Honorable Thomas C. Hasbrook,
Indiana State Representative,
6001 Haverford,
Indianapolis, Indiana.

Dear Sir:

Your letter of 20 March 1951 has been received requesting an official opinion on the following question:

"Would you please be so kind as to give me an official opinion of the validity or the invalidity of Senate Bill No. 73 which was passed by the 87th General Assembly and signed by the governor.

"This bill was a repealer of certain sections of the patent law. It repealed parts of the original act, which was passed about 1867, but it may not have repealed some of the amendments of the original law, which were passed in the 1890s."

In answering your question it is necessary to consider the history of the Act repealed (Sections 51-401 to 51-403, Burns 1951 Replacement) which may be summarized as follows:

On April 23, 1869, an act entitled ‘An Act to regulate the sale of patent rights, and to prevent frauds in connection therewith,’ became effective without the Governor's approval. Section 4 of that Act declared an emergency.

On February 24, 1899, an act entitled ‘An Act to amend sections one (1), two (2) and three (3) of an act entitled an act to regulate the sale of patent rights, and to prevent fraud in connection therewith, approved April 23, 1869, the same being Sections 6054, 6055 and 6056, Revised Statutes of 1881, repealing all laws and parts of laws in conflict herewith, and declaring an emergency,’; was approved by the Governor. This act purported to amend the act which became effective April 23, 1869, and rewrote each of its first three sections (all sections except section 4 declaring an emergency); but it identified the 1869 act inaccurately in two respects:

a. It used the singular ‘fraud’ instead of the plural ‘frauds’
b. It said the act was ‘approved April 23, 1869,’ Whereas in fact the 1869 act became effective without the Governor's approval.

On February 20, 1951, the Governor approved Senate Enrolled Act No. 73, entitled “An Act to repeal an act entitled ‘An Act to regulate the sale of patent rights, and to prevent frauds in connection therewith,’ effective April 23, 1869 without governor’s approval.” Neither the title nor the body of this act refers to the 1899 act. The 1951 Act declared an emergency from and after its passage.

While Article 4, Section 21 of the Constitution of Indiana provides “no acts shall ever be revised or amended by mere reference to its title; but the act revised or Section amended shall be set forth and published at full length”, there is no specific reference to the Constitution as to the prescribed form for a repeal of a statute.

I believe the title of the original act is sufficiently set out in the amendatory act. I do not think it is material that the amendatory act of 1899 inaccurately referred to the 1869 act as “Approved April 23, 1869”, where, in fact, the original law became effective “without the governor’s approval”, for the reason that an approval date is not a part of the title of an act.


That the same rule of statutory construction does not apply to the form used in repealing a statute as that used in amending a statute is clearly shown by the following authorities which hold that a repeal of any act may be made without referring to such fact in the title of the new law.

Gabbart v. The Jefferson R. R. Co. (1859), 11 Ind. 365, 366;

Board of Commissioners of County of Marion v. Scanlon (1912), 178 Ind. 142, 147.

The legislative intent controls in the construction of the effect to be given a repealing provision of a statute. In the case of State ex rel. Milligan v. Ritter's Estate (1943), 221 Ind. 456, the Court on pages 471 and 472 of the opinion said:
"In Arnett, Controller, v. State ex rel. Donohue (1907), 168 Ind. 180, 191, 80 N. E. 153, 156, it is said: '* * * a repealing clause, like any other provision of the statute, is to be subjected to rules of construction, and the intent will prevail over the literal import of the words.'"

It is to be noted that when the amendment of 1899 to the original act became effective, it, as a matter of fact, superseded for all practical purposes the three (3) Sections of the original law, and only left one Section which was not amended, which was the emergency clause of the original act.

To ascribe to the Legislature, the intent of only repealing the original law, without affecting the amendatory act of 1899, would be to say, the legislature performed a useless Act because the original act had already been amended. On this question, the Supreme Court of Indiana in the case of Marks v. State (1942), 220 Ind. 9, at page 18 of the opinion, said:

"It is presumed that the Legislature does not intend an absurdity, and such a result will be avoided if the terms of the act admit of it by a reasonable construction; and 'absurdity' meaning anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion'. Words and phrases, Permanent Edition, Vol. 1, p. 177 and cases cited."

It has been held that an amendatory act should be construed as a part of the original act which it amends, the same as if the subject matter of the amendment had been incorporated in the prior act at the time of its adoption—this is true whether the amendment be a change of a line, figure or recasting of the whole language.

Stiers v. Mundy (1910), 174 Ind. 651, 655;
Board of Commissioners v. Farmer’s State Bank (Transfer Denied 1938) (1938), 104 Ind. App. 692, 695;
The State ex rel. Railroad Commission v. Adams Express Company (1908), 171 Ind. 138, 141.
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While the specific question presented has not been passed on by the Supreme Court of our State, the law in other jurisdictions has been considered. From the following cases, it is clear that as a general rule the repeal of the original act repeals all amendments thereto, and the legislative intent is to be considered on the effects of a repeal.

In re Shee Mui Chong Yuem’s Repatriation (1944), 73 Fed. Supp. 12, 14, 15;
In Re Assessment of Yakima Amusement Company (1937), — Wash. —, 73 Pac. 2d 519;
Duke v. American Casualty Company (1924), 130 Wash. 226 Pac. 501, 504;
1 Sutherland Statutory Construction (3rd Ed.) Page 444, Section 1939.

It will not be considered the legislature did a useless thing in repealing that part of the law that had already been repealed.


Such an amendment is considered a part of the original act from its inception.

Hayden v. Hayden’s Estate, supra;
In Re Assessment of Yakima Amusement Company, supra.

From the foregoing, I am of the opinion that Senate Enrolled Act No. 73 in repealing the above original act, also repealed the amendatory act of 1899.