tion so as to provide for automatic changes. O.A.G. 1951-52, p. 61. See also *Rathbun v. Board of Supervisors of Lenawee County,* 275 Mich. 479 (1936).

Under these decisions the constitutional prohibition against decreases in salaries was held to apply to all public officers having fixed terms and to all salary-fixing bodies.

While the people have not retained the general prohibition against decreases in salaries of public officers during their terms of office found in Article XVI, Sec. 3 of the Michigan Constitution of 1908 in the precise form in the 1963 Constitution, they have nevertheless mandated in Article VI, Sec. 18 that the salaries of probate judges may be increased but shall not be decreased during a term of office except and only to the extent of a general salary reduction in all other branches of government. Such prohibition against decreasing salaries of probate judges must be held to apply to all salary-fixing bodies. Article VI, Section 18 of the Michigan Constitution of 1963 bars the board of supervisors of a county from decreasing the additional compensation of a probate judge during his term, except and only to the extent of general salary reduction in all branches of the county government.

Therefore, it is the opinion of the Attorney General that a board of supervisors that has fixed additional compensation for a probate judge is prohibited from decreasing such additional compensation during the term of office of such probate judge, except and only to the extent of general salary reductions in all branches of the county government.

FRANK J. KELLEY,
Attorney General.

670110.1

CONSERVATION, DEPT. OF: Forest fire prevention — issuance of burning permits.
TOWNSHIPS: Effect of township burning permits.

The provisions of Section 7 of Act 143, Public Acts of 1923, as amended and those of Section 4 of Chapter 45, Revised Statutes of 1846 are not in conflict but give to the Director of Conservation and each township board concurrent supervision over the issuance of burning permits.

Any burning on forest lands, woodlands, grass lands, or of brush or slash must be done consistently with the terms of the Conservation Department permit and the requirements of the township in which the burning takes place.

No. 4533

January 10, 1967.

Dr. Ralph A. MacMullan, Director
Michigan Department of Conservation
Lansing, Michigan 48926

Your letter of May 20, 1966 concerning the question of issuance of burning permits raises the following questions:

"1. If an authorized representative of the Director of Conservation

issues a burning permit to a citizen, may this permit be revoked by a township official acting under the authority of a township ordinance?

"2. Is the same citizen, while in possession of a permit to burn from the Director of Conservation, subject to arrest by township officials if he burns in violation of a township ordinance?

"3. Is a citizen who has obtained a permit to burn from a township also required to obtain a permit from the Director of Conservation?

"4. If the Director of Conservation refuses to issue, or revokes, a permit to burn due to extreme danger, may a township issue a permit to burn in the same instance?

"5. Does the Director of Conservation have the authority to revoke burning permits issued by a township in cases of extreme danger when such revocation is clearly necessary for the safety and life and property, as provided in Act 143, P.A. 1923?"

These questions are asked in the light of Act 143, Public Acts of 1923 as amended, Act 246, Public Acts of 1943, Act 33, Public Acts of 1951 and Act 148, Public Acts of 1961.

A review of Acts concerning the regulation and control of fires discloses several additional Acts not mentioned in your letter but pertinent to the inquiry, namely, an Act relating to the firing of woods and prairies.[1]

In addition, the penal code contains a section relating to the clearing of land by fire and disposing of refuse materials in townships.[2]

The foregoing statutes relating to the powers of townships as to wood and prairie fires have not been repealed. In addition it appears that other Acts have been passed broadening the powers of the townships in relation to fire protection in general. These several Acts are mentioned in your letter; the first is Act 246, Public Acts of 1945 as amended.[3] That Act provides that a township board may adopt ordinances relating to fire protection. The second is Act 33, Public Acts of 1951, as amended,[4] relating to township action with respect to fire protection, raising of money, purchase of fire apparatus and passage of ordinances. Last of all is Act 148, Public Acts of 1961[5] which is an amendment to Act 33, Public Acts of 1951. It enables the township to enact a fire code.

It is apparent from a review of the last three township Acts that they provide generally for township fire protection. They do not relate specifically to prevention and control of forest fires and, therefore, need not be considered. The question of wood, prairie and forest fire insofar as it related to townships is covered by the earlier statutes cited by us.

