"* * * That nothing herein shall be taken to prevent payments being made at shorter intervals than herein specified nor to repeal any law providing for such payments; * * *. (Our emphasis.)

Burns' Indiana Statutes Annotated 1933, Sec. 40-101.

Since Section 40-104 Burns' 1933 provides that the payments to employees shall be at least once each week, "if demanded," it is apparent that the provisions are for the benefit of the employees, and they may be waived by the employees either by contract or other agreement.

In my opinion, therefore, the 1911 Act above referred to is valid and is still in force and effect. The answer to your question is in the affirmative.

INDIANA BOARD OF DENTAL EXAMINERS: Interpretation of Chapter 308 of the Acts of 1943, with particular reference to advertising and unprofessional conduct of Dentists.

November 5, 1943.

Hon. C. A. Frech, D.D.S.,
Secretary-Treasurer,
Indiana State Board of Dental Examiners,
Gary State Bank Building,
Gary, Indiana.

Dear Sir:

Your letter of October 11, 1943, received as follows:

"On behalf of the Board of Dental Examiners, I am making a request for an opinion from your office on the new dental law, and particularly with reference to the following matters:

"Section 63-518, Burns' Ann. Statutes, Supp. of 1943, provides that the Board may refuse to issue a certificate, or if one has been issued, to suspend or revoke the same, etc., for any of the following causes:
"Section (I) provides 'To publicly exhibit, etc., * * *. Provided, That it shall be permissible for a duly licensed dentist to use a picture of himself in connection with his newspaper advertisement: Provided further, That such newspaper advertisement or other advertisement appearing in any circular, program, yearbook, or other printed matter, shall include only the name and title of the dentist, his office and residence address and telephone number, office hours, and his specialty in practice if he be a bona fide practitioner of a dental specialty.'

"The question that has arisen is whether this section would permit a practitioner to advertise over the radio, for example, giving more information than he could give in a newspaper, such as advertising price of dentures or dental work, and also, if this is possible, then is the provision limiting advertising by printed matter constitutional?

"I also would like your opinion on Section (L) of our law. Does not this section cover all sections of our law and prohibit all means of advertising as it pertains to dentistry?"

Section 63-518, Burns' R. S. 1943 Supp., being Sec. 1, Ch. 308, Acts of 1943, is in part as follows:

"The state board of dental examiners may refuse to issue a certificate, or, if a certificate has already been issued, have the right to review the evidence upon which a certificate has been issued, and then suspend or revoke the same and the license issued thereon for any of the following causes:

"* * *

"(9) That the holder thereof has, within one (1) year prior to the filing of the complaint as provided in section seventeen (Sec. 63-519), been guilty of unprofessional conduct as hereinafter defined;

"* * *

"The term 'unprofessional conduct' as used in paragraph (9) shall mean and embrace any one (1) or more of the following practices:

"* * *
“(I) To publicly exhibit or display or publicly use specimens of dental work or any tooth, teeth, bridgework, denture or any portion of the human head or any representation or picture or illustration thereof for the purpose of attracting the attention and patronage of the public to any person, firm or corporation who is engaged in the practice of dentistry: Provided, That it shall be permissible for a duly licensed dentist to use a picture of himself in connection with his newspaper advertisement: Provided further, That such newspaper advertisement or other advertisement appearing in any circular, program, yearbook, or other printed matter, shall include only the name and title of the dentist, his office and residence address and telephone number, office hours, and his specialty in practice if he be a bona fide practitioner of a dental specialty.”

