In the instant case, I think the Board would have promulgated the valid part alone, which leaves sub-paragraph (b) as a requirement of two years of pre-optometry or pre-medicine in a college of arts and science and three years of optometry study.

It is further the apparent intent of the Board, since acceptable credits are required, that the two years of pre-optometry or pre-medicine requires two years of passing work.

OFFICIAL OPINION NO. 9
February 10, 1948.

Colonel Robert Rossow, Superintendent,
Indiana State Police,
Stout Field,
Indianapolis, Indiana.

Dear Sir:

I have your letter of January 15, 1948 in which you make a request to furnish your department with an official opinion setting out whether or not the department may issue a license to carry a pistol to a person under twenty-one years of age, and also defining the rights of firearms dealers in regard to the sale of pistols to people who are not twenty-one years of age.

You particularly make reference to Burns’ Indiana Statutes Annotated, 1933, Section 10-4702, same being Acts of 1905, Chapter 169, Section 450, page 584, which provides in substance that it is a misdemeanor to “sell, barter or give to any other person under the age of twenty-one (21) years any pistol, * * *.”

You also refer to Burns’ Indiana Statutes Annotated, 1933, Section 10-4739, same being Acts of 1935, Chapter 63, Section 6, page 159, which provides that no person shall “deliver a pistol to any person under the age of eighteen (18) * * *.”

The title of the Act of 1905, Chapter 169, reads as follows:

“AN ACT concerning public offenses.”

I call your attention to a third statute, the Act of 1925, Chapter 207, the title of which reads as follows:
“AN ACT to regulate and control the possession, sale, and use of pistols and revolvers in the State of Indiana, to provide penalties, and for other purposes.”

Section 8 of said act provides in part as follows:

“Any person or persons who shall, within the State of Indiana, sell, barter, hire, lend, or give to any minor under the age of twenty-one years, any pistol or revolver shall be deemed guilty of a misdemeanor ***.”

Section 18 of said act contained a repeal clause providing that all laws and parts of laws in conflict herewith are hereby repealed.

The title of Chapter 63 of the Acts of 1935, approved February 21, 1935, reads as follows:

“AN ACT regulating the sale, transfer and possession of certain firearms, prescribing penalties and rules of evidence, and to make uniform the law with reference thereto.”

Section 6 of said act provides in part as follows:

“No person shall deliver a pistol to any person under the age of eighteen * * *.”

Section 17 of said act provides:

“This act may be cited as the ‘Uniform Firearms Act.’”

Section 21 of said act provides:

“All laws or parts of laws inconsistent herewith are hereby repealed, and an act entitled ‘An act to regulate and control the possession, sale, and use of pistols and revolvers in the State of Indiana, to provide penalties, and for other purposes,’ approved March 12, 1925, and all acts amendatory thereof and supplemental thereto are hereby specifically repealed.”

There is a rule of statutory construction to the effect:

“Where a new law in the form of an amendment or otherwise covers the whole subject matter of a
former one, and is inconsistent with it, and is evidently intended to supersede and take its place, it repeals the old law by implication." State ex rel. Colbert v. Wheeler (1909), 172 Ind. 578, 89 N. E. 1; Thomas v. Town of Butler (1894), 139 Ind. 245, 38 N. E. 808; Longlois v. Longlois (1874), 48 Ind. 60.

Applying this rule to the acts mentioned above, it is my opinion that the Acts of 1905, Chapter 169, Section 450, same being Section 10-4702 of Burns', was repealed by the Acts of 1925, Chapter 207, page 495. It is further my opinion that Chapter 207 of the Acts of 1925, same being approved March 12, 1925, was specifically repealed by the Acts of 1935, Chapter 63, page 159, same being Section 10-4739 Burns’ Indiana Statutes Annotated, and that this is the only law on the subject that is now in effect.

You further ask whether or not the department may issue a license to carry a pistol to a person under twenty-one years of age. Section 10-4736 of Burns’, 1942 Replacement, same being the Acts of 1935, Chapter 63, Section 3, page 159, provides:

“No person shall carry a pistol in any vehicle or on or about his person, except in his place of abode or fixed place of business, without a license therefor as hereinafter provided.”

