I am therefore of the opinion that Senate Enrolled Act No. 40, *supra*, does not apply to the charges made by local health officers pursuant to the provisions of Burns' 35-2102, *supra*, for certificates of birth, death and stillbirth.

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**OFFICIAL OPINION NO. 9**

April 26, 1957

Honorable Noble Ellis
Chairman, Alcoholic Beverage Commission
201 Illinois Building
Indianapolis 4, Indiana

Dear Mr. Ellis:

I am in receipt of your request for my Official Opinion in answer to the following question:

"The Indiana Alcoholic Beverage Commission is concerned about the effect of the 1957 Senate Enrolled Act No. 198, in relation to the Acts of 1945, Ch. 357, Sec. 5, as found in Burns' (1956 Repl.), Section 12-436, specifically in respect to the standard of time for the opening and closing times for the sale of alcoholic beverages.

"I, therefore, request your Official Opinion as to the applicable standard of time when the sale of alcoholic beverages should begin and cease, as now provided by law."

The Acts of 1945, Ch. 357, Sec. 5, Burns' (1956 Repl.), Section 12-436, *supra*, provides as follows:

"On Sundays, Memorial Day, on New Year's Day and on Christmas Day the sale of alcoholic beverages shall be unlawful from 12:01 o'clock in the morning, *Central Standard Time*, and from one o'clock in the morning, *Central Standard Time*, on New Year's Day, in the case of bona fide fraternal clubs and patriotic service clubs as such clubs are defined in subsection (c), section 1, of chapter 197 of the Acts of 1937, until seven [7:00] o'clock the next morning, *Central Standard Time*, and such sales shall be unlawful on primary
election day and general election day from 12:01 o'clock in the morning, Central Standard Time, until the time the voting polls close in the evening of said day: Provided, however, the sale of alcoholic beverages shall wholly cease on all other days at midnight, Central Standard Time, and not be resumed before seven [7:00] o'clock the following morning, if not otherwise prohibited.

"During said time when said business is required to be closed as aforesaid, no alcoholic beverages shall be sold, dispensed, given away or otherwise disposed of on such premises, and the premises whereon the same are licensed to be sold, shall remain closed to the extent that the nature of the business carried on, as at hotels and restaurants, on the said premises, shall permit. 'Premises' in this paragraph shall mean and signify the licensed premises only, and in no case the residential portion of any premises where alcoholic beverages are not kept, sold, furnished or given away under said permit, or, in case of clubs or hotels, the separate rooms furnished guests as sleeping quarters therein.

"Whenever the words 'Central Standard Time' are used, the same shall mean Central War Time so long as the same shall remain in force during the war emergency." (Our emphasis)

Although the term "Central Standard Time," emphasized in the above quoted section, is not technically accurate, in that the standard there referred to is officially designated as "United States Standard Central Time," 15 U. S. C. A. § 263, in the absence of subsequent legislation there is no doubt or ambiguity as to the standard of time intended to be applied in the enforcement of the above provision. As of the date of its enactment in 1945, the above provision clearly referred to the United States standard of time as prescribed in 15 U. S. C. A. § 261.

However, the 1957 session of the General Assembly of Indiana enacted Senate Enrolled Act No. 198, now known as Chapter 172 of the Acts of 1957, effective from and after April 28, 1957, the title of which reads as follows:
"AN ACT providing for the standardization and enforcement of time; providing penalties; repealing laws in conflict herewith; and declaring an emergency."

