date of the passage of the ordinance and that the same was properly signed, attested, recorded and approved, we are of the opinion that the publication of said ordinance in pamphlet form did not constitute presumptive evidence of the due publication of such ordinance. * * *. We are of the opinion that the court properly excluded the offered ordinance in this case because of the failure of the appellant to show publication.”

Bartley v. Chicago E.I.R. Co., 216 Ind. 512, on 526 to 528.

Under the law as declared by the Supreme Court in the above case, it is my opinion that it is necessary to advertise ordinances with a penalty clause in a newspaper and that publishing the same in pamphlet or booklet form is not sufficient to constitute due publication of the ordinances.

STATE BOARD OF TAX COMMISSIONERS: Charitable, religious, educational foundations. Taxability of real estate and personal property after March 1, 1944.

March 21, 1944.

Opinion No. 31

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated March 2nd, which reads as follows:

“

We would appreciate the receipt of an official opinion upon the following:—

“The William Taylor Foundation is a non-profit Indiana corporation which owns and operates the educational institution known as Taylor University, at Upland, Indiana.

“Such foundation owns and operates a 120 acre dairy farm, which immediately adjoins the campus and grounds on which are located the University buildings.
This dairy farm is operated solely for the purpose of supplying milk and dairy products to the college dining hall. More than ninety per cent of the students board at the dining hall and room in the college dormitories. The specific questions we would like to have answered are as follows:

"1. Is the 120 acre dairy farm subject to taxation after March 1, 1944, under the provisions of Chapter 146, Section 3, at page 814 of the acts of 1937 (Burns’ R. S. 1943 Replacement, Section 25-1109)?"

"2. Assuming that the 120 acre dairy farm was leased or operated under a crop sharing or partnership arrangement, by which cash rental or a share of the crops or a portion of the production therefrom went to the foundation and such rental or share of crops or products was used exclusively for the purposes for which the foundation was organized, would such real estate be subject to taxation under aforesaid act?"

The section of the statute referred to in your letter was originally enacted as Section 9, Chapter 246, Acts 1921, (Burns’ 1933, Section 25-1109). As originally enacted the section read as follows:

"Such corporation may hold and convey any real estate necessary for the transaction of its business or the execution of any trust. Property held by such corporation exclusively for religious, educational or charitable purposes shall be exempt from taxation."

If we should assume that the last sentence of said section did grant an exemption from taxation, such provision does not control the rights of the foundation today, for in 1937 the above section was amended to read as follows:

"Such corporation may hold and convey any real estate necessary for the transaction of its business or the execution of any trust. Any and all real and tangible personal property held by any such corporation and which is both occupied and used by such corporation exclusively for the purposes and objects of such corporation, shall be exempt from taxation. And any and all intangible personal property and the proceeds and income thereof, held by any such corporation exclusively
for the purposes and objects of such corporation, also shall be exempt from taxation: Provided, however, That all real and tangible personal property now held by such corporations, or hereafter acquired by them in foreclosure of present mortgage obligations or in settlement or payment of present obligations, for the purposes and objects of such corporations, but not occupied and used exclusively for such purposes and objects, shall continue to be exempt from taxation, if owned by such corporation, until March 1, 1944, but from and after March 1, 1944, shall be subject to taxation: Provided further, however, That all real and tangible personal property acquired by any such corporation after the effective date of this act and not specifically exempt hereunder shall be subject to taxation.” (Our emphasis.)

It is a rule of statutory construction that when an existing statute is amended by incorporating any new provision or re-enacted by changing the phraseology, that the Legislature is presumed to have intended to change existing law, unless it clearly appears to have been made for the purpose of expressing the original intention of the Legislature more clearly.

Dailey v. Pugh, 83 Ind. App. 431 on 436 and 437; State ex rel. v. Board etc., 196 Ind. 472 on 482; Steiert v. Coulter, 54 Ind. App. 643 on 648; Dept. etc. v. Muessel, 218 Ind. 250.

It will also be observed that two provisos were added to the section following the language which exempted the real estate, tangible personal property and the intangible personal property owned by such corporation.

It is a rule of statutory construction that the office of a proviso in a section of a statute is not to enlarge or extend the Act or section of which it is a part, but, rather, to put a limitation upon and to qualify the language employed and which precedes the proviso.