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[1] Section 4 of Chapter 45, Rev. Stat. 1846, C.L. 1948 § 320.394, M.S.A. 1962 Rev. Vol. § 28.143. Other miscellaneous township acts have not been cited as they relate primarily to the question of financing or contracting for fire protection.

[2] Section 79 of Chapter X, Act 328, Public Acts of 1931, C.L. 1948 § 750.79, M.S.A. 1962 Rev. Vol. § 28.274.

[3] C.L. 1948 § 41.181 et seq., M.S.A. 1961 Rev. Vol. § 5.45(1) et seq.

[4] C.L.S. 1961 § 41.801-.809, M.S.A. 1958 Rev. Vol. § § 5.2640(1)-.2640(9).

[5] C.L.S. 1961 Supp § 41.805, M.S.A. 1965 Cum. Supp. § 5.2640(5).

The problem is to consider the status of the forest fire law, Act 143, Public Acts of 1923, as amended[6] as it affects statutes passed prior to it. To do this it is necessary to examine that Act to determine the legislative purpose.

Cognizance is taken of the rules applied in construing statutes as follows: (1) that statutes of pari materia are to be considered together to ascertain the intention of the legislature; (2) that prior statutes may be considered in arriving at the legislative intent; and (3) that primary consideration should be given to the purpose if it can be ascertained from the statutes themselves.

Proceeding to such considerations, it is noted that the forest fire law is an Act providing for the preservation of the forests of this State and for the prevention and suppression of forest and prairie fires. In particular, attention should be directed to Section 7 which provides as follows:

> "It shall be unlawful when the ground is not snow-covered to start or have an open fire except for domestic purposes and to protect persons or property in case of fire, without permission of the director of conservation or his authorized representatives. Permission to set fire to any woodlands, grass lands, brush or slash for the purpose of clearing and improving lands or for preventing other fires shall be given whenever the same may be safely burned upon such reasonable conditions and restrictions as the director of conservation may prescribe to prevent spreading and getting beyond control."

The foregoing section is explicit. Further review of the statute shows that Section 8a states that the Governor may forbid, by proclamation, the use of fire in forests, woodlands or muck land areas.

Thus Act 143, Public Acts of 1923 as presently written clearly manifests the interests of the State in the area of forest fire control. Before fire may be set to any brush or slash for the purpose of clearing land or before setting any other fire when the ground is not covered with snow, except those necessary for domestic purposes or to protect persons or property in case of fire, permission of the Director of Conservation is required.

On the other hand, Section 4 of Chapter 45, Revised Statutes of 1846[7] authorizes and imposes a duty in township boards to prohibit the setting of forest fires or fires for clearing land, and the disposing by burning of refuse and waste material within their jurisdiction whenever in the judgment of a majority of the township board members such prohibition is deemed necessary to prevent the spreading of such fires over all or part of the township territory. The statute also empowers the boards to make rules and regulations to effectuate the Act. Section 79 of Chapter X, Act 328, Public Acts of 1931,[8] provides that persons found guilty of violating the orders, rules and regulations of such township boards shall be guilty of a felony. However, it further provides that persons desiring to dispose of refuse material by burning during the time prohibited by the board may do so after procuring permission in writing signed by certain enumerated township officers.

[6] C.L. 1948 § 320.1 et seq., M.S.A. 1958 Rev. Vol. § 13.251 et seq. Sections 10, 11 and 12 of the Act have been amended and Section 14 has been repealed, see M.S.A. 1965 Cum. Supp. § § 13.261, .262, .263, .265.

[7] C.L. 1948 § 320.394, M.S.A. 1962 Rev. Vol. § 28.143.

[8] C.L. 1948 § 750.79, M.S.A. 1962 Rev. Vol. § 28.274.

The Act relating to the firing of woods and prairies[9] was considered in an opinion of the Attorney General rendered December 28, 1911[10] in relation to Act 249, Public Acts of 1903[11]—"An act to provide for the preservation of the forests of this State and for the prevention and suppression of forest and prairie fires." This Act provided that the State Land Commissioner should be supreme in all matters relating to the preservation of forests and the prevention and suppression of forest fires as provided in the Act.

