their respective terms, or will the effective date of the payment of such salaries be at the beginning of a new term in January, 1952?"

You are referred to Official Opinion No. 22 1949, where the same or similar questions are involved and answered.

The answer to your question number one (1) is "yes".

The salaries fixed by ordinances pursuant to Chapter 372, Acts of 1947 are lawfully payable throughout the year 1951.

OFFICIAL OPINION NO. 40

May 9, 1949.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Sir:

Your request under date of April 19, 1949 for an official opinion, reads as follows:

"House Enrolled Act 75, Chapter 241, Acts 1949 fixes the annual base salary of each county surveyor in this state and provides, in sub-section b, section 1, that 'if the county surveyor is licensed under the laws of the State of Indiana to practice civil engineering, the annual salary of the county surveyor shall be * * *.' The act fixes the amount by counties and in some instances is a minor increase. The act further contains a permissive provision for the county council to increase the annual salary in an amount not to exceed $1500. The act is effective April 1, 1949.

'We respectfully request an official opinion to the following question:

"Are county surveyors who are licensed to practice civil engineering entitled to an increase in salary on
and after April 1, 1949 and during the term for which they were elected?

“Reference is made to Burns 49-1103.”

Chapter 241 of the Acts of 1949, concerning the salary of County Surveyor amends sections 3 and 4 of Chapter 305 of the Acts of 1943. Under section 7 of the 1943 law it provided that said Act would expire by limitation at mid-night March 31, 1945. The expiration date provided in Section 7 of said act was extended to March 31, 1947 under the provisions of Section 1, Chapter 286 of the Acts of 1945. Under Chapter 355 of the Acts of 1947 it was provided by Section 1 thereof that the extension of, and the limitation on the taking of effect of the expiration of said Act, was repealed and under Section 2 thereof it provides that said act would expire by limitation mid-night March 31, 1949. Section 3 of Chapter 241 of the Acts of 1949 repealed all of said sections of prior acts regarding the expiration dates of said act and by Section 4 of said new act provides:

“Whereas an emergency exists for the taking effect of this act, the same shall be in full force and effect on and after April 1, 1949.”

From the foregoing it is to be observed that without said provision in the 1949 law the entire act of 1943 would have expired by limitation on March 31, 1949.

Section 1 of the new law amends Section 3 of the 1943 law and sets out verbatim under clause (a) thereof the same salary for the counties for the office of county surveyor as contained in the earlier law. However, the new law also contains in said section new provisions incorporated in what has been marked clause (b), in which the counties are listed and the salaries of such officers fixed at approximately one and one-half times the amount contained in Section 3 of the old law and is applicable only where a county surveyor is licensed under the laws of the State of Indiana to practice Civil Engineering.

Substantially, the same result was obtained in the old law by a proviso to Section 4 thereof which reads as follows:

“Provided, That if the surveyor is licensed under the laws of the State of Indiana to practice civil engineer-
ing; the salary of the surveyor shall be one and one-half times the amount prescribed in this act.”

Section 2 of the new law is identical to Section 4 of the old act except that said proviso, above quoted, has been deleted.

In a previous opinion of this office to you, being 1949 O. A. G. No. 39, it was pointed out that the attempted amendment of the Constitution of Indiana in 1926, prohibiting an increase of salary during the term, is no longer effective. In said opinion it is further pointed out that the provisions of the 1925 statute, section 49-1103 Burns 1933, was not applicable to the increase in salaries therein involved. It remains to be decided whether such statutory provision prevents the immediate effectiveness of the increase in salary provided for by Chapter 241 of the Acts of 1949.

In order not to unduly extend this opinion reference is hereby made to the aforesaid official opinion and to numerous rules of statutory construction and authority cited therein, for the purpose of determining the Legislative intent in the enactment of such statute.

It is necessary to consider the effect of the emergency clause contained in Chapter 241, *supra*. In the case of Carpenter and others v. Montgomery (1845), 7 Blackford 415 at page 416, in construing the effect of an emergency clause in a statute, the court said:

"* * * By the constitution of this state, statutes are not to be in force until they are published in print, unless in cases of an emergency. Of the existence of the emergency the legislature must necessarily be the judges; and when they deem it to exist, they have the right to declare a statute in force from and after its passage. They have exercised that right with regard to the law under consideration. Consequently, as the clerk made up the final record after the passage of the act, and without instructions to do so, he had no right to charge fees for it. * * *"

From the foregoing case it is seen that such an emergency clause not only relieves such act of the necessity of being printed and distributed by the Secretary of the State, and promulgated by the Governor, but the provisions of such an
act become in full force and effect. The use of the emergency clause was an overt act on the part of the legislature. Also see Ayres v. State (1912), 178 Ind. 453, 457.

