limited to exhibitions held in Hammond, Indiana. I am therefore, of the opinion that the bond would not cover exhibitions held in Gary, Indiana.

Under Section 63-209, Burns 1933, same being Sec. 9, Ch. 93, Acts of 1931, all promoters, matchmakers, etc., are required to be licensed before participating, either directly or indirectly, in such boxing, sparring, wrestling match, or exhibition.

Section 63-223, Burns 1933, being Sec. 23, Ch. 93, Acts of 1931, provides that every person, club, corporation or association "which may conduct any match or exhibition under this act" shall execute and file with the Treasurer of State a bond, not less than five thousand dollars ($5,000), in such form and with such sureties thereon as may be approved by the State Treasurer, payable to the State of Indiana, and conditioned for the payment of the tax imposed by such Act, and in compliance with said Act, and in compliance with the valid rules and regulations of the commission, before any such license shall be issued.

It is my opinion that under the foregoing statutes, the promoter who is actually conducting such exhibitions, who would be Mr. Funk in this case, would be required to execute such bond before he could secure such license. If this is a partnership arrangement between Mr. Funk and Mr. Eastes, they would be required to secure a license, and would be required to give a bond, in that form. In any event, the bond of Mr. Eastes covering liabilities arising from exhibitions in the city of Hammond, Indiana, would not qualify Mr. Funk for such promoter's license.

STATE BOARD OF ACCOUNTS: Constitutional Law-Statutes. Title to prior act of legislature may be amended to broaden its scope. Title as amended supersedes original title. Title to Chapt. 89, Acts 1943, sufficient. Airports may be acquired and operated by cities of 4th class under either the Act of 1929 as amended in 1943 or Chapt. 24 of the Acts of 1943. Funds appropriated for maintenance and operation limited by Art. 13, Sec. 1 of Constitution and provisions of the acts themselves. Surplus funds of municipally owned utility can only be used
where properly transferred to the general funds in manner provided by statute.

March 11, 1944.

Opinion No. 27

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

Dear Sir:

This will acknowledge receipt of your letter of January 19, 1944 requesting an official opinion on the following questions:

"1. Is the title of Chapter 89, Acts 1943 defective, so as to render that act unconstitutional?

"2. Are sections 2 and 3 of Chapter 48, Acts of 1920 (Burns 1933, Sec. 14-302 and 14-303) repealed by Chapter 24, Acts 1943? (You will observe that the repeal section refers to an Act approved July 31, 1921, instead of July 31, 1920.)

"3. Should a city of the fourth class decide to acquire a municipal airport, who, or what body, would be vested with authority to acquire and operate the same?

"4. If such city acquired such airport is there any limitation on the sums of money that could be appropriated for its maintenance and operation?

"5. Can such city use surplus funds of its municipally owned utility to finance the acquisition, improvement and operation of a municipal airport?"

In answer to your first question, the title of Chapter 89, Acts 1943, page 285, is as follows:

"AN ACT to amend section 1 and the title of an act entitled 'An Act authorizing cities of the second class to acquire, establish, construct, improve, equip, maintain and operate airports and landing fields and establish a department of aviation in cities of the second class, defining its powers and duties; conferring certain powers upon the common council and mayor of such cities in relation to said aviation department, repealing
conflicting laws and declaring an emergency," approved March 9, 1929."

The constitutional provisions relating to the titles to acts and to amendments are as follows: Section 19, Article 4 provides:

"Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

Section 21 of Article 4 provides:

"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."

Your question involves a determination of the right of the Legislature to amend the title of a prior act and thereby broaden its scope under a reference in the title to the amendatory act that the title of the prior act is being amended. It will be noted that the above constitutional provision does not in terms relate to or prohibit the amendment of a title to a prior act. It is a well established rule of constitutional law that the General Assembly is supreme and sovereign in the exercise of its law making powers with full power to make laws and alter or repeal them, subject only to such limitations as are expressly or by clear implication imposed by the constitution.

