not take effect until the Acts of 1943 have been duly promulgated as provided by law. Therefore, the construction placed upon these statutes in the one which will apply when, and after these Acts take effect.

INSURANCE COMMISSIONER: Whether some mutual benefit health and accident associations are required to pay the $3 tax.

June 21, 1943.

Hon. Frank J. Viehmann,
Insurance Commissioner,
State House,
Indianapolis, Indiana.

Dear Mr. Viehmann:

I have your letter of the 26th in which you set forth the provisions of the Nebraska Law with regard to Mutual Assessment Life and Accident Associations. (Sec. 44-902 Comp. St. Supp., 1937.) Such provision, in substance, permits assessment associations to operate as mutual companies upon maintenance of certain reserves and surpluses. In regard to Mutual Benefit Health and Accident Association of Omaha, which is now operating in a large number of states as a mutual company but still retains the assessment provisions in its Indiana contract, you have asked the following questions:

> "(1) Does the opinion of the former Attorney General prevail now that the Nebraska law has been amended and the company at least in several instances taken advantage of this amendment?
>
> "(2) Is it still impossible for this Department to exact and demand such tax from this company in line with the former opinion? Does the Department have the authority to force the company to change its classification in the State of Indiana as it has in various States to take advantage of the amendment to the Nebraska Statute?
>
> "(3) Does the Department under the provisions of the amendment to the Nebraska Act have the au-

thority under the law or by ruling to exact the premium tax provided by Statute to be payable by foreign insurance companies operating in the State of Indiana?"

With respect to the first question, and irrespective of the amendment to the Nebraska Law, a reexamination of the Indiana Statutes involved leads to the conclusion that the opinion of the Attorney General, found in 1937 Opinions of the Attorney General, page 585, does not reflect a proper interpretation of the law. Briefly, the theory of that opinion was that, since the insurance company in question was admitted to do business in Indiana under a Statute of 1897 which provided that such companies should be subject *only* to the provisions of that statute, such a company was not subject to a tax imposed by an earlier 1891 premium tax statute. Further, a reenactment of the earlier taxation statute in 1919, and again in 1927, would not serve to repeal that part of the 1897 statute which removed such companies from the class of those subject to the tax under the familiar rule that reenactment of a general statute does not, by implication, repeal all intervening special statutes. This then, leads to an examination of the effect of the Insurance Act of 1935 upon foreign assessment life and accident associations and particularly with respect to the fees and taxes applicable.

In construing that Act, it is well to do so in the light of the well-known principle that

> "In pursuance of the beneficent public policy which favors equality in the distribution of the burdens of government, all exemptions of persons or property from taxation are to be construed strictly against the exemption; the intention to create exemptions must affirmatively appear and cannot be raised by implication."
>
> 59 C. J., 1135.

> "Laws are to be liberally construed in favor of equal taxation, while statutes exempting from taxation are strictly construed."
>
> Barr, Trustee, v. Geary, Auditor, 82 Ind. App. 5 at p. 32.

Although the 1935 Insurance Law (Chapter 162 of the Acts of 1935) does not expressly repeal the 1897 Act, I am of the opinion that several provisions of that Act together repeal by implication that part of the 1897 Act which provides that such companies be subject only to the terms of that Act. In the first place, Section 2 of Chapter 162 (Sec. 39-3202 Burns' 1940 Replacement) provides:

> "* * * All domestic, foreign and alien companies authorized to do business in this state shall be subject to this act."

Then, the Act of 1935 did expressly repeal the 1927 Act—the last reenactment of the premium tax provision—and substituted therefor, in Section 235 (Sec. 39-4802 Burns' 1940 Replacement), a new provision regarding taxes, which not being the reenactment of the 1891 or 1927 Act, would conflict with the 1897 Act under which the company was admitted.

