amendment; that the answer to your third question is yes, and the same answer applies to your fourth question.

Trusting that the above fully answers your inquiries with reference to the legal effect of the proposed amendment without taking into consideration anything with reference to the advisability or non-advisability of such an amendment being inserted into the Act.

SECRETARY OF STATE: Corporation fees.
CORPORATIONS: Admission of foreign R. R. corporations,—fees to be paid.

March 3, 1943.

Honorable Rue J. Alexander,
Secretary of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion as to the fee chargeable upon the filing by a foreign railroad corporation of a copy of its certificate of Articles of Incorporation as provided by Section 55-2219 of Burns' Indiana Statutes, Annotated, 1933. This section is Section 2 of Chapter 11 of the Acts of 1921. The Act consisted of four sections, Section 3 providing for the repeal of all laws and parts of laws in conflict with the Act and Section 4 declaring an emergency. I think it is appropriate that I should insert both the first and second sections of the Act, inasmuch as the foreign railroad corporation here involved is relying upon these two sections.

Section 1, the same being Section 55-2218 of Burns' Indiana Statutes Annotated, 1933, provides as follows:

"Whenever any railroad, situated partly in this state and partly in an adjoining state, shall be owned by a corporation formed by the consolidation of a railroad corporation or corporations of this state with a railroad corporation or corporations of such adjoining state, and which consolidated corporation shall have its principal office and the greater part of its railroad in such other state, shall be sold under a
decree or decrees of foreclosure or sale of any Court of competent jurisdiction, any lines of such railroad situated in the State of Indiana may be purchased, together with the connecting lines or a connecting line in such adjoining state, by any corporation organized under the laws of such adjoining state, and authorized and empowered by the laws of such adjoining state to purchase, own, operate and maintain any railroad sold or transferred under such decree of foreclosure or sale."

Section 2 of the Act does not seem to be quite so limited as to the corporations which may take advantage of its provisions, but I am inclined to think that it should be so construed as to apply only to cases coming within the exact terms of Section 55-2218, supra.

Section 55-2219, supra, provides as follows:

"In case the whole or any part of any railroad situate within this state (a part of which is situate in another state) shall become vested in a corporation of such other state, and such corporation shall also acquire a part of such railroad situate in such other state, the said corporation may exercise and enjoy, within this state, for the purposes of such railroad and its business, all the powers, rights, privileges, immunities and franchises of a railroad corporation organized under the laws of this state: Provided, That such corporation shall have filed, in the office of the Secretary of State of this state, a copy of its certificate of Articles of Incorporation, certified by the Secretary of State of such other state: And provided, further, That the corporation which acquires any such railroad shall hold and operate the part thereof so acquired in this state, and shall exercise the powers, rights, privileges, immunities and franchises hereby conferred, subject to all the rights, powers, privileges, duties and obligations prescribed by the general laws of this state, for the regulation, government, taxation or control of railroad companies organized under the laws of this state: And provided, further, That this Act shall not be construed as authorizing any railroad
company to purchase any parallel and competing line of railroad in this state."

You submit for an official opinion the question as to what fees should be charged in such a case.

I have been furnished with a copy of the decree entered in the Circuit Court of the United States for the district of Indiana in the case of United States Trust Company of New York and John A. Stewart as Trustees v. Chicago Terminal Transfer Railroad Company et al. on February 23, 1907, which adopted a decree of February 20, 1907, entered in the Circuit Court of the United States for the northern district of Illinois, eastern division, in the case of United States Trust Company of New York and John A. Stewart as Trustees v. Chicago Terminal Transfer Railroad Company et al. These papers are sufficient, in my judgment, to show the authority for a sale under a decree of foreclosure, embodying also an approval of the sale on January 27, 1910. I have also been furnished with a photostatic copy of the Articles of Incorporation of the company now desiring to comply with the above sections wherein it is shown that such Articles were filed for record with the Secretary of State of Illinois on January 8, 1910. I also have a photostatic copy of the deed relied upon which bears the date of February 8, 1910. These documents, I think are sufficient to bring the case within Section 55-2218 except as to the first condition, namely, that the railroad against which the proceedings were instituted shall be owned by a corporation formed by the consolidation of a railroad corporation or corporations of this state with a railroad corporation or corporations of such adjoining state and also as to the principal office. On this subject I have the statement embodied in a letter from Counsel for the Railroad Company as follows:

