space for these records has remained somewhat constant, it is seen that the Legislature, having been made aware of this acute shortage of space, has provided a vehicle by which such records, regardless of age, may be preserved and storage space for these records concomitantly reduced, and that the original records with the above stated exception, can then be destroyed.

It is my opinion, therefore, that the statutes enacted in 1947 (Acts 1947, Chapter 195, Section 1) is clear on its face and that so long as "the time for filing legal proceedings based on such instruments" shall have elapsed any offices of the state, may after securing permission for your office destroy or otherwise dispose of such records that have been microfilmed.

OFFICIAL OPINION NO. 55

September 1, 1950.

Hon. Walter G. Koch, Chairman,
Indiana State Toll Bridge Commission,
Evansville 7, Indiana.

Dear Sir:

I have your letter requesting an opinion concerning the duties and powers of the Indiana State Toll Bridge Commission with reference to the Financial Reorganization Act of 1947.

Your request, insofar as material, reads as follows:

"Under the existing laws, the Indiana State Toll Bridge Commission cooperates with the Indiana State Highway Commission and obtains its approval on the letting of all contracts relating to the construction of interstate bridges.

"The General Assembly of the State of Indiana in 1947 enacted a law known as 'The Financial Reorganization Act of 1947.' This Act was approved on March 13, 1947. The provisions of this Act, under Section 2 thereof, establish a Division of Public Works and Supplies, a Division of the Budget, and a Division of Auditing. Many State agencies by this Act were placed
under the supervision of the Division of Public Works and Supplies; others were precluded.

"Under Section 6 of said Act the Director of Public Works and Supplies was granted the authority to supervise and control, with the approval of the Governor, the making of all contracts for buildings and other improvements, except public highways and bridges. * * *

"* * * Therefore, we would like to have your opinion as to the construction of the law that would in any way affect our operation under the Indiana State Toll Bridge laws as herein set out and designated. * * *"

The powers and duties of the Indiana State Toll Bridge Commission are defined and set forth in the Act of 1939, as amended by Acts of 1941 and 1947. The amendatory act of 1947 contained no emergency clause and, hence, became effective upon promulgation by the Governor.

Acts 1939, Ch. 79, p. 461;
Acts 1941, Ch. 217, p. 654;

The entire act, as amended, is set forth in Burns Revised Statutes (Repl.) 1949, Sec. 36-3001 to Sec. 36-3017, inclusive.

This act provides for the appointment by the Governor of a Commission consisting of three members. By an express provision of the act, the Commission is constituted "a body corporate under the name of Indiana State Toll Bridge Commission which shall have power to contract and be contracted with, to sue and to be sued in that name and to adopt a seal and alter the same at pleasure." Power is conferred upon the Commission to adopt by-laws, rules and regulations for its own government, to enter into all contracts and agreements, and to do all things necessary or incidental to the performance of its duties, including power to employ engineering, architectural and construction experts, inspectors, attorneys, and such other employees as may be necessary.

Section 1, Acts 1939, supra.

Section 2 of the Act of 1939, as amended by Section 1 of the Act of 1941, empowers the Commission to construct,
acquire by purchase, or to condemn highway bridges extending over any river or stream forming a boundary between the State of Indiana and any adjoining State. The Commission has power to conduct investigations with reference to the need for construction, acquisition by purchase, or condemnation of any interstate bridge, or with reference to the enlargement, extension or improvement of any such bridge under control of the Commission, to employ engineers, construction experts, and attorneys in the carrying out of such authority. The proviso of this section reads as follows:

"* * * Provided, That in case the state highway commission of Indiana shall incur any expense in the acquisition or construction of any such bridge, it shall make up an itemized statement of account of such expenses and present same to the state toll-bridge commission, and upon the presentation of said statement said state toll-bridge commission shall at once reimburse said state highway commission of Indiana for such expenses." Burns Section 36-3004; Sec. 2, Chap. 217, Acts of 1941.

