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

Dear Mr. Hindman:

This is in reply to your letter requesting an interpretation of Acts of 1959, Ch. 107. You ask the following specific questions:

"1. Who fixes the salaries of appointive officers and employees of various city departments operating under special acts enacted prior to Chapter 233, Acts of 1933?

"2. Who fixes the salaries of appointive officers and employees of various city departments operating under special acts enacted since Chapter 233, Acts of 1933, such as:

"(a) Department of Water Works operated by a Board of Trustees pursuant to Chapter 235, Acts of 1933?

"(b) Airports operated by a Board of Aviation Commissioners pursuant to Chapter 190, Acts of 1945?

"(c) Park and Recreation facilities operated by a Board pursuant to Chapter 311, Acts of 1955?

"3. Who fixes the salaries of appointive officers and employees of the following:

"(a) Utility Service Board operating pursuant to Chapter 76, Acts of 1913, last amended by Chapter 326, Acts of 1959?

"(b) Levee Authority created by Chapter 289, Acts of 1959?
1959 O. A. G.

“(c) Aviation Authority created by Chapter 15, Acts of 1959?”

Question No. 1:

“Who fixes the salaries of appointive officers and employees of various city departments operating under special acts enacted prior to Chapter 233, Acts of 1933?”

Acts of 1933, Ch. 233, is a general act concerning the classification and government of civil cities. Section 10 of the act, as amended, as found in Burns’ (1950 Repl.), Section 48-1222, concerns the employment and the fixing of salaries of city officials and employees. This section specifically provides:

“The provisions of any law now in effect in so far only as said provisions fix or purport to fix the salaries of any elective or appointive officer and/or employee of any civil city of this state and the provisions of any laws now in effect in so far only as they fix or purport to fix the salary of any member of any board, commission, department of [or] institution maintained or operated by any civil city, are hereby repealed upon the taking effect of this act, except all laws affecting cities of the second class owning and operating two [2] municipal utilities, which shall remain in full force and effect. All appointive officers, deputies, employees, assistants and departmental and institutional heads not provided for under the provisions of this act, but which are provided for by laws or authority of laws now in effect, shall not be considered as abolished by this act but such appointments shall be made by the mayor within his discretion as to number and positions named under laws or authority of law now in effect and, except where the appointment of officers or commissioners having control of public parks in cities of the first class are designated by statute for fixed terms, such officers, deputies, employees, assistants and departmental and institutional heads shall serve at the pleasure of the mayor, who may terminate their office or employment at any time: Provided, That the clerk of cities of the first and third class shall have the power
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to appoint the deputy clerk, and to terminate his appointment or employment at pleasure: Provided, That nothing contained in this act shall be construed to repeal, alter or amend any law now in force or hereafter enacted concerning the employment, minimum salary, suspension and/or dismissal of the members of the fire and police departments of the several cities of this state: Provided, That where an emergency exists for employment of assistants in any office, board, commission, department, institution and/or utility maintained or operated by any civil city and specific provisions for such employment is not made by law or authority of law, the mayor is hereby given power and authority to provide for and appoint such assistants. The salaries of each and all of such appointive officers, employees, deputies, assistants and departmental and institutional heads, other than those fixed by the common council under provisions of this act, shall be fixed by the mayor subject to the approval of the common council, which may reduce but in no event shall raise the salary so fixed. When the salary of such officers or employees shall have been so fixed as herein provided, it shall be the duty of the common council to appropriate moneys to pay the same: Provided, however, That in cities of the first class the employees of the board of sanitary commissioners shall be appointed as now provided by law and that the number and salaries of such employees shall be fixed by the mayor with the approval of the common council, which may reduce but in no event shall raise the salary so fixed by the mayor and when so fixed it shall be the duty of the common council to appropriate the money necessary to pay said salaries: Provided, further, That none of the preceding provisions of the section concerning the creation of positions, the appointment of employees and the fixing of salaries therefor shall apply to employees engaged in the establishment, maintenance and operation of public parks and public recreational facilities under the direction and control of any officer, board, commission or other official body in cities of the first class, now or hereafter authorized by law to establish and control public parks, and all such positions shall be
established, the appointments thereto be made and the salaries therefor be fixed by such officers, boards, commissions or other official bodies having control thereof. All salaries fixed by the mayor with the approval of the common council in accordance with the provisions of this act, shall be fixed on or before the time provided by law for the adoption of the annual budget for the next calendar year.” (Our emphasis)

Our courts have held that it was the purpose of Acts of 1933, Ch. 233, Sec. 10, supra, at the time of its passage, to vest in the mayor full power to hire, discharge and fix the salaries of all appointive officers and employees of the administrative and executive branches of the city as the “city” was defined in Sec. 23 of the act, as found in Burns’ (1950 Repl.), Section 48-1237, with the exception of those particular employees or officials specifically excepted by its provisions.

