the later acts are so repugnant to the earlier ones that both cannot stand that the earlier is repealed by implication.

Sweigart v. State (1938), 213 Ind. 157;
Nash v. State *ex rel.* Adams (1933), 205 Ind. 22;
Gaebler v. Town of Rockville (1933), 96 Ind. App. 715.

There is no difficulty in construing the foregoing Acts together and it also is clear that there is no conflict between the earlier statutes and the later one that would give rise to a repeal by implication.

Therefore, it is my opinion that the answer to your question is in the negative. If the motor vehicles are furnished and maintained by the county, the officials using such vehicles in the performance of their duties are not entitled to receive the mileage allowance provided in Sections 2 and 3 of Chapter 188, Acts of 1951.

OFFICIAL OPINION NO. 57

December 4, 1951.

Honorable W. H. Skinner,
Indiana State Personnel Bureau,
311 West Washington Street,
Indianapolis, Indiana.

Dear Sir:

Your request of 3 July 1951 for an official opinion reads as follows:

> "You are probably aware of the number of displaced persons and other aliens who have become residents of Indiana during the past year. Occasionally these individuals apply for state positions under the State Personnel Act.
>
> "The increase in industrial employment and the lure of higher salaries elsewhere have made it difficult to attract enough applicants for state positions in many types of work. Some of the foreign nationals

could be obtained to fill vacancies in the state service if such employment is legal.

"Will you please give us an official opinion as to the legality of employing individuals who are not citizens of the United States in positions under the State Personnel Act, Chapter 139, Acts of 1941, as amended?

"If full United States citizenship is not required for positions under the State Personnel Act, will application for first papers be sufficient, or must the appointment be delayed until the receipt of first papers?

"Since these questions are arising with increased frequency and the need for employees is also increasing, we shall appreciate your answers to the above questions as soon as possible."

The answer to your question lies in what the Legislature actually did when it enacted Chapter 139, Acts of 1941. That is to say, we cannot legislate for the General Assembly. The introductory section of the Act, being Burns Statutes, Section 60-1301, reads as follows:

"This act shall be known and may be cited as the 'State Personnel Act'; and this act shall be liberally construed to effectuate its policies and purposes to increase governmental efficiency, to insure the appointment of qualified persons to the state services hereinafter defined solely on the basis of proved merit, to offer *all citizens* a fair and equal opportunity to enter such state service, and to afford the employees in such state service an opportunity for public service and individual advancement according to fair standards of accomplishment based upon merit principles, and to which ends there is by this act established a personnel system based on merit principles and scientific methods relating to the appointment, compensation, promotion, transfer, lay-off, removal and discipline of employees and to other incidents of state employment." (Emphasis supplied.)

It is noted that the Legislature limited the availability of the Act, "to offer all *citizens* a fair and equal opportunity to

enter such state service". Had the Legislature desired to broaden the classification, it could have used the language, "all persons".

It is noted further that the Legislature, by Section 41, of the Act, being Burns Statutes, Section 60-1341, exempted certain named classes from discrimination as to the benefits of the Act. Said section provides as follows:

> "In applying the provisions of this act or in doing any of the things hereby provided for, no officer or employee shall give any weight whatsoever to political, social, religious or racial considerations. No person holding a position in the state service nor any member of the Board shall directly or indirectly solicit or receive or be in any manner concerned with soliciting or receiving any assistance or subscriptions or contributions for any political party or political purpose, be forced to make such contributions, nor be required to participate in any form by political activity whatsoever other than to express freely his views as a citizen and to cast his vote in any election. The board shall provide by rule for the strict observance of the provisions of this section."

Thus it is seen that aliens were not included in the classifications exempted. There is a rule of construction called *"exprissio unius est exclusio alterius"* which may be applied to legislation to arrive at the legislative intent. That is to say, since the Legislature named certain classes of persons, it thereby excluded all other classifications.

Woodford v. Hamilton (1894), 139 Ind. 481, 485, in part reads as follows:

> "It is a maxim of the law that 'the express mention of one person or thing is the exclusion of another.' Wharton's Legal Maxims, p. 11.
>
> "Or, as stated by another eminent author, 'What is expressed makes what is silent to cease.' Coke Litt., 210 A."

Couchman, Administrator v. Prather *et al.* (1903), 162 Ind. 250, 253; in part reads as follows:

> "Sutherland, Stat. Constr., Sec. 399. In another section (327) of the last named work its author says: 'Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others; there is then a natural inference that its application is not intended to be general."

It is noted that certain grants-in-aid to the State of Indiana by federal government are suggested by Section 45 of the Act, being Burns Statutes, Section 60-1345, which reads as follows:

> "Notwithstanding any provision of this act (§§ 60-1301—60-1348), there is hereby adopted such federal or state merit system, or systems, as the federal government may have established or approved, or may establish, as a condition to federal aid for any purpose to which any part of the state service as herein defined pertains; and it is hereby further provided that this act shall be administered in harmony with such federally established or approved merit system, or systems, and that in all cases where any provision of such federally established or approved merit system, or systems, hereby adopted, is in conflict with any provision of this act, then such provision of such federally established or approved merit system, or systems, so adopted shall prevail and this act shall in such case be administered as though such conflicting provision of such federally established or approved merit system or systems, herein adopted were written out at length as a part of this act, that nothing in this act shall be construed as operating in such way as to result in delay or stoppage of grants-in-aid to the State of Indiana by agencies of the federal government."

Since the Indiana act must harmonize with federal merit legislation, it is questionable whether aliens could participate in the Indiana Act without the consent of federal authorities.

Ordinarily it must be presumed that persons whose interests are inimical to the preservation of our government, and the welfare of our citizens, would be found among those who are classed as aliens even though their admission to the country and residence within might be lawful. This class

should not be made eligible for discharge of the broad field of duties in the positions of government, subject to the Personnel Act.

While it is the inherent charitable nature of our citizens generally to be responsible for the well being of those who are permitted the privilege of residence in our country, it must further be presumed that for proper qualifications for services in the branches of government, such as are enumerated in the Act, that they should be qualified at least by possessing the comparatively elementary knowledge required for naturalization as a United States citizen.

Some of the menial duties of employees of State Institutions could possibly be best filled by those in alien classification and of lesser literate character, but since consideration of those must mean consideration for all, it may result in jeopardy to precious information of government and misused by aliens with subversive intentions. It would be difficult to attempt to alter, qualify or make ambiguous the intention of the Legislature in the expressive use of the word "citizen". A reference to Webster discloses that alien is defined as "one who does not possess the privileges of a 'citizen' ", and as the exact antonym of the word 'citizen', Webster gives "alien".

In view of the foregoing, it is my opinion that your inquiry should be answered in the negative; that the Act is not available to aliens.

OFFICIAL OPINION NO. 58

July 11, 1951.

Mr. Frank T. Millis,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter has been received requesting an official opinion on the following questions:

> "(1) Will the Auditor of State be in contempt of the recent court ruling of Judge Niblack who ruled