OFFICIAL OPINION NO. 48

June 22, 1953.

Mr. Ancil Morton,
Director of Bonus Division,
431 N. Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your letter requesting an opinion from this office which reads as follows:

> "Under date of March 14, 1953, House Enrolled Act No. 43, entitled, 'An Act to amend Section 2 of an Act entitled, "An Act to amend Sections 2, 3 and 13 of an Act entitled, 'An Act to provide for the raising of funds for the payment of a bonus to the members of the Armed Forces * * *.' In this Act the ones in authority are referred to as the Commission.
>
> "House Enrolled Act No. 1, approved March 13, 1953, entitled, 'An Act to amend Section 1 of an Act entitled, "An Act to amend Section 5 of an Act entitled, 'An Act to provide for the raising of funds * * *.' This Act referred to the Veterans' Affairs Commission and the Commission.
>
> "House Enrolled Act No. 194, approved March 13, 1953, entitled, 'An Act to amend Section 1 of an Act entitled, "An Act to amend Sections 2, 3 and 13 of an Act entitled, 'An Act to provide for the raising of funds * * *.' This Act referred to the Veterans' Affairs Commission of the State of Indiana.
>
> "House Enrolled Act No. 5, approved March 11, 1953, is an Act concerning the veterans and providing for the transfer of certain duties and appropriations of the Department of Veterans' Affairs and providing the time for payment of World War II bonus.
>
> "As Director of the Bonus, I request an opinion from yourself, as Attorney General of the State of Indiana, to clear up the matter of who is who because House Enrolled Acts 1, 43 and 194 are addressed to the Veterans' Commission or Department of Veterans' Affairs

and were approved by the Governor on March 13 and 14, 1953, while the Act transferring the bonus authority, power, duties, books, appropriations, etc., of the Bonus Division of the Department of Veterans' Affairs and Veterans' Affairs Commission to the Auditor of State was approved on March 11, 1953.

"This causes confusion as to who has the authority of interpretation and the authority for ordering the payment and I believe is one of legislative intent which must, of necessity, be interpreted by you.

"Thanking you in advance, for your cooperation in this matter, I remain,"

The Veterans' Bonus Law was first passed in 1949. Parts of the law were amended and changed by Chapters 4 and 256 of the Acts of 1951. That was the status of the Bonus Laws, Section 59-1401 *et seq.*, Burns' Indiana Statutes Annotated (1951 Repl.) when the 88th regular session of the Indiana General Assembly met in 1953.

The crux of this problem is in the fact that the Act transferring certain authority, duties and appropriations from the Department of Veterans' Affairs and the Veterans' Affairs Commission to the Auditor of State was approved on March 11, 1953, while the other acts mentioned were approved on the 13th and 14th of March, 1953, and all of said acts carried an emergency clause.

House Enrolled Act No. 5, the same being Chapter 134 of the Acts of 1953, is an independent act transferring generally all authority, powers and duties pertaining to the Veterans' Bonus from the Department of Veterans' Affairs and the Veterans' Affairs Commission to the Auditor of State. This Act was in full force and effect before the other mentioned acts were approved. Briefly this Act authorizes the Auditor of State to "take over" and direct the beginning of the payments of bonus claims on June 1, 1953, which claims have been filed previously under the provisions of the Bonus Law. Section 6 of Chapter 134 repealed all laws or parts of laws in conflict. However, this repeal did not disturb the various working provisions of the Bonus Law as Chapter 134 merely substituted

the authority of the Auditor of State for that of the Veterans' Affairs Commission in regard to administering the Bonus Law.

House Enrolled Act No. 194, the same being Chapter 231 of the Acts of 1953, is an Amendatory Act which amended the definition section of the Bonus Law [Chapter 277, Section 2 of the Acts of 1949, as amended by Chapter 256, Section 1 of the Acts of 1951, the same being Section 59-1402, Burns' Indiana Statutes Annotated (1951 Repl.)] by the addition of the following language:

> "Provided, however, That in the event an applicant for a bonus payment dies before a vested interest to such bonus payment has accrued, such bonus payment shall accrue to the benefit of the next of kin in the order as provided herein: Provided, further, That if there are no next of kin, such bonus payment shall be paid to the estate of such deceased applicant without any further application for such bonus being filed."

