estate salesman therefor shall obtain and keep renewed and wholly unrevoked a license as a real estate broker or real estate salesman as herein required."

Said statute accordingly is directed toward and covers isolated transactions, and the performance thereunder of one such isolated transaction by a nonlicensed broker constitutes a violation of the Act.

Accordingly, it is my opinion that when a foreign real estate brokerage corporation, not licensed to do a real estate brokerage business in the State of Indiana, and not admitted to do business therein, engages as a broker in any isolated real estate transaction involving Indiana real estate, by sending its agent into the State of Indiana in connection therewith, such foreign corporation is amenable to process under the terms of said Acts of 1939, Ch. 60, supra.

OFFICIAL OPINION NO. 24

June 28, 1957

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

Dear Mr. Hindman:

This is in response to your letter of May 29, 1957, which requests an Official Opinion as follows:

"Under the new County Officials' Salary Law, Chapter 319, Acts of 1957, which will become effective January 1, 1958, there is a provision in Section 17 that if the salary prescribed in that act should operate to decrease the aggregate sum now received by any county official in counties of classes 1 and 2, the official may elect to continue to receive the 'salary, fees and other emoluments as now prescribed by law' during his present term of office. A similar provision is contained in this section, applicable to officials in counties of classes 3 to 13, whereby any official may elect to continue to
receive his 'salary and per diem as now prescribed by law.'

"In connection with the provisions of the above cited section, we shall appreciate your official opinion on the following questions:

"1. Will it be permissible on and after January 1, 1958, for the county assessor in a county of class 1 or 2 to continue to receive fees for inheritance tax appraisals under the law now in effect, in view of the passage of Chapter 318, Acts of 1957, which by its terms eliminates the appraisal fees payable from the tax of estates, and provides for 8% of such tax and future appraisers' fees taxed as costs by the court to be paid into the county general fund on and after January 1, 1958?

"2. Will it be permissible on and after January 1, 1958, for the clerk of the circuit court in a county of class 1 or 2 to continue to receive fees from the sale of hunting, trapping and fishing licenses, in view of the passage of Chapter 114, Acts of 1957, which by its terms requires that such fees be paid into the county general fund on and after January 1, 1958?

"3. Will it be permissible on and after January 1, 1958, for a county official in a county of class 3 to 13 to continue to receive the per diem allowed under Chapter 113, Acts of 1957, which expires by limitation on December 31, 1957?"

The express purpose of Acts of 1957, Ch. 319, referred to in your letter, appears in Sec. 3 thereof, which says in part:

"The annual salaries fixed by this act shall be in full for all services and in lieu of all fees, per diems, penalties, fines, interest, costs, forfeitures, commissions, percentages, allowances, mileage, and any and all other remuneration whatsoever for official services or involving official authority except as herein otherwise provided."
The Acts of 1957, Ch. 319, effective January 1, 1958, and referred to as the County Officials' Salary Law, classifies every county within the State into one of thirteen [13] classes and specifies the salary to be paid to various county officials in each class, specifically: the Auditor, Treasurer, Clerk of the Circuit Court, Sheriff, Assessor, Recorder, Surveyor, Coroner, Commissioners, and Councilmen. Sections 17 and 18 thereof read as follows:

"SEC. 17. Any provision for salary as prescribed in this act which operates to increase the salary of any county official in a county in class 1 and 2 shall become operative as of the effective date hereof. Any provision for any salary, as prescribed in this act, for any county official shall not apply to any county official in class 1 and 2 during his present term of office, if such provision should operate to decrease the aggregate sum now received by such official from salary, fees and other emoluments, and such official shall continue to receive, during his present term of office the salary, fees and emoluments as now prescribed by law, unless said official should elect to come under the provisions of this Act.

"The provisions of this act shall in no way operate to decrease the salary and per diem of any county official, as now prescribed by law, in a county in class 3 to 13, inclusive, during the present term of office of such county official.

"SEC. 18. This act shall be in full force and effect on and after January 1, 1958." (Our emphasis)

The word "now" used in SEC. 17, supra, is the word to be construed in answering the questions propounded.

Sutherland, Statutory Construction, 3rd Ed., Vol. 1, Sec. 1605, p. 269, says:

"A statute with a definite future day fixed for its commencement has effect only from that time." (Our emphasis)

While it is recognized that different parts of an act may become effective at different times, in Leyner v. State (1856),
8 Ind. 490, 492, the contention that certain clauses took effect upon approval of the act rather than on the effective date, was rejected, as the Court there said:

"* * * It is true that the thirty-ninth section is in the present tense—that all acts are hereby repealed, and actions now pending are saved (Laws of 1855, pp. 222, 223); but this section must be taken in connection with the forty-second section, which expressly provides that the act shall take effect and be in force from and after the 12th of June next. Id. p. 223. The repealing and saving clauses, therefore, speak from that date and not from the date of the approval." (Our emphasis)

Similar language appears in McHale v. Board of Comrs. of the County of Cass et al. (1913), 180 Ind. 390, 394, 103 N. E. 321, thus:

"That part of this proviso which is material reads as follows: ‘The increase in licenses provided for in this act shall not apply to any license now in force, until the expiration of the time for which such license was granted.’ The term ‘now in force’ manifestly has reference, in the matter of time, to the time of the taking effect of the act.” (Our emphasis)

If the strict literal meaning of "now" in Acts of 1957, Ch. 319, supra, is the effective date of the Act, it follows that the “aggregate sum” of “salary, fees and other emoluments” of county officials presently in office in classes one [1] and two [2] which may not be decreased without the election of those officials to come under this Act means that “salary, fees and other emoluments” prescribed by law on January 1, 1958, which the county officials in classes one [1] and two [2] may receive. Likewise, the incumbent county official in classes three [3] to thirteen [13] may not have his salary and per diem of January 1, 1958, decreased by operation of the Acts of 1957, Ch. 319, supra.