There are other provisions in the act concerning the powers of the Commission with reference to purchase, condemnation, construction, enlargement, or improvement of a bridge, and provisions also setting forth the procedure to be followed by the Commission in the carrying out of such powers, which provisions are not essential to the determination of the question presented. The act provides that all expenditures are payable out of the funds provided for in the act; and that title to a bridge so acquired, either by purchase or condemnation, shall be taken in the name of the Indiana State Toll-Bridge Commission. The Commission is authorized to provide funds, in addition to the amount appropriated by Section 13e of the 1947 amendment, for each and every purpose of the act by the issuance of bridge revenue bonds to be retired by toll collection; and the act defines the method and procedure for the advertising and sale of the bonds.

Section 13e, which was added by the Amendatory Act of 1947, reads as follows:

"There is hereby appropriated out of the general fund of the state for the establishment of the Indiana
interstate bridge fund the sum of two million five hundred thousand dollars ($2,500,000): Provided, however, That any and all expenditures from said fund shall be first approved by the governor and the budget committee.” Burns Sec. 36-3013e.

The proviso, which will be hereinafter referred to, is pertinent to the question presented. The Commission is authorized to receive contributions from the Federal Government, or an adjoining State, or from other public agencies to apply on bridge projects; hence, the fund may be affected by such contributions. Sec. 13d; Sec. 36-3013d, supra.

The act contains specific provisions which correlate the duties and powers of the Toll-Bridge Commission with the duties and powers of the State Highway Commission of Indiana, which provisions have special bearing on the question presented. These provisions read as follows:

"Before any construction, acquisition by purchase, or otherwise, or condemnation of any bridge, right-of-way, or other property is consummated, the said commission shall submit to and obtain from the state highway commission of Indiana its approval, and no such construction, acquisition by purchase, or otherwise, or condemnation as provided for in this act shall be valid until said state highway commission of Indiana and said state toll-bridge commission shall have concurred in and agreed upon all matters set out in this section.” Acts 1941, Sec. 4, supra. Sec. 36-3007a Burns Supl. 1949, supra.

“Before any bridge shall be constructed under the provisions of this act, the state toll-bridge commission of Indiana shall cause to be presented to the state highway commission profiles, plans and specifications, and estimates for the construction of such bridge or bridges as they shall designate for construction under the provision of this act; following which said state toll-bridge commission shall give notice of the time, place, terms and conditions for the letting of the contracts for the construction of such bridge or bridges as is now provided by law, for the giving of notices for the construction of highways by the state highway commission of
Indiana; said state toll-bridge commission shall let the contracts for the construction of such bridge or bridges in the same manner and under the same conditions as are now fixed by law for the letting of contracts for the construction of highways by the state highway commission of Indiana.” Acts 1941, supra, Sec. 5; Sec. 36-3007b, Burns Supl. 1949, supra.

Section 6 of the Act of 1947, supra, Sec. 36-3007c, provides that, in the event of disagreement between the Toll-Bridge Commission and the State Highway Commission concerning the questions arising under the provisions hereinbefore quoted, the controversy shall be submitted to the Governor. The method and time for the reference to, and hearing by, the Governor are set forth in this section. Upon the submission of any such issue, it becomes the duty of the Governor to call a conference and, after hearing, the Governor is authorized to determine finally the issue presented and his decision becomes final.

The act further provides that each bridge constructed or acquired by the Toll-Bridge Commission under the provisions of the act shall be given a separate designation and revenues collected from the operation of each bridge shall be kept in a separate account by the Commission and used solely for the operating and maintenance expense of such bridge and for the payment of principal and interest of the bonds issued. Sec. 12, Acts 1939, supra; Sec. 36-3012, Burns Supl., supra.

The act further provides that when all bonds and interest shall have been retired and paid, the bridge so constructed or acquired shall then, without deed of conveyance but by the provisions of the act, be and become the property of the State of Indiana and a part of Indiana State Highway System to be maintained by the State out of the maintenance fund of the State Highway Commission as a free bridge, or at the discretion and upon the order of the State Highway Commission, without further authority than the passage of this act, such bridge may be maintained and operated by application of the proceeds of tolls. Upon this change of control so provided for, the authority of the Toll-Bridge Commission ceases.