Ellingham v. Dye (1912), 178 Ind. 336-343.

It has been suggested that the above quoted title is insufficient as not advising one reading the same that the title of the 1929 Act is being amended to include cities other than cities of the second class and that the amendment to the 1929 Act is applicable to cities other than cities of the second class. This suggestion is supported by some authority.

We have been unable to find any decision in this state where this exact question has been presented to our Supreme Court.
Our Supreme Court has, however, recognized that right in several cases where the question was not presented. In the case of DeHaven v. Municipal City of South Bend (1937), 212 Ind. 194, the title to the original act before the Supreme Court related to "public utilities." The title to that act was amended in 1933 to include "municipally owned utilities." The court said at page 200:

"* * * But of course under the 1913 Act, taxing a municipally owned utilities would not have been proper in-as-much as such utilities were not included in the 1913 Act. So the title to the act was amended in the 1933 Act to include municipally owned utilities. The amended title reads as follows:

"‘An act concerning public and municipally owned utilities, authorizing municipalities to hold, own, acquire, construct and operate utilities and to issue bonds to pay therefor, providing the manner in which such municipalities, may acquire and pay for such utilities, abolishing the railroad commission of Indiana and conferring the powers of the railroad commission on the public service commission.’"

The court then proceeded to discuss the title of the 1913 Act as it was amended, and determined that the provisions in the amended act relating to the taxation of a municipally owned utility were within the title of the 1913 Act as amended. In the above case the title to the amendatory act before the court provided that it was an act to amend certain specified sections of an act entitled: Here the title of the prior act is set forth followed by the following language: "amending the title of said act, and declaring an emergency," with no reference in the title to the amendatory act that its provisions either amending the body or the title of the prior act were extended to municipally owned utilities.

In the case of Crabbs v. State (1923), 193 Ind. 248 at 255, the court said:

"* * * The act of 1921, * * * amending the act of 1917, supra, could not create a crime which was not embraced within the title to the act of 1917, supra, without amending the title. * * *" (Our italics).
While the above expression is dicta, it is a recognition of the right of the Legislature to amend the title of a prior act to make that act include matters which were included under the original title or provisions of the original act. To similar effect is Smith v. State (1924), 194 Ind. 686-687 and Voss v. Waterloo Water Co. (1904), 163 Ind. 69-92. This right is also recognized by Sutherland in his work on Statutory Construction, 3rd Ed., Vol. 1, page 346, where it is said:

"* * * Amendatory provisions that are not germane to the subject expressed in the title of the original act are unconstitutional, unless the title of the original act can be and is amended without violating the rule against dual subject matter."

To the same effect see Crawford on Statutory Construction, Section 103, page 148; O'Donnell v. Powell (1922), 282 Fed. 1-8; People v. City of Chicago (1912), 256 Ill. 558-562; Black v. Powell (1929), 248 Mich. 150, 226 N.W. 910; State v. Oliver (1931), 162 Tenn. 100, 35 S.W. (2d) 396.

An investigation discloses that the Legislature of this state has followed the practice of amending the titles to prior acts to broaden the same to make them include matters not within the original title and by including in the title of the amendatory act only a reference to the fact that the title of the prior act was being amended and without specifying that the amended title includes additional matters. This practice has obtained almost since the adoption of our present constitution. In 1852 an act was passed with the following title: "An act authorizing Railroad, Plank Road and McAdamized Road Companies to borrow money, and to secure the repayment thereof by mortgage." In 1859 the Legislature passed an act entitled "AN ACT to amend the title and first section of an act entitled 'an act authorizing Railroad, Plank Road and McAdamized Road Companies to borrow money, and to secure the re-payment thereof by mortgage,' approved February 5, 1852." Then by Section 2 of the Act of 1859 the title was amended to make it include other companies which were not included in the original title or the original act. Following this we find more than seventy-five (75) instances in which titles to prior acts have been amended to broaden their scope and in which the only reference in the title to the amendatory
act is the reference to the fact that the act is to amend the
title of the prior act and with a section in the amendatory act
in which the title, as amended, is set forth.

