OFFICIAL OPINION NO. 17

April 30, 1947.

Hon. W. O. Fiedler, Member,
House of Representatives,
Logansport, Indiana.

Dear Sir:

I have your letter of April 5, 1947 in which you ask my opinion as to whether Section 3 of Senate Enrolled Act No. 315, Chapter 372, of the Acts of 1947 is a valid amendment of Section 15 of the Acts of 1933.

Said Section 3 attempts to amend Section 15 of Chapter 233 of the Acts of 1933. However, said Section 15 of Chapter 233 of the Acts of 1933 was materially amended by Section 1 of Chapter 304 of the Acts of 1943 (Burns' Section 48-1227, 1945 Pocket Supp.).

Section 21, Article 4, of the Indiana Constitution 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."

It has been held by the Supreme Court of Indiana that an amendatory act which purports to amend a section of a prior act that has already been amended is invalid. In the case of Metsker v. Whitsell (1913), 181 Ind. 126 at page 140 the court said:

> "* * * Section 21, Art. 4, of our Constitution provides that in amending, or revising, an act, the act, as revised or amended, shall be set forth at full length. It has been held, often and consistently, by this court, that an amendatory act which purports to amend an act or section that has already been amended, is void as an amendatory act because the act or section sought to be amended has no existence. Draper v. Falley, *supra;* Blakemore v. Dolan (1875), 50 Ind. 194; Reissner v. Hurle (1875), 50 Ind. 424; Cowley v. Town of Rushville (1878), 60 Ind. 327; Weatherhogg v. Board, etc. (1901), 158 Ind. 14, 62

N. E. 477; Sage v. State (1890), 127 Ind. 15, 26 N. E. 667; State, *ex rel.* v. Wheeler (1909), 172 Ind. 578, 89 N. E. 1, 19 Ann. Cas. 834. * * *"

The above case was cited with approval upon this point in the case of Bettenbrock v. Miller (1916), 185 Ind. 600, 605. It is my opinion that under the above decisions Section 3 of Chapter 372 is invalid as an amendment to Section 15 of Chapter 233 of the Acts of 1933.

In your letter you state that the act was not passed by a constitutional quorum in the Senate. Upon this question our Supreme Court has held in numerous decisions that where a statute is authenticated by the signatures of the presiding officers of the two houses of the Legislature the courts will search no further to ascertain whether such facts existed as gave constitutional warrant to those officers to thus authenticate the act. Where a statute is enrolled and filed in the office of the Secretary of State with the authentication of the officers of the Legislature itself, such authentication imports absolute verity as to the passage of the act. The cases upon this question are reviewed in the case of Western Union Telegraph Company v. Taggart (1894), 141 Ind. 281. In that case the court said at page 283:

> "In Evans v. Browne, *supra,* after a complete examination of the question, including a discussion of the authorities in this and other states, it was held, that the courts of this State must take judicial notice of what is and what is not the public statutory law of the State, and also that *where a statute is authenticated by the signatures of the presiding officers of the two houses of the Legislature, the courts will not search further, to ascertain whether such facts existed as gave constitutional warrant to those officers to thus authenticate the act as having received legislative sanction in such manner as to give it the force of law.*
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> "These holdings have been since adhered to by this court, and we are of opinion that they are in accordance with the weight of authority. Edger v. Board, etc., 70 Ind. 331; Board, etc. v. Burford, 93 Ind. 383; Stout v. Board, etc., 107 Ind. 343; State,

*ex rel.* v. Denny, 118 Ind. 449; Hovey, Gov. v. State, *ex rel.*, 119 Ind. 395.

"In State, *ex rel.* v. Boice, 140 Ind. 506, we have again considered this question and reached the same conclusion. See, also, Field v. Clark, 143 U. S. 649, where the question is discussed.

"The authentication of the act, in the manner provided in article 4, section 25, of the Constitution, that 'all bills and joint-resolutions so passed shall be signed by the presiding officers of the respective houses,' is conclusive evidence that the act was duly passed in conformity with the provisions of the organic law of the State. *Under the guarantee of the constitution, the statute, enrolled and filed in the office of the Secretary of State, comes to us as by the solemn authentication of the Legislature itself, under the hand and seal of its presiding officers. Such authentication imports absolute verity as to the passage of the act; even as in the case of the acts of a court, which are authenticated by its certificate and seal under the hand of its clerk.*" (Our emphasis).

The above act was authenticated under the hands of the presiding officers of the two houses of the Legislature, was signed by the Governor and filed in the office of the Secretary of State, and, therefore, any question as to whether the act was passed in compliance with the quorum requirements cannot be inquired into by the courts or the Attorney General.

This opinion is confined to the specific questions above referred to.