Your first question has reference to the Acts of 1931, Ch. 75, Sec. 7, as amended by the Acts of 1957, Ch. 318, Sec. 1, which says in part:

"The court shall fix as appraisal costs in each estate having a net worth of not less than five hundred dollars
($500.00) and a net worth of not more than five thousand dollars ($5,000.00) and not subject to inheritance tax, the amount of five dollars ($5.00) and in all estates having a net worth in excess of five thousand dollars ($5,000.00) and not subject to inheritance tax, the amount of ten dollars ($10.00), to be assessed as costs and paid, when collected by the clerk of the circuit court, to the general fund of the county as other costs are paid.” (Our emphasis)

The above paragraph replaces one setting appraiser's fees to be paid to the county assessor in the Acts of 1931, Ch. 75, Sec. 7, as last amended prior to the Acts of 1957, Ch. 318, and as found in Burns’ (1953 Repl.), Section 7-2407. The 1957 amendment has an effective date of January 1, 1958, provided in Acts of 1957, Ch. 318, Sec. 7. Therefore, a county assessor in a county of class one [1] or two [2] would have no further right to receive appraiser's fees on the effective date of the new County Officials' Salary Law and such appraiser's fees could not be considered in computing the aggregate sum of salaries, fees and emoluments prescribed by law.

A similar result is reached in answer to your question number two concerning the analogous Acts of 1957, Ch. 114, effective January 1, 1958, which amends the Acts of 1937, Ch. 21, Sec. 13, as found in Burns’ (1956 Repl.), Section 11-1404, and which says initially:

“(a) Each clerk of the circuit court may issue licenses under the provisions of this act and shall retain as the property of the county and shall pay into the county general fund as other fees are paid, out of the license monies collected for the sale of each license issued and sold by him, the following fees: * * *.” (Our emphasis)

The answer to question number two would also be negative on the same reasoning as the answer to question number one.

The Acts of 1957, Ch. 113, was, by Sec. 10, denominated emergency legislation effective April 1, 1957, and, by Sec. 8, to expire by limitation at midnight December 31, 1957. Section 1 says:
"The clerk of the circuit court, sheriff, recorder, treasurer, assessor and surveyor of each county in this state having a population of not more than ninety-five thousand according to the last preceding decennial United States census, shall be paid a per diem of three dollars for each day such official shall be engaged in the official duties of his office, said per diem to be in addition to all other provisions of law for his compensation, regardless of any limitation set by law on the compensation received by any such county official." (Our emphasis)

Sections 2, 3 and 5 of the Acts of 1957, Ch. 113, provide for the payment of various per diems for other county officials, namely, the county auditor, ranking deputy sheriffs, and members of the county council. Section 4 provides additional mileage allowance for sheriffs in counties having a population of not more than ninety-five thousand [95,000] by the last preceding decennial United States census.

By the express provision in Sec. 8, that the Acts of 1957, Ch. 113 "shall expire by limitation at midnight December 31, 1957," it is apparent that this emergency legislation will be of no force and effect at the time from which the Acts of 1957, Ch. 319, speak, having expired the instant before. Therefore, the answer to your third question is also negative.

In City of Indianapolis v. Evans (1940), 216 Ind. 555, 567, 24 N. E. (2d) 776, the Court said:

"Courts are not always bound by the strict literal meaning of the words used. It was said in Steiert v. Coulter (1913), 54 Ind. App. 643:

"‘The legislative intent, however, is to be ascertained by an examination of the whole as well as the separate parts of the act, and when so ascertained, the intention will control the strict letter of the statute or the literal import of terms would lead to injustice, absurdity, or contradict the evident intention of the legislature.’" (Cases cited)

Along the same line, it has been frequently said that courts look to the entire statutory structure upon the subject involved
for the purpose of ascertaining legislative intent. [See: Rosenbloom v. Hutchins (1944), 222 Ind. 590, 595, 55 N. E. (2d) 315.]

As further indication that it was the intent of the Legislature that "now" in Acts of 1957, Ch. 319, Sec. 17, supra, should mean the effective date of the Act rather than time of enactment, it is noted that by such construction only may full effect be given to the express language of all four statutes herein considered.

Furthermore, it has been ascertained that the effect of excluding the fees eliminated by amendment and the per diems which expire by limitation would not leave the reference to "fees" and "per diems" in Acts of 1957, Ch. 319, Sec. 17, supra, meaningless, as there are other fees provided by law which would be payable to certain county officials in classes one [1] and two [2] on January 1, 1958, if the said Ch. 319 were inoperative, just as there are other per diems prescribed by law for county officials of classes from three [3] to thirteen [13], which would be payable to them but for Ch. 319.

In addition to previous statements that the answers to all three of the propounded questions are negative by virtue of strict literal interpretation of the language of Acts of 1957, Ch. 319, it is my opinion that the legislative intention was to so construe it with the effect that no actions detailed in any of your questions will be permitted on and after January 1, 1958.

OFFICIAL OPINION NO. 25

July 9, 1957

Mr. Robert L. McMahan
Commissioner,
Bureau of Motor Vehicles
126 State House
Indianapolis, Indiana

Dear Mr. McMahan:

Your recent letter requesting an Official Opinion has been received and reads as follows: