it specifically provides that the officer shall maintain his own clothing and equipment.

Thus, it is my opinion the city has no duty to maintain clothing or uniforms of a police officer.

OFFICIAL OPINION NO. 14

February 15, 1951.

Honorable Leland L. Smith,
Secretary of State,
201 State Capitol Building,
Indianapolis, Indiana.

Dear Sir:

I have your letter dated February 12, 1951, in which you request an opinion regarding the following questions, to-wit:

"Will you please furnish the Division of Safety Responsibility and Driver Improvement of the Bureau of Motor Vehicles of the State of Indiana, with an official opinion as to the legal status of the Firemen and Mechanic's Insurance Company, insofar as such Division is affected by said Company."

This company was specially created by an Act of the Thirty-Fourth General Assembly, the same being Chapter CCCXLIII, page 545, approved January 21, 1850, and entitled "An Act to incorporate the Firemen and Mechanic's Insurance Company."

The Act is too lengthy to set out in full. However, in substance it recites:

"* * * there is created an insurance company with a capital stock of One Hundred Thousand ($100,000.00) Dollars, to be divided into shares of twenty-five dollars each. * * * and said stockholders and subscribers and their successors shall be * * * a body politic and corporate with perpetual succession, by the name and style of the Firemen and Mechanic's Insurance Company for the period of one hundred years, from and after the passage of this act."
"* * * that said company or corporation shall have full power and lawful authority to insure all kinds of property against loss or damage by fire or any other cause or risk." (Underscoring ours).

Section 2 continues to enumerate other types of insurance the company shall have the power and authority to write, but since the bureau of Motor Vehicles is concerned only with automobile insurance we shall not discuss these.

The subject company is commonly known as a "special charter company", and was, as we have heretofore stated, specially created by the legislature prior to the adoption of the Constitution of 1851. In the Constitution of 1851, it being our present Constitution, it is stated:

"Corporations other than banking shall not be created by special Act, but may be formed under general laws."

Section 13, Article 11, Constitution of State of Indiana 1851.

In other words, since 1851 no legislature has had the right to specially create a corporation other than a banking corporation, but that does not mean corporations specially created prior to that time are of no legal effect.

Until the adoption of the present Constitution our State was governed by the Constitution of 1816 and under this authority many special charter companies were created by the assembled lawmakers of those days. Before that, corporations were specially created by the crown and the power to create special corporations crept into our early Acts through common law; but since the king cannot abolish a corporation, or new model it, or alter its powers, without its assent, neither could the Constitution of 1851, abolish that which had been created.

"It is a familiar rule of statutory construction, that legislation must be given prospective application, unless a different intention is clearly expressed."

Rogers v. Rogers (1893), 137 Ind. 151.

"Statutes are to be considered prospective, unless the intention to give a retrospective operation is clearly
expressed, and not even then, if, by such construction, the act would divest vested rights."

The Aurora and Laughery Turnpike Co. v. Holt-house and Another (1855), 7 Ind. 59;

Every statute which takes away or impairs vested rights, acquired under existing laws, must be deemed retrospective.

Dartmouth College v. Woodward 17 U. S. 517.

However, according to the subject’s charter, it is stated the company “shall have perpetual succession ** for the period of one hundred years.” What does this mean? Is the company to enjoy perpetual succession or is it to be dissolved one hundred years from its beginning? Much research and thought has been given this question.

In Clark v. American, etc., Coal Co. (1905), 165 Ind. 213, the Court said:

“If the law under which a corporation is organized, or the special act creating the corporation, fixes a definite time when its corporate life must end, it is evident that when that date is reached, said corporation is ipso facto dissolved without any direct action on the part of the state or its members and no corporate powers can thereafter be exercised by it except such as are given it by statute for the purpose of winding up its affairs **”

The Clark case (supra) must be distinguished from the subject of this opinion. In that case the appellant Coal Company was created by a special act of the Legislature for an exact period of fifty years. The Firemen and Mechanic’s Insurance Company charter differs insofar as its charter states “perpetual succession ** for the period of one hundred years.”

We have also reviewed the case of In Re Application of the Bank of Commerce (1899), 153 Ind. 460. In Section 1 of the special charter creating the Bank of Commerce, it was provided the corporation should be “a body politic and corporate with perpetual succession for the period of fifty years”.

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The Acts of 1883, page 135 thereof, provided, "that private corporations now existing and which was created and organized by and under a special act or charter passed before the present Constitution of the State took effect shall be and continue a corporation thirty years after the passage of this Act. * * *

The only error for appeal pertains to the power of the Legislature under the present Constitution to grant a new term of existence to an insurance company organized under a special charter prior to November 1, 1851, and existing by virtue thereof on and after that date. The Court held the Act granting an additional thirty years of life was unconstitutional and repugnant to Article 11, Section 13 of the Constitution of 1851.