Board of Commissioners v. Millikan, 207 Ind. 142 on 151; Hughes v. Yates, 79 Ind. App. 247; City of Gary v. Gary Oak Hill etc., 186 Ind. 446 on 452.
Another rule of statutory construction which is applicable in considering the above section of the statute is to the effect that it is a general policy of the state to subject all private property to taxation and statutes exempting property from taxation must be strictly construed. This rule is well stated in the case of the City of Indianapolis v. The Grand Master etc., 25 Ind. 518 on 521, as follows:

"** The answer to this question depends entirely upon the rule of construction which shall be applied to the statute. A very liberal construction of it might exempt the property from taxation. ** The general policy of this State, and indeed of all free governments, is to subject all private property to this burden, and it is therefore not fair to assume that any has been intended to be relieved from it, unless the legislature has clearly expressed such a purpose. Hence, the rule of strict construction has, we believe, usually been applied to such statutes. **"

City of Gary v. Gary etc., 186 Ind. 446 on 452;

Also

Orr v. Baker, 4 Ind. 86.

Your letter states that the 120 acre dairy farm adjoins the campus and grounds on which are located the college and university buildings, and is operated for the purpose of supplying milk and dairy products to the college dining hall; that said farm is leased or operated under a crop sharing or partnership arrangement, by which cash rental or a share of the crops or a portion of the products, therefrom goes to the foundation and such rental or share of crops and products is used exclusively for the purposes for which the foundation was organized. Assuming that such facts are true, it is my opinion that said farm is not occupied and used exclusively for the purposes and objects of the corporation as required by .Section 25-1109, and such real estate is taxable under the law as declared in the case of

La Fontaine Lodge etc. v. Eviston, Auditor, 71 Ind. App. 445-450;

Glen Oak Cemetery v. Board, 358 Ill. 48, 192 N. E. 673.
It may be contended that Section 25-1109, as amended in 1937, is unconstitutional and void as impairing the obligation of the charter issued to the corporation under Section 9 of Chapter 246, Acts 1921, under which the corporation was organized. The answer to this contention is found in the law as declared in the following cases, to-wit:

In the case of Stark v. Kreyling, 207 Ind. 128, the Supreme Court of Indiana said:

"* * * No class of property is exempt from taxation unless it is 'specially exempted by law;' and only property used for 'municipal, education, literary, scientific or charitable purposes' can be specially exempted by law. (Art. X, Sec. 1, Indiana Constitution.) And although the General Assembly, by appropriate legislative enactment may specially exempt a class of property, subject to constitutional limitations, it can not confer any particular piece of property an indelible imprint of non-taxability; and when the facts which bring a particular item of property within an exempted class cease to exist, the particular piece of property necessarily loses its exemption character. * * *." (Our emphasis.)

In the case of Covington v. Kentucky, 173 U. S., 231, the facts were as follows: By an act of the General Assembly of Kentucky approved May 1, 1886, the city of Covington was authorized to build a water reservoir or reservoirs within or outside its corporate limits with full power in the premises. By Section 31 of the Act, it was provided that "said reservoir or reservoirs, machinery, pipes, mains and appurtenances, with the land upon which they are situated, shall be and remain forever exempt from state, county and city tax." In 1891, a new constitution was adopted and the property placed upon the tax duplicate.

On page 238 of 173 U. S. the court says:

"The fundamental question in the case then is whether at the time of the adoption of that constitution the city of Covington had, in respect of the lands in question, any contract with the State the obligation of which could not be impaired by any subsequent statute or by the present constitution of Kentucky adopted in 1891. If the exemption found in the act of 1886 was such a
contract, then it could not be affected by that constitution any more than by a legislative enactment.

"We are of opinion that the exemption from taxation embodied in that act did not tie the hands of the Commonwealth of Kentucky so that it could not, by legislation, withdraw such exemption and subject the property in question to taxation. * * *. Before a statute—particularly one relating to taxation—should be held to be irrepealable, or not subject to amendment, an intent not to repeal or amend must be so directly and unmistakably expressed as to leave no room for doubt; otherwise, the intent is not plainly expressed. It is not so expressed when the existence of the intent arises only from inference or conjecture."

To same effect see also:

Citizens etc v. Kentucky, 217 U. S. 443;
Northern Bank v. Stone, 88 Fed. 413.

Applying the foregoing principles to the language found in the amendment to Section 25-1109, enacted in 1937, and especially to the words "shall continue to be exempt from taxation, if owned by such corporation, until March 1, 1944, but from and after March 1, 1944, shall be subject to taxation," it is my opinion that the Legislature has clearly and distinctly stated that on and after March 1, 1944, the real estate and tangible personal property of such corporation shall be subject to taxation and bear its just burden of taxation the same as all other similar property owned by individuals.

In conclusion, it is my opinion that each of the questions propounded in your letter should be answered in the affirmative.