City of Lafayette v. Keen (1943), 113 Ind. App. 552, 48 N. E. (2d) 63;

However, the 1959 Legislature passed an act amending the Acts of 1933, Ch. 233, supra, and added a new section, numbered 20 (a), which modifies the provisions of Burns’ 48-1222, supra. A part of this new section, as added by Acts of 1959, Ch. 107, Sec. 6, subsection (b), 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.” (Our emphasis)

You will note that the above subsection specifically refers to Burns' 48-1222, supra, and states that wherein the provisions of the subsection are in conflict with said section, such provisions shall be deemed to amend Burns' 48-1222, supra. Burns' 48-1233, subsection (b), supra, requires the salaries in question be fixed on or before the first day of August of each year, and provides that such salaries shall not be increased or reduced during the fiscal year. This restriction as to increase or decrease does not appear in Burns' 48-1222, supra, and the time for the fixing of salaries has been changed from on or before the last Monday in August of each year to on or before the first day of August of each year. In addition, Burns' 48-1233, subsection (b), supra, contains language similar to Burns' 48-1222, supra, with respect to giving the mayor authority, subject to the approval of the common council, to fix the salaries of each and every appointive officer, employee, deputy, assistant, and departmental and institutional head of the city. This authority, however, is subject to but two exceptions, that being the manner of fixing and the amount of compensation paid to members of the police and fire departments. 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 other exceptions as stated in Burns' 48-1222, supra.

Therefore, in answer to your Question 1, it is my opinion that the salaries of appointive officers and employees of various city departments operating under special acts enacted prior to Acts of 1933, Ch. 233, supra, are fixed pursuant to the provisions of Burns' 48-1233, subsection (b), supra.
From an examination of your Questions 2 and 3, I note that they involve special acts concerning various departments and activities of a civil city. On the other hand, the provisions in Burns' 48-1222, *supra*, and Burns' 48-1233, subsection (b), *supra*, are contained in a general act concerning the government and classification of civil cities.

In the recent case of State of Indiana *et al.* v. LaRue's Inc., *et al.* (1958), — Ind. —, 154 N. E. (2d) 708, our Supreme Court held that in the absence of an expressed intention to the contrary, the specific provisions of an act will prevail over the general provisions of a subsequent act with relation to the same subject matter unless the two statutes are irreconcilably inconsistent. The Court adopted the following language with approval at page 710:

"* * * In the construction of statutes, specific provisions will prevail over general provisions with relation to the same subject-matter. And it is a rule of statutory construction that a general statute, without negative words, does not repeal the particular provisions of a former statute on a special subject to which the general language of the later act, if it stood alone, might be deemed to apply, unless the two statutes are irreconcilably inconsistent. Walter v. State, 1886, 105 Ind. 589, 592, 5 N. E. 735; Kingan & Co. v. Ossam, 1921, 190 Ind. 554, 557, 131 N. E. 81; Monical v. Heise, 1911, 49 Ind. App. 302, 305, 94 N. E. 232.' Straus Bros. Co. v. Fisher, 1928, 200 Ind. 307, 316, 163 N. E. 225, 228. "* * * The reason for such rule is clear. In passing the special act, the minds of the legislators were necessarily directed to the details of the special case, and it is not probable that they should intend, by a general act, to derogate from that which they have carefully supervised and regulated. Lewis v. Cook County, 1897, 72 Ill. App. 151; 36 Cyc. 1088. (7) Where a particular intention is expressed in an act, which conflicts with a general intention expressed in a later one, the particular intention shall be given effect, leaving the later act to operate only outside the scope of the former.' Cleveland, C. C. & St. L. R. Co. v. Blind, 1914, 182 Ind. 398, 423, 424, 105 N. E. 483, 493."
Inasmuch as the situations presented in subsections (b) and (c) involve special acts while the provisions in Burns’ 48-1222, supra, and 48-1233, subsection (b), supra, concerning the fixing of salaries are contained in a general act, it is my opinion that the salaries in question are fixed pursuant to the special acts involved. Therefore, my answers to your Questions 2 (b) and (c) and 3 (b) and (c) are as follows:

2 (b) The board of aviation commissioners of any municipality, pursuant to Acts of 1945, Ch. 190, Sec. 5, as amended, as found in Burns’ (1959 Supp.), Section 14-417, has the authority to fix and regulate compensation paid to the several persons employed by it, including superintendents, managers, engineers, surveyors and attorneys.

