"(1) Such board of health is hereby authorized and directed to prepare ordinances, and the common council of every city shall, in addition to its other powers, have the power to enact ordinances * * * for the maintenance, if deemed necessary, of an ambulance service for the speedy removal of sick and needy persons * * *." 

It should be noted that the language of the above quoted statute provides for the maintenance of an ambulance service. There is no specification as to whether such maintenance shall be accomplished by ownership of the equipment or by other means such as contract with an owner of such equipment. Therefore, I find no objection to the City contracting with a private ambulance owner in order to provide the service as permitted under the statute.

OFFICIAL OPINION NO. 46

October 30, 1957

Mr. Howard F. Tudor
Chairman, Indiana Real Estate Commission
145 West Washington Street
Indianapolis, Indiana

Dear Mr. Tudor:

I am in receipt of your letter of October 4, 1957, in which you request an Official Opinion, and which reads as follows:

"1. Was Chapter 249 of the Acts of 1921 approved on March 10, 1921 and providing for the issuance of licenses to non-resident real estate dealers, repealed by the enactment of the Real Estate License Law of the State of Indiana, being Chapter 44 of the Acts of 1949, in force on March 2, 1949?

"2. If so repealed are any licenses issued prior to March 2, 1949, to non-resident real estate dealers pursuant to the provisions of said Chapter 249 of the Acts of 1921, still in force and effect?"

The Acts of 1921, Ch. 249, as amended by the Acts of 1945, Ch. 211, as found in Burns' (1952 Repl.), Sections 42-1001 to
42-1009, made it unlawful for any non-resident broker to carry on a real estate brokerage business affecting Indiana real estate without first procuring a license issued by the Auditor of the State of Indiana, set forth the procedure required for the issuance of such licenses, and provided penalties for the violation thereof.

The Acts of 1949, Ch. 44, as found in Burns' (1951 Repl.), Sections 63-2401 to 63-2423 became in force and effect on March 2, 1949, and is commonly known as the Real Estate License Law.

The Acts of 1949, Ch. 44, supra, being said Real Estate License Law, does not repeal said Acts of 1921, Ch. 249, supra, by the use of express terms or by an express reference to said former statute. It does, however, provide that "all other laws or parts of laws in conflict with this Act are hereby repealed."

The question thus is presented whether the prior law regarding non-resident real estate brokers was repealed by implication by the Real Estate License Law in effect March 2, 1949.

Repeal of statutes by implication is not favored, but if a later act covers the whole subject of a prior act and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of said first act.

State ex rel. O'Donnell v. Flickinger (1937), 211 Ind. 361, 7 N. E. (2d) 192;
DeHaven et al. v. Municipal City of South Bend (1937), 212 Ind. 194, 7 N. E. (2d) 184;
Draper v. Zebec et al. (1941), 219 Ind. 362, 37 N. E. (2d) 952.

It is my opinion that the Real Estate License Law, so enacted in 1949, covers the whole subject of the prior act respecting non-resident real estate brokers and embraces new provisions, thus plainly showing that it was intended as a substitute therefor, and that the prior act was thus repealed by implication. This opinion is supported by the following specifications:

1. The 1921 Act, as amended, provides for the issuance of annual licenses to non-resident real estate
1957 O. A. G.

brokers, by the Auditor of State, while the 1949 Act, in Sec. 19 thereof, provides for the issuance of such licenses by the Indiana Real Estate Commission.

2. The 1921 Act, as amended, provides for an annual license fee of twenty-five dollars [$25.00], payable to the Auditor of State, while the 1949 Act, in Sec. 12 thereof, provides for an annual license fee of ten dollars [$10.00], payable to the Indiana Real Estate Commission.

3. Penalty for violation of the 1921 Act, as amended, is not more than a five hundred dollar [$500.00] fine, to which may be added six [6] months jail imprisonment. Penalty for violation of the 1949 Act is a minimum of fifty dollars [$50.00] and a maximum of one thousand dollars [$1,000.00] fine, to which may be added the amount of any real estate commission paid or earned on such violation.

4. Under the 1921 Act, as amended, the Auditor of State may, upon complaint, or on his own motion, and after such summary hearing as he may prescribe, revoke any such license. Under Sec. 15 of the 1949 Act, licenses may be revoked or suspended by the Real Estate Commission only for the causes therein stipulated, and the procedure with reference to said revocation or suspension is governed by the Administrative Adjudication and Court Review Act, being Burns' (1951 Repl.), Sections 63-3001 to 63-3030.

The answer to your first question is therefore in the affirmative.

It necessarily follows that your second question must be answered in the negative.

The Act of 1921, as amended, provided for an annual application and an annual license fee. It is thus apparent that an annual license only was contemplated. Since said Act of 1921, as amended, was repealed by the Act of 1949, the right of the Auditor to issue any such licenses to non-resident real estate brokers ceased and terminated, and any licenses issued by the Auditor pursuant to the terms of said prior statute are not in force and effect.