In answer to your first question it is my opinion that if clause (I) aforesaid is considered separate and apart from each of the other clauses of said section of the statute, that the last proviso in said clause (I) would be unconstitutional and void within the rule announced by the Supreme Court of Indiana in the case of Needham v. Profitt (1942), 41 N. E. (2d) 606, where the court was called upon to determine the constitutionality of a provision of the Funeral Directors and Embalmers Act of 1939, which Act prohibited advertisement of prices of services and merchandise to the public, limiting such advertising to “any form of printed matter, newspaper or otherwise, holding out such facts to the public.” Section 63-722, Burns’ 1941 Supp. On page 607 of the opinion the court says:

“Without passing upon the other questions duly presented we shall consider the proposition to the effect that Sec. 6 unlawfully discriminates against newspaper advertising. If the statute was an old one the prohibition against advertising by means of the printed word without restricting the right to advertise by other means might be understood, even if it could not be justified, upon the theory that science has since overtaken the lawmakers; but we cannot
close our eyes to the fact that in 1939 when this statute was enacted the radio had already come into general use in the advertising field. We are unable to conceive of any possible reason for prohibiting licensed funeral directors and embalmers from advertising their prices in newspapers or by handbills and at the same time permitting them to broadcast the same facts to the public by radio. Such a result constitutes a direct violation of Sec. 23 of Article 1 of the Constitution of Indiana, which forbids the General Assembly from granting to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens. For the same reason the act violates Sec. 1 and Sec. 9 of Article 1 of the State Constitution."

The court in the above case quotes, at some length, from the case of People v. Osborne (1936), 17 Cal. App. 2d Supp. 771, 773, 776, 59 P. 2d 1083, which case declared unconstitutional a California statute prohibiting advertisement of prices on the outside of barber shops, and wherein the California court held that there was no reasonable relation between the purposes of the statute regarding the advertising of prices and the regulation of the health laws. The Indiana court in using such quotation specifically held that it was only passing upon the question of discrimination as to means of advertising and refrained from passing upon other questions presented as to the constitutionality of the statute.

The unconstitutionality of clause (I), supra, would be limited to the last proviso thereof, for the reasons hereinafter set out in this opinion.

In answer to your second question I wish to advise that clause (L) of Section 63-518, Burns' R. S. 1943 Supp., supra, provides as follows:

"(L) To advertise a guarantee or warranty of any dental service where the result depends upon the action or reaction of human tissue. The terms 'publish,' 'circulate,' and 'advertise' as used herein shall mean and include the use of advertisements by means of any circular, letter, card, handbill, sign, poster, steropticon (stereopticon) slide, motion picture, advertising
match, advertising mirror or any other advertising article or by advertising in any newspaper, magazine, telephone directory, city directory, theater or other program, or other publication or by projection by means of light or by crier or by any public address system or by radio broadcasting or by television, or by airplane banners or by sky writing or by the use of any advertising solicitor or publicity agent or by any other advertising device for the purpose of soliciting patronage.”

It will be noted that the first line of clause (L), supra, refers only to advertising; that the rest of the clause defines the terms “publish,” “circulate,” and “advertise” as above stated. Clause (I), supra, refers to “newspaper advertisement or other advertisement appearing in any circular, program, yearbook, or other printed matter, * * *.” An examination of previous clauses of said Section 63-518, supra, shows that clause (A) refers to “publishing” and “circulating”; clauses (B), (C), (D), and (F) refer to “advertising”; clause (E) refers to “publishing.”

In the case of Indiana Creosoting Co. v. McNutt, Governor (1936), 210 Ind. 656, where the court decided that the appellant was not a manufacturer within the meaning of the Gross Income Tax Act, in construing the different Sections of said Act, on page 667 of the opinion the court said:

"* * * The meaning of a word used in a statute must be construed with reference to all other words used therein and with which it is associated. It is a rule of statutory construction that effect must be given to the whole statute and every part thereof. State ex rel. Hopper v. Board of Comm. (1925), 196 Ind. 472, 149 N. E. 69. * * *"

Also see: Zoercher v. Indiana Associated Telephone Corp. (1936), 211 Ind. 447, 455.

The mere fact that the provisions of the Act are divided into separate clauses, instead of being confined to one, does not render any part of the Act invalid.

Lewis v. The State (1897), 148 Ind. 346, 349.
It is therefore my opinion that the definition of the words "publish," "circulate," and "advertise" as defined in clause (L) of Section 63-518, Burns' 1943 Supp., supra, must be construed to define each of said words as used throughout said Section of said Act.