2 (c) The governing board of a department of parks and recreation created pursuant to Acts of 1955, Ch. 311, as found in Burns’ (1959 Supp.), Section 48-5851, has the authority to appoint and fix the compensation of the superintendent of parks and recreation, his assistants, administrative officers of the department, and all personnel of said department.

3 (b) Acts of 1959, Ch. 289, as found in Burns’ (1959 Supp.), Section 27-1601, permits the common council of a city to create a levee authority district for the area coterminous with the boundaries of the city. In addition, it gives the authority for both the city and county to jointly create a levee authority district whose boundaries coincide with those of the county. Under Sec. 15 of the act, as found in Burns’ (1959 Supp.), Section 27-1615, the board of the levee authority district has the power to employ and fix the compensation of a secretary, superintendents, managers, engineers, surveyors, attorneys, and all other employees of the district.

3 (c) Acts of 1959, Ch. 15, as found in Burns’ (1959 Supp.), Section 14-1201 et seq., authorizes a city having a population of 128,000 or more located in a county with a population of not less than 150,000 nor more than 180,000 to establish an airport authority district whose boundaries are the same as those of the city. It further allows the common council of a city and the county council of the county to
create a similar district whose areas shall coincide with that of the county. Under Sec. 15 of the act, as found in Burns' (1959 Supp.), Section 14-1215, supra, the board of the airport authority district has the power to fix the salaries or compensation of the various officers and employees of such district.

Part (a) of your Question No. 2 presents a slightly different situation. You ask who fixes the salaries of appointive officers and employees of a department of waterworks created pursuant to Acts of 1933, Ch. 235. Section 11 of the above act, as amended, as found in Burns' (1950 Repl.), Section 48-5311, specifically authorizes the board of trustees of the water department to fix the compensation of the superintendent of waterworks. However, with regard to other employees, Sec. 5 of the act, as found in Burns' (1950 Repl.), Section 48-5305, provides that the board of trustees of the department of waterworks has the power: "* * * to * * * appoint and employ all necessary officers, agents, attorneys, engineers and employees * * *." You will note that this provision authorizes the board of trustees to "appoint and employ" necessary officers and employees but does not specifically give said board of trustees the power to fix their salaries or compensation.

It has been held that where the power to fix salaries, although not expressed, is necessary in carrying out the enumerated powers, the power to fix salaries can be implied from the granting of enumerated powers.

The Board of Commissioners of the County of Allen, Indiana, et al. v. State ex rel. Lockhard (1939), 216 Ind. 125, 23 N. E. (2d) 494.

An examination of Acts of 1933, Ch. 235, supra, reveals that the board of trustees of the water department has the exclusive government, management, regulation and control of the waterworks system. Burns' 48-5305, supra, authorizes the board of trustees to enter into any and all contracts as are necessary to effectuate the purposes of the act without ratification of such contracts by any other board, body, or officer of the city. Inasmuch as the board of trustees is given such broad and exclusive powers with respect to control and management of the waterworks system, it is my opinion that the power to fix the salaries of appointive officers and employees,
may be implied from the granting of enumerated powers of
the board of trustees.

Acts of 1933, Ch. 235, *supra*, and Burns' 48-1222, *supra*,
were passed at the same session of the Legislature. However,
our Supreme Court, in several cases, has upheld the provisions
in Acts of 1933, Ch. 235, *supra*, with regard to the appoint-
ment of members of the board of trustees, which appointive
provisions conflicted with those in Burns' 48-1222, *supra*, thus
indicating that the Court regarded the special provisions in
Acts of 1933, Ch. 235, *supra*, as prevailing over the general
provisions in Burns' 48-1222, *supra*.

Rogers *et al.* v. The Calumet Nat. Bank of Hammond
*et al.* (1938), 213 Ind. 576, 12 N. E. (2d) 261;

Long v. Stemm *et al.* (1937), 212 Ind. 204, 7 N. E.
(2d) 188.

