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

Dear Sir:

On April 13, 1949, you addressed a request to me for an official opinion as follows:

"I am writing to ask your official opinion as the proper construction to be placed upon Chapter 241 of the Acts of the Indiana General Assembly of 1943, approved March 10, 1943 by the amendment of Section 1 of that Act by Chapter 138 of the Acts of 1949, approved March 7, 1949.

"Your attention is called that sub-paragraph 2 of said Section 1 has now been amended by the insertion of the words, 'heretofore and hereafter,' in the provision now reading, 'Provision (2) herein granting authority to the Indiana Tax Board to cancel delinquent taxes heretofore or hereafter shall not apply to any delinquency that has occurred since December 1, 1941.'

"The same words were inserted in the last paragraph, Section 1, in the sentence reading as follows: 'Upon petition of the Auditor and Treasurer of any County, the Indiana Tax Board shall have full authority to order the cancellation of any and all taxes heretofore or hereafter assessed against real estate owned or acquired by any such county or any township, city or town thereof.'

"A question arises as to the effect or limitation, if any, the insertion of this additional wording will have upon the construction to be placed upon Section 2 of said Chapter 241."

On May 16, 1949, you addressed a subsequent communication requesting a further opinion on matters involved in the
same statute which you had not included in your former request. This second request reads as follows:


"On April 29, 1949, I received an unofficial opinion. Due to the numerous applications to be filed in our office, I would like to have this opinion to be official and would like to raise the question as to the effect of Section II in the Act of 1943 which apparently was not repealed by the Act of 1949. This last question was not brought out in the original request.

"I also wish to call your attention to the Purpose as stated on Engrossed Senate Bill No. 143 which became Chapter 138."

In order to answer both of your requests in one (1) opinion, you are advised that:

Sub-paragraph 2 of Sec. 1 of the amendment of 1949 deals only with the cancellation by the Board of Tax Commissioners of delinquent taxes which had accumulated against real estate owned and held by those other than the State or municipalities, and that the cancellation which can be made by the State Board of Tax Commission in such cases is limited to the cancellation of any delinquent taxes that have occurred before December 1, 1941 but not since said time.

In this connection, I can not see the force or the meaning of the words "heretofore or hereafter." It seems like the limitation expressed in December 1, 1941 provision is sufficient in and of itself to make the necessary limitations. Furthermore, it is difficult to see how such cancellation could be made "heretofore." This apparently is an unintentional use of language.

The next clause of the amended statute to which you refer, should be divided into two (2) parts for clarity.

(a) Upon petition of the Auditor and Treasurer of any County, the Indiana Tax Board shall have full authority to
order the cancellation of any and all taxes heretofore or here-
after assessed against real estate owned or acquired by any
such County or any Township, City or Town thereof.

(b) And upon the petition of the Governor or the petition
of the Chief Administrative Officer of any agency, department,
division or other branch of the State Government requesting
the cancellation of any and all taxes assessed against real
estate owned or acquired by the State of Indiana and under
its supervision, and upon the approval of the Governor of the
State, the State Board of Tax Commissioners may order the
cancellation of any and all taxes assessed against real estate
so owned or acquired by the State of Indiana.

It will be observed that the first part of the Section of which
you inquire deals with delinquent taxes assessed prior to
December 1, 1941, while the other provision deals with the
cancellation without limitation of all taxes against State or
municipalities' owned real estate under the conditions therein
stated.

Your last request desires my opinion on the effect of the
failure to repeal Section 2 of the Act of 1943, Chapter 241.
A study of Section 2 of the Acts of 1943 discloses that sub-
section 2 of said Section 1 is as follows:

"(2) Where delinquent taxes, prior to the
passage of this Act, have accumulated against real
property, to the extent and in the amount that in the
opinion of the State Tax Board a cancellation thereof,
in whole or in part, will be equitable and just and
will be advantageous to the particular taxing unit in
which the taxed property is located. Provision (2)
herein granting authority to the Indiana Tax Board
to cancel delinquent (delinquent) taxes shall not apply
to any delinquency that has occurred since December 1,
1941."

It is apparent that since Section 2 of the Act of 1943, pro-
vides that such Section should be of no force and effect on or
after the first (1st) day of May, 1943, that it has been
ineffective since that time and, of course, there was no reason
why this Section should be repealed. Therefore, the failure
to repeal it and its existence during the time it was in effect
is of no consequence in the construction of the statute. How-

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ever, the matters covered by said outmoded section are embraced within the amendment of 1949.

I trust this answers all you had in mind in reference to the amendment of 1949.

CHJ:AA:ar

OFFICIAL OPINION NO. 53

June 16, 1949.

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

Dear Sir:

This is in reply to your letter of 11th instant which is as follows:

"Chapter 44, Acts of 1949 is an act regulating real estate brokers and real estate salesmen. Section 14 of the Act deals with the handling of the funds received by the commission. We have doubts regarding certain provisions of this section and therefore, would appreciate your official opinion to the following questions:

"1. Is the language of Section 14 sufficient to appropriate (as provided in Article 10, Section 3 of the Constitution) the funds received by the Commission and authorize the Auditor of State to draw his warrant in payment of the expense incurred by the Commission?

"2. Does this section create two separate funds, i.e. the 'Real Estate Commission Fund' and another fund in the General Fund of the State? If your answer is in the affirmative please outline the type of payments that can be paid out of each of such funds."

1. Your first inquiry calls for an opinion as to whether Chapter 44 of the Act of 1949 carries a sufficient appropriation of funds with which to pay the expenses incurred by the real estate commission under the provisions of Article 10,