This long and repeated practice of the Legislature unchal-
lenged over a period of more than eighty years, becomes a
potent factor and lends much strength to an interpretation of
the constitution favoring the authority of the General Assem-
bly to amend the title to a prior act and thereby broaden its
scope, and do this by including only a reference in the title to
the amendatory act that the title to the prior act is to be
amended, and without reference in the title to the later act
that the amendment is to broaden the prior title and act in
the respects intended. In the case of State v. Gerhardt (1896),
145 Ind. 439 at page 457 the court said:

"Each of these acts might be said to be as amenda-
tory of the original and existing laws upon the same
subject as is the statute in controversy. This continued
and repeated practice of the legislature, unquestioned
for a period of over forty years, becomes a potent
factor, and lends much strength to an interpretation
of the constitution favoring the authority of the gen-
eral assembly to enact, in the manner it did, the law
under consideration. Were we in doubt of this legisla-
tive right, we should feel obligated to be controlled by
such a practical exposition. Hovey, etc., v. State, ex
rel., 119 Ind. 386; French v. State, ex rel., 141 Ind. 618."

In addition it has been held that a liberal interpretation will
be employed and the largest scope accorded the words em-
ployed that reason will permit to uphold the title of an act.

Steinkamp v. Board of Commissioners, Decatur
County (1935), 209 Ind. 614-616;
DeHaven v. Municipal City of South Bend
(1937), 212 Ind. 194.

In the latter case it is said at page 200:

"* * * In considering the constitutionality of an act
in reference to its title, a very liberal interpretation
will be adopted, rather than a critical construction
calculated to defeat it. * * *."
While there is some authority to the contrary, in view of the authorities above and the long and unchallenged practice of the Legislature of this state, I am of the opinion that the title of a prior act may be amended as was done in this case.

The title of the Act of 1929 is therefore replaced by the amended title as set forth in Section 4, page 288 of the Act of 1943. In Sutherland on Statutory Construction, Vol. 1, at page 360, it is said:

“The 'replacement' theory of amendment is followed in Indiana. The basis of this theory is that the amendatory act supersedes the original statute. The original act or section is treated as repealed and no longer subject to amendment.” (Citing numerous Indiana decisions.)

Under this rule we must consider the title of the 1929 Act and give it the same construction as though the amended title had been the title of the original act.

Million v. Metropolitan etc. Co. (1930), 95 Ind. App. 628-633;
Atz v. City of Indianapolis (1928), 87 Ind. App. 580;
Walsh v. State (1895), 142 Ind. 357-362;
Blair v. Chicago (1906), 201 U. S. 400; 50 L. Ed. 51.

This being true, the title to the original act as amended is sufficiently broad to include the provisions in the amendatory act relating to cities of third, fourth and fifth class, as well as to cities of the second class.

Lewis v. State (1897), 148 Ind. 346-349;
State ex rel. v. Superior Court of Marion County (1931), 202 Ind. 589-598.

The next question suggested in relation to the said title of the 1943 Act is that it refers only to Section 1 of the 1929 Act, but then by Section 1 of the 1943 Act it is provided as follows:

“Section 1. Be it enacted by the General Assembly of the State of Indiana, That sections 1, 2 and 7 of the
above entitled act be amended to read as follows: Section 1” etc.

Then follows Section 2 and Section 3 (Section 4 being the section amending the title). If the expression “2 and 7” in the above quotation be disregarded as surplusage and to conform to the title, we would then have an amendment to Section 1 of the 1929 Act composed of three sections. While such a result is not the best draftsmanship or a model to follow, it has been held that this may be done without violating any constitutional provision.