In addition, it is an established rule of statutory construc-
tion that where two statutes, apparently inconsistent, are
passed at the same session of the Legislature, the one dealing
with the common subject in a more minute way will prevail
over the one with a more general character.

State *ex rel.* Davenport *et al.* v. International Har-
vester Co. (1940), 216 Ind. 463, 25 N. E. (2d) 242.

Therefore, in answer to your Question No. 2 (a), it is my
opinion that the salaries and compensation of the superinten-
tendent of waterworks and of all other appointive officers and
employees are fixed by the board of trustees of a water depart-
ment created pursuant to Acts of 1933, Ch. 235, *supra*.

Your Question No. 3 (a) asks who fixes the salaries of
appointive officers and employees of a utility service board
created pursuant to Acts of 1913, Ch. 75, Sec. 109, as amended
by Acts of 1933, Ch. 190, Sec. 19, and Acts of 1959, Ch. 325,
Sec. 1, and as found in Burns' (1959 Supp.), Section 54-613.
Acts of 1933, Ch. 190, Sec. 19, *supra*, substituted new language
to an existing section of the Public Service Commission Act.
This section was substituted for Sec. 109 of the Acts of 1913,
*supra*, which had concerned the determination of compensa-
tion by the Public Service Commission to be paid for lands

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taken by a public utility under eminent domain. Thus the provisions in Acts of 1933, Ch. 190, Sec. 19, supra, were entirely new and permitted a municipality to provide for the operation by a utility service board of a utility owned by such municipality. With regard to the salaries of the employees, it is provided in Burns’ 54-613, supra, as follows:

"* * * The board shall fix the number and the compensation of all employees, including the manager, such compensation to be submitted to the municipal council for approval; the council shall have the authority to lower such compensation but not to raise it * * * ."

Therefore, Acts of 1933, Ch. 190, Sec. 19, supra, established entirely new provisions creating the utility service board, even though said section amended an earlier act. Under these circumstances, my answer is controlled by the rules of statutory construction previously cited in this Opinion. Although this section was enacted at the same session of the Legislature as Burns’ 48-1222, supra, it deals with the subject of a utility service board in a more minute way than the Acts of 1933, Ch. 233, supra, and it is my opinion that these special provisions prevail over the general ones found in Burns’ 48-1222, supra, and therefore still prevail over the provisions of Burns’ 48-1233, subsection (b), supra.

In summary, my answers to your questions as as follows:

1. Acts of 1933, Ch. 233, Sec. 10, supra, at the time of its passage, repealed the provisions under prior acts which purported to fix salaries of all appointive officers and employees of a city, the only exceptions being those specifically set out in said act.

2. (a) The salaries and compensation of all appointive officers and employees of a department of waterworks created pursuant to Acts of 1933, Ch. 235, supra, including the salary of the superintendent of the waterworks, are fixed by the board of trustees of the water department.

   (b) The board of aviation commissioners of any municipality created pursuant to Acts of 1945, Ch. 190, supra, has the authority to fix and regulate the compensation paid to the several persons employed by such board.
(c) The governing board of a department of parks and recreation created pursuant to Acts of 1955, Ch. 311, *supra*, has the authority to fix the compensation of all the appointive officers and employees employed by such board.

3. (a) A utility service board operating pursuant to Acts of 1913, Ch. 76, *supra*, has the authority to fix the compensation of all employees of such board and such compensation may be lowered but not raised by the city council.

(b) The board of a levee authority district created pursuant to Acts of 1959, Ch. 289, *supra*, has the authority to fix the compensation of all appointive officers and employees of such district.

(c) The board of the airport authority district created pursuant to Acts of 1959, Ch. 315, *supra*, has the authority to fix the salaries or compensation of the various officers and employees of such district.

OFFICIAL OPINION NO. 65

December 12, 1959

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

Dear Mr. Steers:

This will acknowledge receipt of your recent request for an Official Opinion based on the letter to you from the Indiana Municipal League attached thereto. The following questions are presented therein:

"(1) If an incumbent councilman, elected to serve another four-year term, dies prior to being sworn in, does the person elected by the council to fill the present unexpired term retain office for the next four year period?

"(2) If an incumbent councilman, re-elected for another four-year term, dies after being sworn in but before the beginning of the next ensuing