Section 10-4737 of Burns’, same being the Acts of 1935, Chapter 63, Section 4, page 159; 1937, Chapter 173, Section 1, page 879, provides that the provisions of Section 3 of the Act of 1935 shall not apply to marshals, sheriffs, prison or jail wardens, judicial officers, or to members of the Army, Navy, or Marine Corps of the United States, or of the National Guard, or organized reserves when on duty, to purchase or receive such weapons from the United States or from this State, provided such members are at or are going to or from their place of assembly or target practice, or to officers or employees of the United States duly authorized to carry concealed pistols, or to employees of express companies when engaged in company business, or to any person engaged in the business of manufacturing, repairing or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or
ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business, or to a place of repair or back to his home or place of business, or in moving from one place of abode or business to another.

Section 10-4738, Burns' 1945 Pocket Supplement, same being the Acts of 1935, Chapter 63, Section 5, page 159; 1937, Chapter 158, Section 1, page 843; 1943, Chapter 156, Section 1, page 466, provides for the procedure in obtaining a license and to whom the application is made and further provides that the officer to whom the application is made shall forward all information obtained together with his recommendation to the Superintendent of State Police, who may make whatever further investigation he deems necessary and shall issue a license to the applicant. It is to be particularly noted that this section does not set out any age limit but, on the contrary, states "A person desiring a license to carry a pistol shall apply * * * ."

Section 10-4736, Burns', which pertains to the carrying of a pistol, and Section 10-4738, which pertains to the issuance of a license, include all persons regardless of age or sex. However, we are confronted with Section 10-4739 which deals with the delivery to minors and states that no person shall deliver a pistol to any person under the age of eighteen, and by Section 10-4747 of Burns' which makes it a felony so to do, punishable by a fine of not more than $1,000.00 or by imprisonment in the state prison for any determinate period of not less than one year nor more than ten years.

The confusion appears to be, that while it is made a felony to deliver a pistol to one under eighteen years of age, the permit section itself contains no age limitation. In construing those two sections, it might be argued that if one under eighteen years of age obtained a pistol, he could be licensed. However, I do not believe that was the legislative intent. In arriving at the legislative intent we should bear in mind that this is a uniform act. In drafting uniform laws, the commissioners necessarily anticipate that they may be adopted by many or all states. That is the very function of the Commission on Uniform Laws. It would, therefore, be anticipated that in no state adopting the uniform law could a person under eighteen years of age obtain a pistol (except possibly by finding). If one under eighteen years of age
could then obtain a permit to carry a pistol he would be faced with the necessity of securing possession of a pistol. When we realize that the delivery of a pistol to any person under the age of eighteen is a felony, we can readily see that the intent of the Legislature was that one under the age of eighteen years under no condition, unless he came within Section 10-4737, supra, should possess a pistol. Therefore, you would not be at liberty to issue a permit to one under the age of eighteen years. You would, however, be permitted to issue a license to one over the age of eighteen years.

You also request that I define the rights of firearms dealers in regard to the sale of pistols to people who are not twenty-one years of age. Section 10-4740, Burns, deals with the regulation of sales of pistols by any person and Sections 10-4741 and 10-4742 deal with the licenses of and sales by retail dealers of pistols and, among other things, provides:

“No pistol shall be sold in violation of any provision of this act, * * *.”

Again these sections deal with “persons” and contain no age limit. As noted above, Section 10-4747 makes it a felony to deliver a pistol to one under the age of eighteen.

It is, therefore, my opinion that firearms dealers may sell to persons over the age of eighteen years, said sales, however, to be made in accordance with the procedure set out in the statute with reference to all sellers and retail dealers.

OFFICIAL OPINION NO. 10

February 11, 1948.

Mr. Ben H. Watt,
State Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of January 26, 1948, received requesting an official opinion on the interpretation of the provisions of Chapter 276 of the Acts of 1947 and Chapter 211 of the Acts of 1927 as applied to the following questions: