

provided for in this act and for any and all other expenses connected herewith or otherwise provided for herein, and any part of such amount so appropriated remaining shall be used in the beautifying and maintaining such memorial place.

"No contract shall be made in excess of the amount of the appropriation. All contracts made for any purpose under the provision of this act and all expenses incurred in the erection and the completion of such structure or structures shall not exceed the total sum of two million five hundred thousand dollars, of said appropriation. \* \* \*"

The subject contract does not violate the statutory mandate against contracts in excess of the amount of the appropriation, the total architects' fee amounting to far less than \$2,500,000.00.

In view of the foregoing, it is my opinion that the successors to Walker & Weeks were not over paid under the contract for services in preparing the plans and specifications for Buildings "C" and "D" of the Indiana World War Memorial structures, and it is my recommendation that any moneys now due the architects for subsequent services be paid.

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OFFICIAL OPINION NO. 78

December 26, 1952.

Hon. Sam. J. Bushemi,  
State Representative,  
House of Representatives,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion of the following question:

"Is Chapter 240 of the Acts of 1949 applicable to special charter insurance companies?"

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The complete text of the Act about which you inquire is as follows:

"The Insurance Commissioner shall annually forward to all Departments and Divisions of the State requiring the posting of security because of motor vehicle accidents and resultant damage and loss, a list of those insurers which are, or which are agreeable to be, examined by the Insurance Department in the same manner as set out in Sections 14 (b), 15 and 16 of the Indiana Insurance Law, and set up and maintain liabilities, and reserves in the same manner as set out in Section 179, of the Indiana Insurance Law, and submit a written statement of their financial condition and their operations on the forms as prescribed by the National Association of Insurance Commissioners, and in the same manner as set out in Sections 14 (b) and 269 of the Indiana Insurance Law. No certificates or policies shall be accepted by such Departments or Divisions as such security unless the insurer so filing the certificate or policy shall have met or is agreeable to meeting the requirements as set out above.

"Sec. 2. This Act shall take effect January 1, 1953.

"Sec. 3. If any provision to this act is unconstitutional no other provision shall be voided thereby." (Chapter 240, p. 792, Acts 1949, same being Section 39-3331, Burns' 1952 Repl.)

Special Charter Insurance Companies were created by special acts of the legislature prior to the adoption of the Indiana Constitution of 1851. Your attention is directed to a discussion of this subject in an Attorney General's official opinion numbered 14 and dated February 15, 1951.

It appears from the language of the act, *supra*, that all insurance companies, including special charter companies, were obviously meant to be included in this act, however, since special charter companies were created prior to the adoption of the 1851 Constitution general acts pertaining to insurance companies to 1851 are not wholly applicable to those charters.

The act about which you ask specifically states that no certificates or policies shall be accepted by any Department or Divisions of the State unless the insuror so filing the certificate or policy shall, among other things, submit a written statement of their financial condition and their operations on the forms as prescribed by the National Association of Insurance Commissioners.

Your attention is called to Section 39-1811, Burns' 1952 Repl., the same being Chapter 134 of the Acts of 1899, which prescribes the type of written statement, special charter companies shall submit. This special act, *supra*, was not repealed by the Act of 1949.

"It is a canon of statutory construction that a later statute, general in its terms, and not expressly repealing an earlier statute, will ordinarily not affect the special provisions of such earlier statute."

Waterworks Co. v. Burkhart, 41 Ind. 364;

Monical *et al.* v. Heise *et al.*, 49 Ind. App. 302, 94 N. E. 232.

It is therefore my opinion that the Act of 1949 does not alter the provisions of the Act of 1899 nor does it take away any of the special privileges of special charter companies. It is my further opinion that since the Act of 1899 is still in force and effect the Act of 1949 is not effective as against special charter companies.