Sutherland Statutory Construction, 3rd Edition, Vol. 2, Section 3002, announces the rule to be:

"As a part of its legislative function, a legislature may enact law and define its meaning. Where in the same statute the legislature defines the meaning of the words used, it expresses most authoritatively its intent and its definitions and construction is binding on the courts. * * *"

Also see: Gross Income Tax Dept., etc. v. Harbison, etc. (1943), — Ind. App. —, 48 N. E. (2d) 834, 836.

However, an examination of the last proviso of clause (I) of the statute under consideration, to-wit:

"* * * Provided further, That such newspaper advertisement or other advertisement appearing in any circular, program, yearbook, or other printed matter, shall include only the name and title of the dentist, his office and residence address and telephone number, office hours, and his specialty in practice if he be a bona fide practitioner of a dental specialty."

discloses that said proviso limits that which may be advertised in a newspaper to the specific items therein set forth, and does not restrict advertising by radio to such specific items. A person would be entitled to advertise on the radio as to any matters not prohibited by the several clauses of said Act. When this right is denied to newspaper advertising it constitutes a discrimination within the purview of the case of Needham v. Proffitt, supra, and would render said proviso, aforesaid, unconstitutional. This would not affect the constitutionality of any other part of said Act, or of any other part of clause (I), supra, under the following authorities:

In the case of Pennington v. Stewart (1937), 212 Ind. 553, the court was required to construe the constitutionality of
Ch. 308 of the Acts of 1935 abolishing a civil cause of action for alienation of affections, and providing a penalty against one filing a complaint on such grounds. In upholding the constitutionality of the Act and in holding said Section providing for such penalty unconstitutional, the court on pages 562 and 563 of the opinion said:

"The practical effect of Section 8 of the act under consideration is to deny and prohibit one from contesting the constitutionality of the Act. If this is a lawful exercise of legislative power then the constitutionality of all acts of the legislature could be prevented from being tested by a similar penalty provision being enacted in such act. The legislature can not enact a law and at the same time pass upon its constitutionality. It is for the courts to pass upon this question.

"We are of the opinion that section 8 of the act, insofar as its relates to the filing of any pleading or paper setting forth or seeking to recover upon a cause of action abolished or barred by the act, is unconstitutional. Section 9 of the act provides that each section and provision shall be construed separately and the invalidity of any section or provision shall not affect the validity of the remaining sections or provisions."

Section 4 of Chapter 308 of the Acts of 1943, (set out in the footnotes to Section 63-522a, Burns' 1943 Supp.), which is the dental statute under consideration, provides:

"'If any provisions of this act as amended be decided by the courts to be unconstitutional or invalid, such unconstitutional or invalid provision shall be considered severable from the remainder of this act and shall be excised therefrom, and the same shall not affect the validity of this act as a whole, or any part thereof, other than the part so decided to be unconstitutional or invalid.'"

In the case of Indiana State Board of Medical Reg. v. Seulean (1941), 219 Ind. 321, the court was required to construe the constitutionality of the podiatry Act (Ch. 8, page 15, Acts 1925). Section 3 of said Act contained a proviso
giving applicant certain rights if they filed an application on or before January 1, 1924. This was impossible of performance as the Act was not passed until 1925. In holding the proviso invalid, and in upholding the validity of the remainder of said Act the court on page 326 of the opinion says:

“If the requirements of the whole act were impossible of compliance, then appellee's cases would be in point; but this is not true of the present statute. The only part of the act which appellee contends is impossible to comply with relates only to the proviso above quoted which permits the issuance of a license to applicants without an examination, provided said applications are filed before January 1, 1924, a date already passed, and therefore no applications could be filed before January 1, 1924. Granted that appellee's contention is correct, such a holding by this court could have no other effect, than to strike from the statute said proviso contained in section 3 of said act.

“In State v. Barrett (1909), 172 Ind. 169, 87 N. E. 7, it was held that, if the elimination of an invalid portion of an act will leave the remainder complete in itself, sensible and capable of being executed against all alike, the remainder will be enforced. The same question was presented and the same result reached in Swartz v. Board, etc. (1902), 158 Ind. 141, 63 N. E. 31; Smith v. McClain (1896), 146 Ind. 77, 45 N. E. 41; City of Indianapolis v. Bieler (1894), 138 Ind. 30, 36 N. E. 857.”