The Financial Reorganization Act, (Acts 1947, Ch. 279, p. 1138,) is a general act applying to the fiscal management of all State offices, agents, institutions, and commissions, in the

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absence of express exception. The entire act appears in Burns Supplement 1949, Sec. 60-1802 to 60-1835, inclusive. This act was approved March 13, 1947, and, by express provision of an emergency clause contained therein, became effective on June 30, 1947. The purpose of this act, as stated in the preamble thereto, was to adopt a modern administrative procedure for administering the fiscal affairs of the State. The act is a comprehensive one, setting forth the procedure in this respect, and it provides for and sets up: (1) a Division of Public Works and Supply; (2) a Division of the Budget; and (3) a Division of Audit. The duties and powers of each of these divisions are defined in detail by the act.

The provisions defining the duties of the Division of Public Works and Supply provide for the appointment of a Director of the Division. The duties of the Director are comprehensive and are defined largely and in detail in Section 5 of the act. This section prescribes the procedure for purchase or rent of, or the furnishing of supplies, materials, equipment, printing and contractual services; the supervision and control, with the approval of the Governor, of the making of contracts for buildings and other improvements; the preparation of plans and specifications for construction, alteration, or enlargement of State buildings, structures and other improvements; the rental of land or other premises, with the approval of the Governor, when necessary for State purposes; and for the carrying out of many other duties of similar character not essential to the determination of the questions presented. It suffices to say that the duties and powers of the Director are correlated with the duties and powers of the State agencies in the execution and carrying out of contracts, purchases and business transactions, with certain exceptions contained in the act.

Since the Toll-Bridge Act, supra, contains provisions correlating the duties and powers of the Toll-Bridge Commission with those of the State Highway Commission, it is necessary to give special consideration to such provisions of the Financial Reorganization Act, supra, as apply to the powers and duties of the State Highway Commission. The provision of the Financial Reorganization Act, defining the duties and powers of the Division of Public Works and Supply, expressly makes the duties and powers of the Director:
“Subject to other applicable provisions of this act and to other laws not inconsistent herewith * * *.”

With reference to the duties and powers of the Highway Commission, it should be noted that Section 5 of the Financial Reorganization Act contains exceptions with reference to “public highways and bridges.” Clause 2 of Section 5, conferring authority on the Director, reads as follows:

“To supervise and control, with the approval of the Governor, the making of all contracts for buildings and other improvements, except public highways and bridges, and to prescribe the amount and form of certified checks, deposits or bonds to be submitted in connection with bids and contracts when not otherwise provided by law.” (Our emphasis.)

Clause 11 of Section 5 of the Financial Reorganization Act, in conferring the duty on the Director to maintain and operate, with the approval of the Governor, certain designated public buildings makes an exception of the Central State Highway Garage and also the Testing Laboratory of the State Highway Commission.

Clause 14 of Section 5 of the act reads as follows:

“To supervise and control the making of necessary repairs to all buildings and structures owned by the State, when requisitioned by the officials or official in charge of said state property, provided however, that the provisions of this section, except as to the purchase of supplies, equipment and the provision concerning printing, shall not apply to the State Highway Commission of Indiana; and, provided further that the provisions of the laws now in force defining the duties and powers of said Commission concerning the purchase or rent of materials, the employment of contractual services and the advertising and letting of contracts, the preparation and promulgation of standard and supplemental specifications for the construction and maintenance of highways and bridges, and the testing of materials for such construction and maintenance, shall remain in force and shall govern the duties and powers of said Commission, except that specialized
road equipment should be purchased by the Director of Public Works and Supply on requisition from the State Highway Commission."

The act (Sec. 6) defines the powers and duties of the State Budget Committee, "subject to the other applicable provisions of this act and to other laws not inconsistent therewith." With the approval of the Director of Public Works and Supply and the Director of Auditing, the State Budget Committee is authorized to prescribe the procedures to be followed in submitting requisitions for supplies, materials, equipment, printing and contractual services and the manner in which claims therefor shall be submitted. This section further provides that the Committee shall have such other powers and duties respecting all agencies of the State as may be imposed by law or transferred to it by the provisions of this act.