In State v. Fidelity Health and Accident Company, 79 Ind. App. 377, the Court held that the 1897 Act, under which this company was admitted to do business in Indiana, and particularly that part which provided that such corporation, association, or society transacting business in this state should be subject only to the provisions of that Act, removed this company from the class of companies taxable under the 1891 Act. In so holding one of the arguments used by the Court was that the 1891 Act and the 1897 Act both provided that the taxes under the former and the fees under the latter were for the privilege of doing business in the state and that, therefore, if the company were subject to the tax, it would be paying a double amount for the same right. That argument no longer prevails. The 1935 Insurance Law provides for fees to be paid by foreign corporations and also for the premium tax. Every indication is that assessment associations as well as other foreign companies shall be liable for both amounts.

For those reasons, I am of the opinion that the Legislature, in passing the 1935 Insurance Law, intended to subject all foreign insurance companies to both premium tax and the fees set forth therein and that, therefore, the company in question is liable for the premium tax.

To say that the company is now liable for such tax, although it was not at the inception of doing business in Indiana, does not impair any contract obligation. In Home Indemnity Company of New York v. O'Brien, 104 Fed. Rep. 413, the Court said, at page 417:

> "A privilege or license to do business granted by the state to a foreign corporation is not a contract, nor does it confer a vested right, but is issued in the exercise of the police power of the state and may be modified, revoked or continued. Such license is accepted subject to the conditions that the liabilities then prescribed by statute may be repealed or altered. It is not a contract or license within the meaning of Article 1, Section 10, of the Constitution, nor property under the Fourteenth Amendment and confers no constitutional guarantees. Noble State Bank v. Haskell, 219 U. S. 104, 113, 31 S. Ct. 186, 55 L. Ed. 112, 32 L. R. A., N. S., 1062, Ann. Cas. 1912A, 487; Stockholders of Hagerstown Bank & Trust Co. v. Sterling, 300 U. S. 175, 184, 57 S. Ct. 386, 81 L. Ed. 586; Hartford Fire Insurance Company v. Commissioner of Insurance, 70 Mich. 485, 38 N. W. 474."

See also Citizens' Insurance Company v. Hebert, Secretary of State, 71 So. (La.) 955. 1916.

It is arguable that Section 272 of the 1935 Insurance Law (Sec. 39-5025 Burns' 1940 Replacement) in the provision that,

> "* * * Except as provided in this section and in part 1 and part 2 of this act, all companies operating as Lloyds or making insurance or doing an insurance business on the assessment plan shall have and exercise all the rights, powers and privileges conferred upon them and be subject to the liabilities under any existing law not hereby repealed.",

carries an exemption from taxation as to these companies which were originally exempt. The difficulty with that argument is that the Legislature in Section 272 is apparently talking about assessment companies organized in Indiana. Further, the immunity from taxation is probably neither a

right nor a power. By some authorities the word, "privilege," has been construed to mean immunity from taxation, but the weight of authority appears to be contrary.

In Phoenix Fire and Marine Insurance Company v. State of Tennessee, 161 U. S. 174, the Court said at page 177:

> "The words 'rights, privileges and immunities' when used in a statute of the kind under consideration are certainly full and ample for the purpose of granting an exemption from taxation * * *. The word 'immunity' expresses more clearly and definitely an intention to include therein an exemption from taxation than does either of the other words. Exemption from taxation is more accurately described as an 'immunity' than as a privilege, although it is not to be denied that the latter word may sometimes and under some circumstances include such exemption."

In that case, where an act was passed incorporating the W. Insurance Company, giving it all the rights and privileges of the D. Company, the omission of the word "immunities" implied that the W. Company was not to be exempt from taxation.

The same definition has been applied in many railroad charter cases. An example is Nashville, C. & St. L. R. Co. v. Commonwealth, 30 S. W. 200 (Ky.).

See also other definitions of privilege in 33 Words and Phrases, pages 740 and following.

I am consequently of the opinion that the Mutual Benefit Health and Accident Association of Omaha is subject to the premium tax as set forth in the Indiana Insurance Law of 1935.

Consequently, the answer to your second question should be in the negative.

As to the second part of your second question, a determination of that point is not now necessary, and since it requires an interpretation of the Nebraska Statute, I express no opinion thereon.

It is my opinion that you have the right to exact the premium tax from this company, but I do not base that opinion upon a change in the Nebraska Statute.