Section 1 of the above cited 1957 Act provides, in part, as follows:

"SECTION 1. At two o'clock ante meridian of the last Sunday in April of each year, the standard time in this state shall be advanced one hour, and at two o'clock ante meridian of the last Sunday in September of each year the standard time in this state shall, by the retarding of one hour, be made to coincide with the mean astronomical time of the ninety degrees of longitude West from Greenwich, the standard official time of which is described as United States standard central time so that between the last Sunday of April at two o'clock ante meridian in each year and the last Sunday in September at two o'clock ante meridian in each year the standard time in this state shall be one hour in advance of the United States standard central time: *

If the 1957 statute had terminated in its effect at this point in respect to the standard of time and its application, it would have had no effect upon the opening and closing hours referred to above dealing specifically with the time within which sales of alcoholic beverages are prohibited. However, the General Assembly, in its legislative discretion, made clear the intended broad scope of application of the 1957 law by further providing in said Section 1 as follows:

'* And in all laws, statutes, orders, decrees, rules and regulations relating to the time of performance of any act of any officer or department of this state, or of any county, township, city or town, municipal corporation, agency or instrumentality of the state, or school corporation, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the state, and in all the public schools and in all institutions of the state, or of any county, township, city or town, municipal corpora-
tion, agency or instrumentality of the state or school corporation, and in all contracts or choses in action made or to be performed in the state, *it shall be understood and intended that the time shall be the time prescribed in this section.*” (Our emphasis)

Permittees under the Alcoholic Beverage Act are, of course, clearly within the language “any person subject to the jurisdiction of the state,” as emphasized in the above quoted portion of Section 1 of the 1957 Time Law. It seems to me that regardless of what our personal views may be in respect to the wisdom of the public purpose indicated in the 1957 Act, there can be no serious disagreement as to what the Legislature meant by the enactment of the language stated in said law.

Apart from your question as to the effect of the 1957 Time Law, it may be asserted that repeal or amendment of a prior statute by implication is not favored unless two statutes are so irreconcilable that meaning and effect cannot be accorded to both, in which event the provisions of the latter statute will control. It is to be noted that Section 7 of the 1957 Time Law provides as follows:

“SEC. 7. All laws and parts of laws in conflict here-with are hereby repealed and an act entitled ‘An Act providing for the standardization of time,’ approved March 7, 1949, is hereby specifically repealed.”

It seems to me that there is an irreconcilable conflict between the 1945 and the 1957 Acts referred to in your letter of request and if the provisions of the 1945 Alcoholic Beverage Act were considered as not having been amended by the 1957 Time Law, the purpose of standardizing time on a state-wide basis as to all persons subject to the jurisdiction of this state would be obliterated.

Further, there is authority for the following propositions of law:

1. Indiana Constitution, Art. 4, Sec. 21, respecting the manner by which laws or parts of laws are to be amended, has no application to an *independent* enactment, which may have the effect of amending or modifying prior statutes because in conflict therewith.
2. When the General Assembly has passed an independent enactment providing that it shall be applicable "in all actions," such a repeal or amendment by implication is not so far in disfavor as to authorize the Court to hold that the Legislature did not mean what its words imply.

Pittsburgh, Cincinnati, Chicago & St. Louis R. Co. v. Lightheiser (1904), 163 Ind. 247, 260, 261, 71 N. E. 218;

Watson v. Strohl (1942), 220 Ind. 672, 681, 46 N. E. (2d) 204.

Although heretofore we have had statutes and ordinances concerning time and standards of time and certain problems related to such provisions of law, the present question is one of first impression in this state and I am not so presumptuous as to assert that the courts of this state will necessarily reach the same conclusion as my own. It is neither my duty to write the laws nor administratively enforce the Alcoholic Beverage Act, but in view of the provisions of the 1957 Act, above set forth, I am of the opinion that the acts to be performed by the persons subject to the jurisdiction of your agency of the State of Indiana, whether they relate to the opening and closing hours for the sale of alcoholic beverages or the performance of any other acts for which the time is provided by statutes, orders, decrees, rules and regulations, must be performed, as to time, in accordance with the standard of time prescribed in the Acts of 1957 of the General Assembly of the State of Indiana, Chapter 172.

OFFICIAL OPINION NO. 10

April 29, 1957

Mr. Joe McCord
Director, Department of Financial Institutions
410 State House
Indianapolis 4, Indiana

Dear Mr. McCord:

This is in reply to your request for my Official Opinion in answer to the following questions:

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