to the fundamental principles of justice, or inconsistent with the powers conferred upon such boards, would be invalid. Parker & Worth. on Pub. Health, §86.”

In the case of Department of Insurance v. Church Members Relief Assn. (1939), 217 Ind. 58, which was an action against the Department of Insurance to enjoin its interference with the form of policies being written by the plaintiff, which injunction was refused, the court said at page 60 of the opinion:

“* * * When the right to do a thing depends upon legislative authority, and the Legislature has failed to authorize it, or has forbidden it, no amount of acquiescence, or consent, or approval of the doing of it by a ministerial officer, can create a right to do the thing which is unauthorized or forbidden. The administrative officers of the state, as well as the appellee, were bound by the statute. * * *.”

Under the above authorities it is my opinion that local school corporations would have no power to make a rule, after the legal dismissal date as provided by the above statutes, to require the teacher to do any other act than is set forth in the above statute, on penalty of having his new contract cancelled. Nor could such rule have the effect of constituting a cancellation of the contract by the teacher by any other means than those provided for in such statute. The rule of such school corporation as referred to in your letter would be void.

CORPORATE NAME: Corporation accepting terms of 1929 Corporation Act need not include “corporation” or “incorporated” or abbreviations thereof in its name.

July 26, 1944.

Opinion No. 68

Hon. Rue J. Alexander,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Mr. Alexander:

I have your letter of July 24th in which you request a review of two previous opinions of the Attorney General under dates
of July 16, 1929 (O.A.G. 1929, p. 89) and August 19, 1941 (O.A.G. 1941, p. 293). Specifically you ask this question:

"May the Secretary of State legally file articles of acceptance of the provisions of the General Corporation Act of 1929 by corporations organized under prior Acts where the name of the reorganized corporation does not include the word 'corporation' or 'incorporated' or one of the abbreviations thereof?"

Both of the former opinions involved the same inquiry in substantially similar language. The first opinion concluded that a corporation reorganized under the 1929 Act need not include the word "corporation" or "incorporated" or one of the abbreviations thereof in its name. The second opinion involving the same Act took cognizance of the first opinion and reached the opposite result; namely, that upon reorganization under the 1929 Act a corporation should include those words in its name.

Both of those opinions involved Sections 46 through 50 of Chapter 215 of the Acts of 1929 (25-245 through 25-249 Burns' 1933 Statutes), known as the Indiana General Corporation Act. It should be noted that those sections of the 1929 Act were amended by Sections 3, 4, 5, 6 and 7 of Chapter 226 of the Acts of 1941 and Section 46 of the original Act was also amended by Chapter 94 of the Acts of 1943 (25-245 through 25-249 Burns' 1933, Pocket Supplement). So far as the material provisions of the 1929 Act were concerned, the principal change in the 1941 amendment was to provide for an acceptance of the 1929 Act rather than a reorganization under the 1929 Act. Also, the right to accept the provisions of the 1929 Act were extended to corporations whose existence terminated on or after March 16, 1929, provided the acceptance was filed within five years (ten years under the 1943 amendment). Otherwise the procedure and language of the amendments is the same as the original 1929 enactment.

Section 4 of the 1929 Indiana General Corporation Act provides as follows (25-203 Burns' 1933 Statutes):

"The corporate name shall include the word 'corporation' or 'incorporated' or one of the abbreviations thereof. ** ** **."
The last sentence of the same section provides:

"* * * The provisions of this section shall not affect the right of any corporation which is existing under the laws of this state or authorized to transact business in this state at the time this act takes effect to continue the use of its corporate name."

Both of the previous opinions turned upon an interpretation of those parts of Section 4 of the 1929 Act as applied to reorganized corporations, and this opinion also depends entirely upon the meaning and legislative intent of the same section as applied to corporations which accept the provisions of the 1929 Act.

There are two possible interpretations of the sentence last quoted: First, that it applies only to corporations organized prior to 1929 and which have not accepted the terms of the 1929 Act. There are two factors which weigh against that interpretation of the sentence. In the first place the plain language of the sentence applies to "any corporation which is existing under the laws of this state or authorized to transact business in this state at the time this act takes effect." So long as the language of the sentence itself is clear and applies to all previous incorporations there is little reason to read into it a restricted meaning other than the clear import of the language. Furthermore, if that sentence was intended to apply only to old corporations not reorganizing or accepting the terms of the 1929 Act, it has no legal effect. It is well established that the corporate name is a valuable legal right—a part of the charter grant to the corporation—which can not, in the absence of a reserved right in the legislature, be impaired by subsequent laws. As stated in 7 Fletcher Cyc., Corporations, at page 115:

"* * * In the absence of such reservation, a new or different name can not be imposed upon a corporation for such a change in the name of a corporation constitutes an amendment of its charter, and like other amendments must be accepted by the corporation."

It follows, then, that a corporation organized prior to 1929 had a legal right to retain its corporate name notwithstanding any provisions of the 1929 Act, and an express provision
which would no more than confirm that right in statutory language would confer no new right upon an old corporation. It is not to be presumed that the legislature intended to enact a statute of no legal effect.

The other possible interpretation is that the legislature intended to secure to all previous incorporations the use of their original names as adopted, even though they might reorganize or accept the provisions of the 1929 Act. If that interpretation is placed upon the Act it not only conforms to the plain language used, but at the same time gives legal effect to its provisions.

I am consequently of the opinion that the first opinion rendered by the Attorney General is the better on principle, and that the Secretary of State may accept for filing articles of acceptance which retain the name of a previously incorporated company even though it does not contain the words "corporation" or "incorporated" or an abbreviation thereof.

STATE BOARD OF ACCOUNTS: Fees—Per Diem Fees of Clerk on Change of Venue Cases.

July 28, 1944.

Opinion No. 69

Hon. Otto K. Jensen,
Department of Inspection and
Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of July 12, 1944, requests an official opinion in substance as follows:

"A considerable difference of opinion has arisen as to whether the clerks of the circuit courts are entitled to a per diem fee for each day during which the time of the court is occupied with any business sent to it on change of venue from another county, or whether the clerks of the circuit courts are entitled to a per diem fee only for days when the time of the court is occupied with the actual trial of a cause pending on a change of venue from another county."