House Enrolled Act No. 43, the same being Chapter 284 of the Acts of 1953, is an Amendatory Act which amended the eligibility section of the former law [Chapter 277, Section 3 of the Acts of 1949, as amended by Chapter 256, Section 2 of the Acts of 1951, the same being Section 59-1403, Burns' Indiana Statutes Annotated (1951 Repl.)]. The only change made by this amendment was the omission of a clause prohibiting payment to conscientious objectors.

House Enrolled Act No. 1, the same being Chapter 213 of the Acts of 1953, is an Amendatory Act which amended the section pertaining to the time for filing bonus claims [Chapter 277, Section 5 of the Acts of 1949, as amended by Chapter 4, Section 1 of the Acts of 1951, the same being Section 59-1405, Burns' Indiana Statutes Annotated (1951 Repl.)]. This Act merely extended the dead line for filing applications for bonus to June 30, 1953.

Thus it is evident that while Chapter 134 generally placed the administration and the payment of the Veterans' Bonus under the authority of the Auditor of State, the other acts mentioned above merely made minor changes in the previous bonus law.

Repeals by implication are not favored and it is especially true of acts passed at the same session of the General Assembly. If they can by any rule of statutory construction be construed in harmony, such construction will be adopted.

> State *ex rel.* v. International Harvester Co. (1940), 216 Ind. 463, 467, 25 N. E. (2d) 242.

The rule stated in the above case is:

> "* * * there is no inference that one act was intended to destroy another as they are on the same subject matter and enacted at the same meeting of the Legislature, but on the contrary, they should be construed, if possible, to give full effect to each. The purpose of all rules of Statutory Construction is to ascertain the Legislative intent * * *."

Supporting the above propositions also see:

> Long, Mayor v. Kinney (1935), 210 Ind. 192, 198, 1 N. E. (2d) 929.

It has been decided that the mere re-enactment of a statute does not repeal or affect the intermediate statutes dealing with the same subject matter. The court in the case of Thompson v. Mossburg (1923), 193 Ind. 566, 139 N. E. 307, considered the effect of the re-enactment of the exact language of a statute by an Amendatory Act. The court, on page 573, pointed out that the obvious and full purpose of the Legislature in passing the Amendatory Act was to insert two provisions with reference to drainage in certain counties and then pointed out that under the requirements of the State Constitution the original section could only be amended by setting forth at full length the section so amended. The court then, on page 574, used the following language:

> "The recital in this manner, in an amendatory act, of language contained in the act amended, does not show a legislative intent to make any change in the law as expressed by the language so re-enacted; but the unchanged portions of the statute are continued in force, with the same meaning and same effect after the amendment that they had before. Worth v. Wheatley

(1915), 183 Ind. 598, 604, 108 N. E. 958; State v. Kates (1897), 149 Ind. 46, 48, 48 N. E. 365; Holle v. Drudge (1920), 190 Ind. 520, 129 N. E. 229, 230.

"'So far as the section is changed (by amendment) it must receive a new operation, but so far as it is not changed it would be dangerous to hold that the mere nominal re-enactment should have the effect of disturbing the whole body of statutes *in pari materia* which had been passed since the first enactment * * *. The portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along.' Sutherland, Statutory Construction (2d ed.) § 133.

"'By observing the constitutional form of amending a section of a statute the legislature does not express an intention then to enact the whole section as amended, but only an intention then to enact the change which is indicated. Any other rule of construction would surely introduce unexpected results and work great inconvenience.' McLaughlin v. Newark (1894), 57 N. J. Law 298, 301, 30 Atl. 543, 544."

A like statement of the law, supporting the rule cited in the Thompson case, is found in the case of Huff v. Fetch (1924), 194 Ind. 570, 577, 143 N. E. 705.

I am therefore of the opinion that under the foregoing authorities the enactment of Chapters 231, 284 and 213 has not affected the over-all rights, powers and authority of the Auditor of State pertaining to the Veterans' Bonus that are granted to him by Chapter 134.