themselves are but attempts to obtain funds by means detrimental to public morals and the people's virtue. A resort to these means may be prohibited by statute. A statute having such operation, is not the inhibition of a free sale of property, but of a mode of swindling in disposing of it."

We respectfully direct you to the following cases for a further review:

Riggs v. Adams (1859), 12 Ind. 199;
Summer v. Union Trust Co. of Indianapolis (1946), 116 Ind. App. 684;

The consideration of the bill in an abbreviated form, as to its validity after certain inclusions or deletions of certain sections or amendments, becomes a physical impossibility within the few hours remaining until the compulsory adjournment of the General Assembly.

Therefore, in conclusion, the bill, considered in its original form without the amendatory language, may have some question as to constitutionality or validity because of the unusual features which are in character innovations in the field of law, but for absolute determination it must be submitted to the court. However, without precedent law to govern, it is my opinion that the right of the legislature to enact such a law would presume its constitutionality. The bill, construed with its amendatory features, is clearly unconstitutional.

OFFICIAL OPINION NO. 21

March 8, 1951.

Mr. Robinson L. Hitchcock,
Adjutant-General,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion concerning the liability, if any, of the State of Indiana to Mr. G. E. Mitchell,
sub-contractor under the Barnes Construction Company for the Armory at Alexandria, Indiana. In addition to the files submitted with your request, I have been supplied with copies of the specifications by Everett I. Brown and Company, architect and engineer for this project, including a copy of addendum No. 1, which is as follows:

"Indianapolis, Indiana
June 1, 1948

"ADDENDUM NUMBER ONE to the plans and specifications prepared by Everett I. Brown Company for the addition to the Motor Vehicle Storage Building to be constructed for the State of Indiana, at Alexandria, Indiana.

"* * *

"The Civil City of Alexandria, Indiana, will furnish in place all of the fill that is needed inside and outside of this building."

This document also provides:

"24. DELAYS AND EXTENSION OF TIME

"If the Contractor be delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect, or of any employee of either, or by any separate Contractor employed by the Owner, or by changes ordered in the work, or by strikes, casualties or any causes beyond the Contractor's control, or by delay authorized by the Architect pending arbitration, or by any cause which the Architect shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Architect may decide.

"No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Architect. In the case of a continuing cause of delay, only one claim is necessary.

"If no schedule or agreement stating the dates upon which drawing shall be furnished is made, then no claim for delay shall be allowed on account of failure
to furnish drawings until two weeks after demand for such drawings and not then unless such claim be reasonable.

"This article does not exclude the recovery of damages for delay by either party under other provisions in the contract documents."

"29. DAMAGES

"If either party to this contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damage.

"Claims under this clause shall be made in writing to the party liable within a reasonable time at the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials, and shall be adjusted by agreement or arbitration."

The documents submitted with your request purport to show that fill dirt was not provided per specification and Mr. Mitchell has submitted evidence of damage to him from the delay in the supplying of fill. When the state enters into a contract with an individual the rights and obligations of the parties must be adjudicated as if both parties were private persons.

State v. Feigel (1932), 204 Ind. 438, 445, 178 N. E. 435;
1943 O. A. G. 432, 436;
1937 O. A. G. 100.

The above cited case concerned liability of the state for delay in procuring a right of way. In that case it was said on page 445:

"* * * Appellant makes no contention as to the validity of the contract, out of which the present controversy arose. It was entered into by the proper officials of the state, after the proper preliminary proceedings had been taken, and constituted a valid and
binding obligation on the part of the state. It seems to be well settled that the state, in all its contracts and dealings, must be adjudged and abide by the rules which govern in determining the rights of private citizens contracting and dealing with each other. There is not one law for the state and another for its subjects. When the state engages in business and business enterprises, and enters into contracts with individuals the rights and obligations of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law. * * *

and the court further said on page 446:

"Looking at this contract in the light of the decisions referred to, it occurs to us that the plainest principles of justice required the implication of a covenant on the part of the state to provide a right of way so as to enable the appellee to prosecute his work to the utmost advantage and economy. Any other construction would destroy the mutuality of the agreement, and put it practically in the power of the state to defeat performance by the contractor. It is true that the contract does not expressly state that appellant shall furnish the right of way, nor does it fix any definite time when the same should be acquired; but the clearest implication arises from the language of the agreement and its avowed object and interest that the right of way over which the proposed highway was to be constructed should be secured by the state. * * *

It has been uniformly held that a person contracting for construction is liable to a contractor for damages resulting from circumstances which delay the contractor in beginning his work caused by the owner.

Indianapolis etc. Traction Co. v. Brennan (1909), 174 Ind. 1, 24, 91 N. E. 503;
Louisville & Nashville R. R. Co. v. Hollenbach, et al. (1885), 105 Ind. 137;
Brown, et al. v. Langer (1900), 25 Ind. App. 538;
Anno. 115 A. L. R. 65.
Furthermore, it has been held that when the delay is unreasonable a governmental agency is liable for damages even though the contract may prohibit such liability.

People v. Craig (1921 New York), 133 N. E. 419; 135 A. L. R. 1265; 76 A. L. R. 268.

The addendum states that the city of Alexandria will furnish fill dirt. Under no construction of the contract could the contractor or the sub-contractor be deemed to guarantee the actions of the city of Alexandria. That it was the city of Alexandria and not the State, that was to supply the fill is a matter between the state and the city and is completely collateral to the relationship between the state and the contractor.

Whether or not the sum specified by Mr. Mitchell is reasonable is a question of fact, the determination of which is not within the scope of this office. However, inasmuch as claims against the state, based on contract express or implied, may be the subject of suits in the Court of Claims, it is my opinion that the State of Indiana is liable to the J. I. Barnes Construction Company and thus indirectly to Mr. G. E. Mitchell for damages suffered as a result of the delay in providing fill at the site of the Armory in Alexandria, Indiana.

OFFICIAL OPINION NO. 22
March 16, 1951.

Mr. F. W. Quackenbush,
State Chemist,
Purdue University,
Agricultural Experiment Station,
Lafayette, Indiana.

Dear Sir:

Your letter of March 15, 1951, supplementing your request of January 18, 1951, has been received, in which you request an official opinion as to whether or not you can legally print new State Chemist labels to replace some 100,000 issued to the Ellis Chemical Company, providing a charge is made by you for the cost of printing, shipping and counting the old