The opinion considered the question of whether Act 249 repealed sections of Chapter 45, Revised Statutes of 1846 concerning the firing of woods and prairies. At page 209 this office stated as follows:

> "It is an elementary rule in the construction of statutes that where two statutes relate to the same subject, both should be given effect if possible, and this will be done where there is no direct inconsistency or repugnance between them. Applying this rule to the statutes under consideration, I am of the opinion that both of the statutes may be given effect and consequently Sections 11656 to 11658 of the Compiled Laws of 1897 are not repealed by Act 249 Public Acts of 1903."

The same principle which was dispositive then and has been reiterated in numerous decisions of Michigan and federal courts,[12] is applicable to the matter at hand.

Here we have two statutes relating to the same subject and this basic rule of construction requires that both be given effect if possible. Another rule of construction is that the intention of the legislature should govern. That the legislature intended both statutes be given effect is supported by the fact that they have not indicated in a clear manner that the State has preempted the field of fire protection in the matter of setting fire to woodlands, grass lands, brush or slash for the purpose of clearing and improving lands. Further, there is no statutory authority for either the Director of Conservation or a township board to revoke a burning permit issued by the other. In addition, both statutes can be given effect without impairing their general purpose, that is, to preserve the forests and prevent forest fires, since if Section 7 of Act 143, Public Acts of 1923 which confers authority upon the Director of Conservation to grant permits for fires is applicable, no fire may be held without such a permit even though the township board or other township officials grant permits for the fire. Similarly, if the Director of Conservation issued a permit, but the township officers did not, the citizen could not set a fire in that particular township. There is no reason why a township should not be able to do this since the interests of the Director of Conservation and the township board may not be precisely the same. It may be in the best interest of the township, in protecting the person and property of all their inhabitants, to refuse to

[9] Section 4 of Chapter 45, Rev. Stat. 1846, C.L. 1948 § 320.394, M.S.A. 1962 Rev. Vol. § 28.143.

[10] O.A.G. 1912, p. 208.

[11] Act 249, P.A. 1903 was repealed by Act 143, P.A. 1923. It is the effect of this latter Act which is the subject of this inquiry.

[12] *Leitz v. Fleming*, 264 F. 2d 311, 313 (6th Cir.); *In re Markel*, 195 F. Supp. 926, 927 (E.D. Mich.); *People v. Buckley*, 302 Mich. 12, 22; *In re Opening of Gallagher Avenue*, 300 Mich. 309, 313.

issue a burning permit even though the Director of Conservation in protecting the State's interest has determined that a fire may properly be set within township limits.

Therefore, it is the opinion of this office that full effect can and must be given to both Section 7 of Act 143, Public Acts of 1923 and Section 4 of Chapter 45, Revised Statutes of 1846. The answers to your specific questions follow.

Answering question 1, a permit issued by the Director of Conservation may not be revoked by a township official acting under a township ordinance.

Answering question 2, a holder of a Department of Conservation permit may be arrested for burning in violation of a township ordinance even though he burns in accordance with the conditions of the Department permit.

Answering question 3, a citizen who has obtained a permit from a township to burn must also obtain a permit from the Director of Conservation since this is required by Section 7 of Act 143, Public Acts of 1923.

Answering question 4, a township may issue a permit to set fire even though the Director of Conservation refuses to issue or revokes a permit due to extreme danger. However, a citizen cannot proceed to burn without a permit from the Director as required by Section 7.

Answering question 5, the Director of Conservation does not have authority to revoke burning permits issued by a township in cases of extreme danger when such revocation is clearly necessary for the safety of life and property. He may refuse to issue a permit and a citizen setting fire without the permit required by Section 7 of Act 143, Public Acts of 1923, would be in violation of State law.

FRANK J. KELLEY,
Attorney General.

670123, 2

CIVIL SERVICE: Classified service, eligibility of National Guard Civilian Technicians.

MILITARY AFFAIRS, DEPT. OF: Status of National Guard Civilian Technicians.

Army and Air Civilian Technician employees of the Michigan National Guard are not eligible for admission to the classified state civil service. Their positions being established pursuant to Federal law and subject to Federal control, are not positions in the state service under Article XI, Section 5, Michigan Constitution of 1963.

No. 4460 January 23, 1967.

Mr. Franklin K. DeWald, Director
Department of Civil Service
Lewis Cass Building
Lansing, Michigan 48933

You requested to be advised by opinion of the Attorney General "whether or not the Civilian Technician employees of the Michigan National Guard should be considered as eligible for admission to the classified state civil service under the terms of Article XI, Section 5 of the Constitution."