1069, provides for the payment of compensation, fees and travel allowance to certain officers based upon a classification schedule set out in the act. Section 6 of the Act, as found in Burns' 49-1058, provides for the salary of the clerk of the circuit court in each classification. Section 14 of the Act, as found in Burns' 49-1066, provides as follows:

> "All county officers included in this act except county councilmen, shall receive mileage at the rate of eight cents [8¢] per mile for travel in the performance of their official duties except as herein otherwise provided and except for travel required of sheriffs pursuant to the Uniform Extradition Act, and in such amount as is allowed by the county council."

Acts of 1957, Ch. 319, *supra*, is entitled "An Act concerning the compensation, fees and travel allowance to be paid *certain* county officers.” (Our emphasis)

Indiana Constitution, Art. 4, Sec. 19, provides as follows:

> "Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. *But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.'" (Our emphasis)

Our Supreme Court has issued a very recent opinion concerning the question of whether the clerk of the circuit court is a county officer. In State of Indiana v. Marion Superior
1959 O. A. G.

Court (1959), — Ind. —, 158 N. E. (2d) 264, the court held that the Governor was the proper officer to fill a vacancy in the office of the clerk of the circuit court. The court held that the statute giving the board of county commissioners the power to fill vacancies in "county offices" was not applicable.

Even though the clerk of the circuit court is a circuit officer, rather than a county officer, strictly speaking, it is obvious that the legislative intent was to include him under the provisions of the Acts of 1957, Ch. 319, supra. The clerk of the circuit court has frequently been referred to, albeit improperly, as the "county clerk," and the reason for such practice was the subject of the following language in Taylor v. State ex rel. Ogle (1907), 168 Ind. 294, 296, 80 N. E. 849:

"In the course of legislation many duties have devolved upon this officer, wholly independent of his relation to the court, and in many instances he has been inaccurately styled 'clerk of the county,' and 'county clerk.' Correctly speaking no such officer as 'county clerk' is known in the law of this State. The present controversy in no way involves legislation upon collateral subjects in which the clerk of the circuit court may be designated or referred to as 'county clerk,' and this opinion is not to be construed as intimating that in any such cases the legislative intent may not be sufficiently manifest and validly expressed. * * *" (Our emphasis)

The clerk of the circuit court is elected by the voters of a county so that in joint judicial circuits, there is more than one clerk. Furthermore, the Legislature has also authorized him to perform some of the governmental functions of the county and he is customarily compensated from county funds as are county officers.

In determining whether the title of an act is broad enough to cover the provisions therein, our Supreme Court has held in Stith Petroleum Co., Inc. v. Department of Audit and Control of the State of Indiana et al. (1937), 211 Ind. 400, 409, 5 N. E. (2d) 517, as follows:

"* * * if there is any reasonable basis for grouping together in one act various matters of the same nature,
and the public cannot be deceived reasonably thereby, the act is valid. * * *

Our court has further held that where a matter is so closely connected with the subject of the act as to create doubt as to whether it is included within the subject, the act will be upheld.

State ex rel. Western Construction Co. v. Board of Commissioners of the County of Clinton (1906), 166 Ind. 162, 76 N. E. 986.

I believe there is a reasonable basis for including the clerk of the circuit court in an act concerning compensation for county officers and therefore, it is my opinion that the constitutionality of the Acts of 1957, Ch. 319, supra, will probably be upheld in its application to the office of the clerk of the circuit court.

The duties performed by the clerk of the circuit court as an ex officio member of the county election board are "official duties" within the meaning of Burns' (1959 Supp.), Section 49-1066, supra. In Losche v. Marion County et al. (1934), 207 Ind. 44, 191 N. E. 143, it was held that the clerk of the circuit court, who was a member of the county board of canvassers by virtue of his being a member of the county election board, was a member of such board of canvassers as an official, the clerk of the circuit court, and not as an individual. The court concluded that the provisions of a general salary act which provided that "salaries named herein shall be in full for all services" included the services performed by the clerk as a member of the board of canvassers and he was therefore not entitled to the additional compensation provided to the members of such board.

In addition to the above, in 1958 O. A. G., page 88, No. 20, I expressed the opinion that the duties performed by the clerk of the circuit court as a member of the county election and canvassing boards are official services within the meaning of Section 3 of the County Officers' Salary Act, and therefore I must conclude that such clerk, acting as a member of the county election board, is entitled to the mileage for the performance of his official duties provided in Section 14 of the same Act.

230
1959 O. A. G.

In conclusion, in answer to your first question, it is my opinion that all elections of town officers are to be conducted by the town election board and town officials, rather than by the county election board, which latter board conducts the primary elections in certain towns pursuant to the provisions of the Acts of 1957, Ch. 168, which amended the town election law without making any changes in the procedure of the fall elections of town officers.

In answer to your second question, it is my opinion that the clerk of the circuit court, acting as a member of the county election board, is entitled to mileage in the performance of his official duties in accordance with Burns' 49-1066, supra.

OFFICIAL OPINION NO. 50

September 8, 1959

S. T. Ginsberg, M. D.
Mental Health Commissioner
1315 West 10th Street
Indianapolis 7, Indiana

Dear Doctor Ginsberg:

This is in answer to your letter of July 30, 1959 requesting an Official Opinion and stating in part as follows:

"In the sale or disposition of State owned land under the provisions of Chapter 335 of the Acts of 1947, and assuming that the appraisal price is met:

"1. May such sale be by sealed bids, to be opened and read publicly, at a specified time?

"2. In the event that your answer to Number One, above, is 'Yes,'

A. May an anti-collusion affidavit be required?

B. Is it permissible to disclose the appraisal value to prospective bidders in their bid documents and in the legal notice of advertisement?"