"It will be noted that the property was owned by the Chicago Terminal Transfer Railroad Company at the time of the foreclosure. This railroad was composed of numerous other railroads organized both in Indiana and Illinois. Among them was the Chicago, Hammond and Western, Chicago and Calumet Terminal and a number of short lines in Illinois, the names of which I cannot offhand give you."
Assuming that this statement is correct, the evidence I think is sufficient to meet the requirements of Section 55-2218, supra, the terms of which authorize such foreign corporation to purchase such railroads situate in the State of Indiana if such foreign company was under its own charter authorized and empowered by the laws of the adjoining state to purchase, own, operate, and maintain such a railroad. Upon this subject, I think you should be furnished with further evidence. If such evidence is furnished, I think then that the provisions of both Sections, 55-2218 and 55-2219, supra, have been complied with so as to authorize the filing of the Articles as required by Section 55-2219, supra.

I pass now to the specific question propounded, which is the question as to what fees are chargeable against such a company. It is clear that the Act under which the corporation is claiming the right to file its Articles contains no provision with respect to fees chargeable. The nearest that it gets to the subject of fees is the statement, quoting from Section 55-2219, supra, that the corporation which acquires any such railroad,

"shall hold and operate the part thereof so acquired in this state, and shall exercise the powers, rights, privileges, immunities and franchises hereby conferred, subject to all the rights, powers, privileges, duties and obligations prescribed by the general laws of this state, for the regulation, government, taxation or control of railroad companies organized under the laws of this state:" (Our emphasis.)

However, in my opinion, this provision has nothing to do with the initial payment of fees upon the filing of the Articles of Incorporation. I have examined the statutes on the subject of railroad corporations and find nothing in those statutes, now in effect, which would provide for fees to be paid upon filing Articles of a foreign corporation. I have examined also the Indiana Corporation Fee Act, Sections 25-601 to 25-602, inclusive, and in that Act the only appropriate provision which I find is Subdivision (g) of Section 25-602, which provides as follows:

"For filing with the Secretary of State any certificate not herein specified, five dollars ($5.00) each, regard-
less of the number of amendments contained in said certificate, except increases of capital stock upon which the fees shall be as hereinbefore provided."

It is true that provision is made for a filing fee to be paid by a foreign corporation applying for admission to do business in the State of Indiana, which fee is based upon the proportion of its capital stock represented by its business and property in Indiana, but Section 55-2219, *supra*, does not contemplate an application for the right to do business within the state. Such Section 55-2218, *supra*, authorized the purchase, upon a foreclosure sale in Indiana, by a foreign railroad company, and Section 55-2219 provides what such foreign corporation is to do in order to operate in the state, which is limited, simply, to the filing of a certified copy of the Articles of Incorporation. The case submitted does not seem to be covered by any railroad statute now in effect, and the general statute on the subject of fees does not seem to apply except as to the general filing fee of $5. If a certificate and seal is required there is a special fee for that. In my opinion, the fee payable in the case submitted, under existing law, is $5, plus the appropriate fee for certificate and seal.

GENERAL ASSEMBLY:

DENTISTS: Validity of legislative action prohibiting certain types of newspaper advertising.

Honorable Albert J. Beveridge, Jr.,
Member Indiana Senate,
State House,
Indianapolis, Indiana.

Dear Senator Beveridge:

This will acknowledge receipt of your request for an opinion as to the constitutionality of the provisions of Engrossed House Bill No. 103 in so far as it purports to control, regulate and prohibit certain types of newspaper advertising by dentists.

It is my opinion that under the police power, the Legislature has the right to control, regulate, as well as prohibit any news-