In the case of Lewis v. State (1897), 148 Ind. 346 at 349, the court said:

“* * * It must be conceded that the statute is a specimen of awkward and bungling legislation, which seems to have resulted in dividing section 209 into two paragraphs. It is apparent that the provisions of section 2 could have been properly embodied in section 209, and, in effect, they are but a continuation of the latter section as amended, and may be so treated and considered. Section 2 declares that other acts, not originally mentioned in section 209, shall constitute a misdemeanor. It is evident that these provisions are germane to, properly connected with, and embraced in the subject expressed in the title of the act of 1881. Where the title of an original act is sufficiently broad to include the provisions embraced in an amendatory one, it is not essential that the title of the latter, in this respect, be of itself sufficient. Brandon v. State, 16 Ind. 197; Shoemaker v. Smith, supra.

“Strictly speaking, an amendatory statute is not to be regarded independently of the one which it amends. It may be so framed as to serve to amend certain parts and add such supplementary sections as are embraced in, and connected with the subject expressed in the title of the original act. Shoemaker v. Smith, supra; Blake-more v. Dolan, 50 Ind. 194.

“The title of the act of 1889 referred to the section, and indicated the act to be amended, and in the enacting part thereof it was declared, ‘that section 209 of the above entitled act be amended to read as follows.’
Then follows, at full length, the provisions ingrafted into the statute by the amendment. The title of the amendatory act was sufficient, and the mere fact that its provisions are divided into two paragraphs or sections, instead of being confined to one, does not result in rendering any part of the act invalid. * * *

See also:
Reed v. State, 12 Ind. 641-647;
Shoemaker v. Smith, 37 Ind. 122;
Blakemore v. Dolan, 50 Ind. 194.

In the case of Walsh, Treasurer v. State (1895), 142 Ind. 357 at 361, the court said:

"* * * Strictly speaking, an amendatory act is not regarded as an independent statute, and it may be framed so as to amend certain parts of the law, and to add such supplementary sections as might be embraced under the title of the original act. * * *""

The above case also holds that an amended section becomes a part of the original law as if added at the time of adoption, and the statute has the same operation and effect as if it then had been re-enacted.

Section 2 and 3 of the amendatory act of 1943 do not introduce new or additional matter, but relate to matters connected with the subject matter of section 1 and are embraced in the subject of the amended title. It was clearly the intention of the Legislature to extend the rights which had theretofore been granted to cities of second class to cities of third, fourth and fifth classes. That intention should be followed and given effect unless it clearly violates some constitutional prohibition. The fact that awkward draftsmanship has been employed must yield to the clear intention of the Legislature. See authorities, supra.

In Clare v. State (1879), 68 Ind. 17, at page 27, the court said:

"The subject-matter of section 1 of the aforementioned act of March 21st, 1879, shows very clearly to our minds that the General Assembly did not intend therein or thereby to amend section 74 of the act of
March 6th, 1873, which section 74, as we have seen, merely provided that the terms of the circuit courts, in the Thirty-Fifth Judicial Circuit, should be held in a certain specified manner. But it is very clear, we think, that the object, purpose and intention of the Legislature, in the enactment of said section 1 of the said act of March 21st, 1879, were to amend said section 36, above set out, of the act of March 6th, 1873, by providing that two of the counties named in the latter section, to wit, 'Steuben and DeKalb, shall constitute the Fortieth Judicial Circuit of the State of Indiana.' The use of the words and numerals, 'seventy-four (74),' in the title, and of the words 'seventy-four,' in section 1 of the said act of March 21st, 1879, was a clear and palpable mistake; for it can not be doubted, as it seems to us, that it was the intent and purpose of the Legislature, in and by the said act, to amend, not said section 74, but the said section 36, above set out, of the act of March 6th, 1873. It is the duty of this court, in order to carry out the intent and purpose of the Legislature, in the enactment of the said act of March 21st, 1879, to construe the said act as we do, as if it did in fact, what it clearly does in legal effect, amend the said section 36, instead of the said section 74, of the aforesaid act of March 6th, 1873. (Our underscoring.)

