STATE BOARD OF HEALTH: Discussion of constitutionality of Chapter 290 of the Acts of 1943.

June 4, 1943.

Hon. J. L. Quinn, Acting Chief,
Bureau of Sanitary Engineering,
Indiana State Board of Health,
1098 West Michigan Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an interpretation of Chapter 290 of the Acts of 1943 entitled:

"An Act to amend sections 1 and 2 of an act entitled 'An Act providing for an administrative building council and prescribing its powers and duties,' approved March 3, 1923, and adding two new sections to be numbered sections 15 and 16, appropriating money therefor, and repealing all laws in conflict therewith."

The specific questions are as follows:

"1. Is the title of this act sufficient to cover Section 6 of the Act which provides that this act shall expire by limitation July 1, 1944?

"2. The title of this act also provides for the adding of two new sections which shall be known as Sections 15 and 16. Section 3 of the act is designated as Section 15. Which of the remaining sections should be designated as Section 16?

"3. Section 1 of this act provides for the employment of a full-time secretary. Would this act in any way be invalidated by the appointment of some individual to act as part-time secretary due to the lack of available funds for the employment of a full-time secretary?"

Section 19 of Article 4 of the Constitution of Indiana provides as follows:

"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.”

It is well settled in this state that the above provisions require simply that the subject of the legislation shall be expressed in the title which will be sufficient as a title to authorize the insertion in the act of “matters properly connected therewith.” See Baldwin v. State, 194 Ind. 303; Cyrus v. State, 195 Ind. 346.

Section 6 of the Act under consideration provides as follows:

“The provisions of this act shall terminate by limitation on July 1, 1944.”

Of course, the title of this particular act does not contain express language that the Legislature is proposing to make a limitation upon the period of time during which the act will be in effect, but I do not think such a provision is any part of the subject such as is required to be stated in the title as provided in the constitutional provision above referred to. In my opinion, however, such a provision ordinarily would come within the language “matters properly connected therewith” which is not required to be placed in the title in order to authorize its insertion in the act. It may be of interest to note that such a plan was followed in Chapter 70 of the Acts of 1932 and also in the Milk Control Law of 1935. The title of Chapter 70 of the Acts of 1932 is

“An Act concerning the salaries, wages, and compensation of public officers and employees.”


Section 10 of the Act enacted under such title provides as follows:

“This act shall expire by limitation on the first day of January, 1934,” etc.


The title of the Milk Control Law of 1935 is,

“An Act declaring an emergency concerning the production and distribution of milk, creating a milk con-
trol board and defining its powers and duties, and declaring an emergency.”


Under such title the Legislature enacted the following provision:

“The provisions of this act shall apply only during the emergency period as defined by this section. The ‘emergency period’ means the period between the time this act takes effect and July 1, 1937, unless the General Assembly shall otherwise provide,” etc.


These cases, of course, are not authority on the subject, but the fact that they were never attacked on that ground does indicate, to some extent, that such a limitation does not have to be placed in the title in order to authorize its insertion in the act.

However, in order to come to a conclusion on the question submitted, the specific title of Chapter 290, supra, requires further consideration. It will be noted first of all that the title to Chapter 290 has for its subject the amending of Sections 1 and 2 of the Administrative Building Council Act of 1923 and the adding of two new sections to be known as Sections 15 and 16, “appropriating money therefor, and repealing all laws in conflict therewith.” The amendment of the two specific sections is accomplished by Sections 1 and 2. Must it be held, therefore, that the provisions of the new sections are to be limited to the appropriation of money therefor and to the repealing of all laws in conflict therewith? Upon the basis of what has already been said, the provision of Section 6, in my opinion, could legally have been inserted in the sections by amendment, and I see no practical reason why it cannot be inserted in the new sections. In other words, I do not think that the new sections in subject matter are limited to making an appropriation and to repealing all laws in conflict therewith. In other words, limiting provisions, such as are contained in Section 6, are not infrequently inserted with respect to appropriations. In my opinion, therefore, your first question should be answered in the affirmative.
Your second question calls attention to the fact that, while the title refers to the addition of two new sections to be numbered Sections 15 and 16, the legislation contains no provision which is to be designated as Section 16, and you ask the question as to which of the remaining sections should be designated as Section 16. In my opinion, neither of them can be thus designated. It does not follow, however, that the other provisions of the act should not be given effect. It will be noted that Section 3 of the Act provides that an additional section be added to the said Act to be numbered Section 15 and to read as follows: “Section 15.” Thereafter is contained what is usually spoken of as a severability clause, after which follows Section 4 repealing inconsistent acts, Section 5 making an appropriation, and Section 6 limiting the term of the Act. I think, under the authorities in this state, these sections in their entirety may be considered as a part of Section 15 and as such given effect. That conclusion grows out of the fact that section numbers are not regarded as conclusive and where necessary may be regarded as surplusage and stricken out as such in an interpretation of such an act. In this connection, I refer to the case of Reed v. The State, 12 Ind. 641, quoting from page 646, where the Court said:

“It is again objected that the division of the amendatory act into two paragraphs or sections, is evidence that two subject-matters are included in it; that as the title professes to amend but one section of the old law, that amendment must be contained, and be presumed to be so contained, in the section of the amendatory enactment within which the old law to be amended is set forth.

“Upon the question of numbering and paragraphing, the authority last referred to” (Law and Pract. of Leg. Assemblies in the United States, by Cushing, ed. 1850, p. 516) “is as follows: ‘The numbers prefixed to the several sections, paragraphs, or resolutions, which constitute a proposition, are merely marginal indications, and no part of the text of the proposition itself; and, if necessary, they may be altered or regulated by the clerk, without any vote or order of the House.’ Id. p. 533. See, also, Journ. of the House of
The above case was followed by the Court, in the case of *Lewis v. The State*, 148 Ind. 346, wherein the Court used the following language at page 349:

"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."

With reference to your third question the provision of the Act is as follows:

"An executive secretary of the administrative building council shall be appointed by the governor, which appointment shall be made from a list of three persons submitted to him by the said administrative building council. The executive secretary shall serve for a term of four years from the date of his appointment and said secretary shall *devote his full time* to the discharge of the duties created by this act and amendments. Said executive secretary shall receive for his services such compensation as the administrative building council shall determine. The said secretary or any employee of the office of said secretary as created by this act, shall not engage directly or indirectly in the practice of architecture or engineering during his or their tenure."  (Our italics.)

It will be noted from the above that the Act contemplates a full-time secretary. I do not think the appointment of a part-time secretary would be authorized in view of the statement in the Act that the secretary "shall devote his full time to the discharge of the duties created by this act and amendments" thereto.