In the case of Miles v. Department of Treasury (1935), 209 Ind. 172, the court, in upholding the constitutionality of the Gross Income Tax Act of 1933, and in deciding there was no discrimination between persons of like classes affected by said Act, on page 195 of the opinion said:

“The law is intended to be general and to operate upon all residents of the state and all who derive revenue from sources within the state. It is clear that there is a sufficient basis for classifying some of those who are subject to the tax at a higher rate than others. As we are presently advised, there is no invalidity in
any of the classifications, but if there were invalidity it would not make the act unconstitutional in its entirety, but merely require that those unlawfully affected should be taxed no higher than those with whom they are in like circumstances. If exemptions and exceptions were found to be invalid they would simply be inoperative, since the act provides that if any of its provisions are declared invalid they shall not affect the remainder of the act."

It is therefore my opinion that said Act should be construed as though the last proviso of clause (I), as above quoted, was eliminated from said Act, and the definitions of the words "publish," "circulate," and "advertise" as defined in Section (L) of said Act applies to each of said words wherever they appear within said Section 63-518, Burns, 1943 Supp., supra.

This brings us to the question as to the constitutionality of such a statute as above construed.

In the case of Semler v. Oregon State Board of Dental Examiners (1934), 294 U. S. 608, the court in holding an Oregon statute constitutional preventing dentists from advertising as to their prices, superiority of service, free dental work, etc., said on page 610 to 613 of the opinion:

"Plaintiff is not entitled to complain of interference with the contracts he describes, if the regulation of his conduct as a dentist is not an unreasonable exercise of the protective power of the State. His contracts were necessarily subject to that authority. Rast v. Van Deman & Lewis Co., 240 U. S. 342, 363; Union Dry Goods Co. v. Georgia Public Service Comm'n, 248 U. S. 372, 375, 376; Sproles v. Binford, 286 U. S. 374, 391; Stephenson v. Binford, 287 U. S. 251, 276. Nor has plaintiff any ground for objection because the particular regulation is limited to dentists and is not extended to other professional classes. The State was not bound to deal alike with all these classes, or to strike at all evils at the same time or in the same way. It could deal with the different professions according to the needs of the public in relation to each. We find no basis for the charge of an unconstitutional discrimination. Watson v. Maryland, 218 U. S. 173, 179;

"The question is whether the challenged restrictions amount to an arbitrary interference with liberty and property and thus violate the requirement of due process of law. That the State may regulate the practice of dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board, is not open to dispute. Douglas v. Noble, 261 U. S. 165; Graves v. Minnesota, 272 U. S. 425, 427. The State may thus afford protection against ignorance, incapacity and imposition. Dent v. West Virginia, 129 U. S. 114, 122; Graves v. Minnesota, supra. We have held that the State may deny to corporations the right to practice, insisting upon the personal obligations of individuals (Miller v. State Board of Dental Examiners, 90 Colo. 193; 8 P. (2d) 699; 287 U. S. 563), and that it may prohibit advertising that tends to mislead the public in this respect. Dr. Bloom, Dentist, Inc. v. Cruise, 259 N. Y. 358, 363; 182 N. E. 16; 288 U. S. 588.

"Recognizing state power as to such matters, appellant insists that the statute in question goes too far because it prohibits advertising of the described character, although it may be truthful. He contends that the superiority he advertises exists in fact, that by his methods he is able to offer low prices and to render a beneficial public service contributing to the comfort and happiness of a large number of persons.

"The State court defined the policy of the statute. The court said that while, in itself, there was nothing harmful in merely advertising prices for dental work or in displaying glaring signs illustrating teeth and bridge work, it could not be doubted that practitioners who were not willing to abide by the ethics of their profession often resorted to such advertising methods 'to lure the credulous and ignorant members of the public to their offices for the purpose of fleecing them.' The legislature was aiming at 'bait advertising.' "In-
ducing patronage,' said the court, 'by representations of "painless dentistry," "professional superiority," "free examination," and "guaranteed" dental work' was, as a general rule, 'the practice of the charlatan and the quack to entice the public.'