We have also studied Marion Trust Co. v. Bennett (1907), 169 Ind. 346, 82 N. E. 782, but we do not believe it has any bearing on this opinion.

Your attention is called to State of Indiana on the Relation of Alton L. Bloom, Prosecuting Attorney for the Thirty-Eighth Judicial Circuit of Indiana v. The Firemen and Mechanic's Insurance Company, et al. Cause No. 26131, in the Allen Circuit Court. This was an information filed by the Prosecuting Attorney praying that the special charter heretofore granted the Firemen and Mechanic's Insurance Company on January 21, 1850, be held for naught because the same had expired January 22, 1950. Each of the defendants appeared and answered and the Court having heard evidence found that the special charter heretofore granted Firemen and Mechanic's Insurance Company is perpetual and that said company is authorized and qualified to write insurance on the type of risks for which it was incorporated. The Court further found that contracts of insurance issued by Firemen and Mechanic's Insurance Company are entitled to be accepted and approved by any public officers of this state, all of which was decreed on the 11th day of March, 1950.

The above action was predicated upon Sub-sections 3, 4 and 6 of an act pertaining to the filing of information, as follows:

"(3) When any association or number of persons shall act, within this state, as a corporation, without being legally incorporated."
“(4) When any corporation does or omits acts which amount to a surrender or forfeiture of its rights and privileges as a corporation.

“(6) Where the corporation has exceeded or abused the authority conferred upon it by law or has exercised authority not conferred upon it by law.” Sec. 3-2001, 1933 Burns 1946 Replacement. Acts 1881 (Spec. Sess.), ch. 38, § 814, p. 240; 1929, ch. 221, § 2, p. 806.

That the filing of an information or quo warranto by the Prosecuting Attorney is the proper remedy for testing the validity of a special charter has been sustained by our courts.

“Under our statute, then, when a corporation does, or omits, acts which amount to a forfeiture of its charter, or exercises powers not conferred by such charter, an information may be sustained against it.”

The Lanville and Plank Road Co. v. State (1861), 16 Ind. 457;
State Bank v. The State (1823), 1 Black 267;
The Aurora and Laughery Turnpike Co. v. Holtthouse (1855), 7 Ind. 59;
State ex rel. v. Home Brewing Co. (1914), 182 Ind. 75.

Thereafter, in an action filed in the Marion Superior Court, Room No. 4, and entitled State of Indiana on the Relation of Firemen and Mechanic’s Insurance Company v. Charles F. Fleming, Secretary of State, et al. the same being known as Cause No. B-76663 and B-71734, the Court sustained plaintiff’s plea in abatement and found that the judgment of the Allen Circuit Court was a valid judgment and not subject to collateral attack.

“If the court had jurisdiction, its judgment, however erroneous, is not void, and if not void it is not vulnerable to a collateral attack.”

Lantz v. Maffett, et al. (1884), 102 Ind. 23.

Since the judgment of the Allen Circuit Court became a final judgment the same could not be collaterally attacked in the Marion Superior Court.
"The rule is that where a remedy by appeal is provided, that remedy must be resorted to for the correction of all errors and irregularities."

Young v. Sellers, Auditor (1885), 106 Ind. 101;
State ex rel. McKnight v. Rogers (1891), 131 Ind. 458;
Smith v. Hess (1883), 91 Ind. 424;
Hall v. Durham (1886), 109 Ind. 434.

Therefore, we are of the opinion the judgment of the Allen Court is binding and final and, according to said judgment, the Firemen and Mechanic's Insurance Company is a perpetual corporation and its contracts of insurance are entitled to be accepted by public officers.

OFFICIAL OPINION NO. 15
February 16, 1951.

Paul D. Williams, M.D.,
Medical Superintendent,
Richmond State Hospital,
Richmond, Indiana.

Dear Sir:

Your letter of January 31, 1951, has been received, in which you state you have an application for recommitment of a patient to your institution signed by a licensed osteopathic physician. You request an official opinion as to whether or not a licensed osteopath is authorized to execute such recommitment application forms within the meaning of the provisions of the statute.

The controlling statute is Chapter 69 of the Acts of 1927, same being Sec. 22-1202 et seq., Burns' 1950 Replacement. The particular section on readmission is Sec. 27 of said Act, same being Sec. 22-1227, Burns' 1950 Replacement, the pertinent part of which reads as follows:

"No person who has ever been adjudged insane according to law, and has been formally discharged from any hospital for insane for any cause, shall again