The purpose of the emergency clause was to put into operation said act immediately upon its passage. If the legislators only intended the act to apply to officials subsequently elected, there was no reason for an emergency clause for the act would have come into being by promulgation long before the time for election of new officers. It cannot be presumed the legislature performed futile or purposeless act.

Lee Brothers v. Jones (1944), 114 Ind. App. 688, 702;
In re Terry’s Estate (1916), 218 N. Y. 218, 112 N. E. 931, 934.

Under the authority cited in said prior official opinion herein referred to, it is pointed out that one Legislature can not prevent another Legislature from carrying out the prerogatives of such office so as to prevent it from enacting new types of law permitted by the Constitution. It is further pointed out in said opinion that a later act repeals a former act by implication to the extent of any conflict. In addition to the authorities therein cited see:

The Jeffersonville, Madison and Indianapolis Railroad Company v. Dunlap (1887), 112 Ind. 93, 95, 96;
Deisner v. Simpson (1880), 72 Ind. 435, 439;
Read v. Beckiewicz (1939), 215 Ind. 365, 382.

Applying these provisions to the instant statute it is my opinion the Legislature knew the effect of an emergency clause when they placed the same in the statute in question and they intended it to take effect on April 1, 1949, as stated in said act. This would have the effect under the above authorities of repealing by implication said 1925 law at least as far as applicable to the instant statute.

It is to be further observed that Section 1 of the new act amends section 3 of the old statute and that section 2 of the new act amends Section 4 of the old statute. These old sections amended were the salary provisions in question. It
has been determined in this state that once a section of a statute is amended the section amended ceases to exist.

State, ex rel., v. Bowman, Auditor (1927), 199 Ind. 436-446.

That case held that the old salary statute for the pay of the legislature ceased to exist on the taking of effect of the new amending section. Applying the foregoing to the instant case, since the new law contains an emergency clause effective April 1, 1949, the old salary provisions of the 1943 law are no longer in existence. No salary could now be paid under such section. To impute to the Legislature an intent to give effect to the old 1925 statute rather than giving full force to the emergency clause as stated by the 1949 Legislature, would result in charging the Legislature with the intent of taking away any statute under which the present incumbents in office could be paid. Such a violent assumption would be entirely unwarranted.

Marks v. State (1942), 220 Ind. 9, 18.

Another reason exists why effect cannot be given to the 1925 law prohibiting increases in salary of such officers during term. Article 4, Section 21, of the Constitution of Indiana, provides as follows:

"No act 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."

Applying the foregoing constitutional provision it is clear that the sections of the statute exist only in the present amended form. Under that provision of the Constitution the 1949 session of the Legislature could not have amended such section, so as to make the provision contemplated by the 1925 law, effective, except by setting out the old statute for present office holders and by making provisions in addition thereto for the increase for subsequent office holders. This it did not do. The passage of the 1949 law, as an amendatory act precludes the application of the 1925 act.

State ex rel v. Bowman, supra.
1949 O. A. G.

By the same token I would not believe such force and validity could be given the 1925 act as to read into the new amendment a provision postponing its taking effect, and the effective date of its actual operation, to a time in the future, contrary to the provision contained in the emergency clause of the new statute.

I am therefore, of the opinion the salaries provided by Chapter 241 of the Acts of 1949 shall be paid on and after April 1, 1949.

OFFICIAL OPINION NO. 41
May 12, 1949.

Mr. Noble W. Hollar, Chairman,
State Board of Tax Commissioners,
State House, Room 301,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 19, 1949 has been received requesting an official opinion construing Chapter 251, being House Enrolled Act No. 193 of the Acts of the General Assembly for 1949 and Chapter 236, being Senate Enrolled Act No. 56 of the Acts of the General Assembly for 1949. Each of these statutes provide increases of salaries of certain officials. The former statute concerns the salaries of city officials in cities having a population of 50,000 to 250,000 while the latter statute concerns the fixing of salaries of certain county officers in counties having a population of from 200,000 to 300,000.

Chapter 251, supra, Section 2, provides as follows:

"Whereas an emergency exists for the taking effect of this act, the same shall be in full force and effect from and after May 1, 1949."

Section 2 of Chapter 236, supra, provides as follows:

"Whereas an emergency exists for the taking effect of this act, the same shall be in full force and effect on and after March 15, 1949."