The act also defines the duties and powers of the Director of Auditing. The provisions on the subject, however, are "subject to other applicable provisions of this act and to all other laws not inconsistent therewith * * *". Sec. 7, supra. These duties concern the methods of auditing and the keeping of records of account. The duties of the Director in this respect are set forth in detail; and, in short, the act confers upon the Director supervisory power over the accounting and bookkeeping methods and duties of the several State agencies, offices, and commissions.

Section 15 of the act provides that, excepting as otherwise provided, every contract shall be signed in behalf of the State by the head of the interested State agency. This provision will be hereinafter noted.

In the determination of the question presented, it is necessary to read together the provisions of the acts hereinbefore cited and to reconcile them in such manner, if possible, as to permit them to operate together in harmony.

State v. Gerhardt (1896), 145 Ind. 439.

This is true even though the Toll-Bridge Act is special in its nature in that it deals with a common subject—that of the construction and acquisition of interstate bridges—and the Financial Reorganization Act is general in its application to
State offices and agencies. It should be noted that the Toll-
Bridge Act for the most part was enacted previously to the
Financial Reorganization Act; and, in the amendatory act of
1947, certain provisions were merely added without change of
the provisions previously in force. Though it is a rule of con-
struction that a later act, general in its terms, and not ex-
pressly repealing an earlier statute, will ordinarily not affect
the special provisions of the earlier statute (Monical v. Heise
(1911), 49 Ind. App. 302), the rule does not apply if the
provisions of the two acts may be harmonized as hereinbefore
stated.

City of New Albany v. Lemon (1926), 198 Ind. 127,
and cases cited.

This is especially true with reference to acts passed at the
same session, as stated in the opinion last cited.

It is my opinion that the provisions when considered
together prescribe a procedure that permits each of the acts
to be given such effect that each may operate as intended by
the Legislature and without conflict, excepting in one par-
ticular, hereinafter mentioned, which conflict is merely verbal
rather than a conflict in the ultimate purpose to be attained.

In view of the rules of construction stated, therefore, I think
the duties and powers of the Toll-Bridge Commission with
reference to the Financial Reorganization Act are as follows:

1. The preparation of plans and specifications, the giving
of notice of bids for construction, and the letting of contracts
for construction of bridges are duties conferred upon the Toll-
Bridge Commission, subject, however, to the approval of the
State Highway Commission of Indiana. In other words, the
duties of the Toll-Bridge Commission in this respect are gov-
erned by the law applicable to the State Highway Commission
and the procedure as outlined in the law governing the State
Highway Commission should govern the Toll-Bridge Commiss-
ion, the execution and letting of contracts to be in the name of
the Indiana Toll-Bridge Commission. This necessarily results
from the fact Sec. 5 of the Financial Reorganization Act of
1947 specifically exempts all contracts for building and im-
proving public bridges. Therefore, since the Toll-Bridge Act
provides that a bridge when paid for shall become a part of
the system of highways under control of the State Highway
Commission, the feasibility of any such bridge as a part of the system under control of the Highway Commission would be an element for the State Highway Commission to consider in connection with other questions involved in its decision.

2. The duties and powers of the Toll-Bridge Commission with reference to the acquisition by purchase of a bridge are likewise correlated with the duties of the Highway Commission; and, hence, any proposal to acquire any such bridge by purchase would be subject to the approval of the Highway Commission.

3. The powers and duties of both Commissions with reference to the construction or acquisition of any such bridge as set forth in Conclusions Nos. 1 and 2, in case of disagreement, are subject to the power of review by, and final decision of, the Governor as provided in section 6 of the Toll-Bridge Act, supra.

4. Since Clause 14 of section 5 of the Financial Reorganization Act, supra, by an exception, leaves with the Director of Public Works and Supply authority concerning purchases of supplies and equipment and printing, the same authority of the Director in this respect as applies to the Highway Commission applies to the Toll-Bridge Commission; and the practice in respect to such items followed by the Director and the Highway Commission should be followed with reference to the duties of the Toll-Bridge Commission.