"We do not doubt the authority of the State to estimate the baleful effects of such methods and to put a stop to them. The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards of conduct from those which are traditional in the competition of the market place. The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public peculiarly susceptible to imposition through alluring promises of physical relief. And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous. What is generally called the 'ethics' of the profession is but the consensus of expert opinion as to the necessity of such standards.

"It is no answer to say, as regards appellant's claim of right to advertise his 'professional superiority' or his 'performance of professional services in a superior manner,' that he is telling the truth. In framing its policy the legislature was not bound to provide for determinations of the relative proficiency of particular practitioners. The legislature was entitled to consider the general effects of the practices which it described, and if these effects were injurious in facilitating unwarranted and misleading claims, to counteract them by a general rule, even though in particular instances there might be no actual deception or misstatement. Booth v. Illinois, 184 U. S. 425, 429; Purity Extract Co. v. Lynch, 226 U. S. 192, 201; Hebe Co. v. Shaw, 248 U. S. 297, 303; Pierce Oil Corp. v. Hope, 248 U. S.
498, 500; Euclid v. Ambler Realty Co., 272 U. S. 365, 388, 389.”

Citing the Semler v. Oregon State Board of Dental Examiners, supra, the Supreme Court of the United States dismissed appeals in each of the following cases on the grounds that there was no substantial federal question presented:

Orwitz v. Board of Dental Examiners, 313 U. S. 546; (Opinion State Court, 41 Cal. App. (2d) 653, 107 P. 407);

In each of the foregoing cases the question was directly presented to the United States Supreme Court as to the constitutionality of statutes prohibiting advertising by dentists.

The Semler v. Oregon State Board of Dental Examiners case, supra, has been cited and followed, and similar statutes were held constitutional by state courts, in the following cases:

Webster v. Board of Dental Examiners (1941), 17 Cal. 2d 534, 542, 110 P. 2d 997;
Brown v. Board of Dental Examiners (1941), 44 Cal. 2d 790, 113 P. 2d 249;
Craven v. Bierring (1936), 222 Ia. 613, 620, 269 N. W. 805;

In Craven v. Bierring, supra, the Iowa Supreme Court in detail considers the relation of such prohibition against advertising by dentists with relation to public health, and reviews decisions of numerous states on this subject, and holds such legislation constitutional.

In answer to your second question it is my opinion that Section 63-518, Burns' 1943 Supp., supra, should be construed as though the last proviso of clause (I) of said Section is eliminated; that the words "publish," "circulate," and "advertise" as used throughout said Section of the statute should be construed as controlled by the definition given said words in
clause (L), supra; that said Section of the statute as so construed, would only prevent a dentist from doing those things therein prohibited.

I am also of the opinion, that Section 63-518, Burns' 1943 Supplement, as above construed, is constitutional.

SECRETARY OF STATE: Duty of Secretary of State in supplying extra copies of the Acts of the Indiana General Assembly.

November 5, 1943.

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

Dear Mr. Alexander:

This will acknowledge receipt of your letter dated October 29, 1943, requesting my opinion concerning your duty as Secretary of State to supply additional copies of the 1943 Acts to the various clerks of the Circuit Courts of the State of Indiana. Your letter states that due to a small vote in the 1942 General Election, most clerks will receive about two-thirds of the number of copies they received in 1941.

The following are the applicable sections of the Indiana statutes which govern and control the distribution of free copies of the printed Acts of each General Assembly.

Burns' R. S. 1943, Pocket Supplement, Section 49-1612, which is Section 1, Chapter 39, Acts 1935, reads as follows:

"(a) The secretary of state shall distribute the acts of each session of the general assembly to the clerk of the circuit court of each county within the state of Indiana. The number so distributed shall be based upon the total vote of each county, respectively, for secretary of state cast at the last preceding general election, and shall be as follows, to wit: Ten (10) copies of the session acts for each one thousand (1,000) votes cast, excluding fractions of thousands, in each county."