most persons who make appraisals. It does not require the licensing of officers, directors, or regular employees of the bank because of the sole fact that they make appraisals for the purpose of real estate loans.

JHF:ml

OFFICIAL OPINION NO. 90
September 27, 1949.

Mr. Willis K. Batchelet,
State Senator,
Angola, Indiana.

Dear Sir:

Your letter of September 10, 1949, requesting an official opinion reads as follows:

"As State Senator, I respectfully request an official opinion on the following:

"Chapter 26, Acts of 1949, page 72, amending section 8 of the Acts of 1933 (Section 48-1219, Burns' Ind. Stats. Anno., 1933) states that the mayor shall act as city judge in cities of the 5th class, and that the duty shall devolve wholly upon the mayor. The 1949 amendment, in this respect, did not change the 1933 Act.

"Does the 1949 amendment, repeal by implication, the provision for appointment of a city judge under the Acts, 1945, Chapter 277, section 1, page 1244 (Section 4-2614, Burns' Ind. Stats. Anno., 1946 replacement volume)?

"If the 1945 Act is held to be repealed by implication, would a city judge, duly appointed and qualified for a stated term of 1 year, on September 1, 1949, be permitted to complete that term?"

The 1949 Act purported to re-enact the provisions of Section 8 of the 1933 Act relative to Mayors of cities of the fifth (5th) class acting as city judges. The only change made in
Section 8 of the 1933 Act was to provide an alternate method of constituting the membership of the Board of Public Works and Safety in cities of the fifth class.

Section 1, Chapter 26, Acts of 1949, in part reads as follows:

"* * * The elective officers of cities of the fifth class shall consist of a mayor, a clerk-treasurer and members of the common council as hereinafter provided. Such officers shall be elected in accordance with provisions of laws now in effect except as herein provided.

"In such cities the mayor shall act as city judge and the duties now provided by law for city judge shall devolve wholly upon the mayor. The salary herein provided for mayor shall be in full for all services performed by him as mayor and for acting as city judge."

It is noted that there is no repealing clause or section contained in this Act.

In the year 1945, the General Assembly enacted an original Act providing in part as follows:

"* * * That in cities of the fourth and fifth class, the powers and duties of city judge shall be held and exercised by the mayor, unless he shall choose to be relieved of such duties and shall declare such action at a common council meeting and such declaration shall become a part of the minutes of that meeting as recorded by the clerk-treasurer, in which case the powers and duties of city judge shall be conferred upon a city judge, appointed by the mayor for a period of one year, such city judge to possess the usual qualifications for judge. The salary of such city judge may be fixed by the city council.

"In any such cities, where the mayor acts as city judge, he may receive, for such services, additional compensation as follows: In cities of the fourth class, city council may fix an amount not to exceed nine hundred dollars per annum and in cities of the fifth class, the city council may fix an amount not to exceed six hundred dollars per annum."

Section 3 of this Act was a repealing section, declaring that "All laws and parts of laws in conflict with this act are hereby repealed."

This Act became effective immediately upon its passage, to-wit: March 7, 1945.

It becomes important to consider what effect the provisions of the 1945 Act above referred to, had upon the 1933 Act. It is seen that there was no express repeal by the 1945 Act. Had Section 8 of the 1933 Act been repealed by the 1945 Act, then the Act of 1949 which sought to amend a section no longer in existence would be without force and effect. The effect of such construction might be to destroy all other provisions of said section, which result probably would be contrary to the intent of the General Assembly.

If Section 8 of the 1933 Act was not repealed, at least it was qualified or limited by the 1945 Act.

We note a rule of statutory construction observed by the Indiana Supreme Court in Gaughan et al. v. State of Indiana (1918), 187 Ind. 334, as follows:

"* * * It is a rule of statutory construction that a later law which is merely the re-enactment of a former law does not have the effect of repealing an intermediate statute which has qualified or limited such former law; but such intermediate act will remain in force to limit or modify the re-enacted law to the same extent that it did the first. * * *

To the same effect are: Rauch v. Board of Commissioners of Marion County (1919), 72 Ind. App. 412; Monical v. Heise (1911), 49 Ind. App. 302; Collins Coal Co. v. Hadley (1906), 38 Ind. App. 637.

Therefore, in my opinion, the provisions of Chapter 277 of the Acts of 1945 were not repealed by Chapter 26 of the Acts of 1949, and the provisions of the 1945 Act are still in force and effect, the 1949 Act notwithstanding.

WOL:vb