5. Section 18e, supra, of the Toll-Bridge Act, which confers upon the Governor and the Budget Committee the duty of approving expenditures from the Toll-Bridge Fund, was intended to apply to the expenditure of the amount appropriated by this section, to expenditures for personnel, supplies, office equipment, and "overhead" expense; in other words, to such expenditures as do not become fixed either by contract or by operation of law. It should be noted that the Toll-Bridge Commission is authorized to cause the issuance of bonds to be retired by application of the net proceeds of toll collection; also to receive contributions from the Federal Government and other public sources. A contribution of this character would necessarily be applied by contract to a specific project and, hence, the disbursement thereof would be governed by contract. The same is true as to the application of the net proceeds of toll collections. Such fixed charges arising out
of contract duly executed may not be escaped; hence, to permit
the accomplishment intended by the Toll Bridge Act, I think
the authority of the Governor and the Budget Committee, by
virtue of Section 13e, is confined to such expenditures as are
involved in office management and operation, office supplies
and equipment and what is generally known as "overhead" in
the construction field. My conclusion on this phase of the ques-
tion is based on two reasons: First, the Financial Reorganiza-
tion Act, in conferring power on each of the Divisions
established, as hereinbefore stated, expressly provides that
their respective powers are "subject to other applicable pro-
visions of this act and to other laws not inconsistent herewith
* * *;" and, secondly, the provision conferring power of ap-
proval upon the Governor and the Budget Committee, in this
instance, is by way of a proviso; and a proviso is ordinarily
strictly construed and limited to the section of which it forms
a part, in the absence of language evidencing a clear legis-
lative intent that it is to have broader application.

Murray v. Gault (1913), 179 Ind. 658, and cases cited.

The limitation of the proviso to expenditures as hereinbefore
stated, I think comports with this rule. But, in view of the
fact that both acts involved herein were before the same
session of the Legislature, I think the provisions of the Re-
organization Act apply to all expenditures except the fixed
charges hereinbefore mentioned. This construction permits
the Toll Bridge Act to operate as intended with reference to
such fixed charges and also gives effect to the purpose of the

6. The keeping of records and accounts by the Toll-Bridge
Commission is subject to the supervisory direction of the Di-
rector of Auditing as provided in section 7, supra, of the
Financial Reorganization Act. It should be noted in this con-
nection that section 12, supra, of the Toll-Bridge Act requires
a separate accounting as to each bridge project; hence, a
proper and practicable system of accounting and bookkeeping
should be set up in order to comply with this provision, which
duty is essentially within the scope of the authority of the
Director of Auditing.

7. Since the Toll-Bridge Act constitutes the Indiana State
Toll-Bridge Commission as a corporate entity, with the power
to sue, to be sued, and to contract, in its own name, the contracts of the Commission should be executed in the corporate name of the Commission as set forth in the Toll-Bridge Act rather than in the name of the State of Indiana, as provided in section 15 of the Financial Reorganization Act. Since the Toll-Bridge Act is specific in this instance and no change in this respect was made by the amendatory Act of 1947, I think the provision in the Toll-Bridge Act controls over the provision in the Financial Reorganization Act that requires contracts to be made in the name of the State. This procedure is consistent with, and is set up as a part of, the provision conferring power on the Commission to sue or to be sued in its name, which provision the Legislature evidently intended to remain operative.

I think the conclusions stated sufficiently answer the question submitted.

OFFICIAL OPINION NO. 56
September 9, 1950.

Noble Hollar, Chairman,
Indiana State Tax Board,
301 State House,
Indianapolis, Indiana.

Dear Sir:

You have submitted to us a communication from Mr. Hunt, Assessor of Pigeon Township, Vanderburgh County, upon which you ask an official opinion with respect to the personal tax on certain trucks owned by a trucking company. The request for an opinion states:

"* * * Its principal administrative business office is in Evansville, but it also has a business office and yard in Henderson, Kentucky and one in Grayville, Illinois. It has obtained Indiana registrations and license plates for certain of its motor vehicles which are located in the Henderson, Kentucky, yard. These motor vehicles run out of that yard, principally to various points in Kentucky, although they may also be used on interstate hauls through Indiana and Illinois and other states, as