"This construction of the act of March 21st, 1879, gives force and effect to the evident intent and purpose of the Legislature in its enactment, and sustains the validity of the law. * * *"

See also:

Cummins v. Pence (1909), 174 Ind. 115-123.

There is also another rule under which Sections 2 and 3 of the 1943 Act may be upheld as an amendment to the 1929 Act. The title of the 1943 Act clearly and correctly designates the title of the act to be amended in compliance with Section 21 of Article 4 of the Constitution. Where that is done, the court will resort to the body of the act and other means than the title to determine what act or section it was intended to amend.
In the case of Weatherhogg v. Board of Commissioners of Jasper County (1901), 158 Ind. 14 at page 24, the court said:

"* * * And it may be said that the purpose of these provisions (constitutional provisions) is fully attained when the amendatory act, of itself and as an entirety, contains such matter as clearly and unmistakably identifies the act or the section of the act to be amended, and the act or section of the act as the same is amended. * * *"

(Our parentheses.)

In the case of Mankin v. Pennsylvania Co. (1902), 160 Ind. 447 at page 454, the court said:

"* * * When the act or section to be amended is identified in the manner required by the Constitution, and it is not certain what act or section was amended, the court will resort to means other than the title to determine what act or section was amended. * * *"

In the act in question the title clearly designates the act which is being amended and the body clearly shows the sections of the prior act which it was intended to amend.

I am therefore of the opinion that Sections 1, 2 and 3 of the Act of 1943 are within the title of the act of 1929, page 141, as amended; that while awkwardly drafted, the intention of the Legislature was clear and they constitute a valid amendment to that act.

We further call your attention to the fact that Sections 2 and 3 of the Act of 1943 are virtually identical with Sections 2 and 7, respectively, of the original act of 1929. Section 2 of the 1943 Act added "or other city officer performing duties similar to that of city clerk in cities having no city clerk" after the words "city clerk," and is otherwise the same as Section 2 of the Act of 1929. This addition is also made in Section 1 anyway. Section 3 of the 1943 Act is the same as Section 7 of the original act except it adds "or such officer who performs similar duties to that of comptroller in cities having no comptroller" after "comptroller of such city."

As to your second question, the date the act is approved is not a part of the title. As was said in Citizens Street R. Co. v. Haugh (1895), 142 Ind. 254 at page 257:
"The date of the approval of an act is no part of its title, and an act may be amended without giving or referring to the date of its approval. The constitution does not require that the date of the approval of the amended act be given in the title or body of the amendatory act."

There was an act with the title set forth in the repealing clause of Chapter 24, Acts 1943, which was approved July 31, 1920, and there was no act of that title approved July 31, 1921. The fact that an erroneous date of approval was used does not make the express repeal ineffective.

Citizens Street R. Co. v. Haugh, supra.

In answer to your third question, we have in force and effect both the act of 1929 as amended in 1943 above discussed, and also Chapter 24 of the Acts of 1943, page 51, as applicable to cities of the fourth class. While the latter is not as clear and definite as might be desired, it was plainly the intention of the Legislature to vest the authority to acquire and operate airports in that body which is charged with the duty of acquiring and maintaining the property of the taxing unit, which in the case of cities of fourth class is the Board of Public Works and Safety. Under the Act of March 9, 1929 as amended in 1943 it is the "Department of Aviation" provided for in Section 1 of the act as amended. As to which body would be vested with the authority to acquire and operate an airport would be determined by the act under which the city proceeds. Chapter 24 of the Acts of 1929 expressly provides by Section 5 that the said act of 1929 is not repealed.

In answer to your fourth question, I find no limitation on the sums of money that can be appropriated for its maintenance and operation other than the constitutional limitation against indebtedness found in Article 13, Section 1 of the Constitution, and the provisions in the Act of 1929 as amended.

In answer to your fifth question, the surplus funds of the municipally owned utilities can only be used to finance the acquisition, improvement and operation of a municipal airport where they have been properly transferred to the general funds in the manner provided for by statute. See Section 48-7205 Burns R. S. 1933.