

Under the situation thus presented, section 6(b) of said chapter 135 of the Acts of 1937 is now to be regarded by you as though it had never been enacted.

The answer to your two inquiries is that the State Highway Commission does not have any further responsibility in connection with the work done on such county contracts, whether the work was done before or after March 10, 1941.

Also, your commission has no further responsibility in connection with such county projects on which plans have been approved, but where contracts have not been awarded, or, on work not yet started by March 10, 1941, under such contracts.

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**GOVERNOR: Status of State Board of Education.**

**STATUTES: Whether repealed Act can be amended.**

March 18, 1941.

Honorable Henry F. Schricker,  
Governor, State of Indiana,  
State House,  
Indianapolis, Indiana.

My dear Governor:

I have your request of March 17, 1941, for an opinion relative to the status of the State Board of Education in the light of the legislation passed by the Eighty-second General Assembly. Your request states in part:

“As you know, the 82nd General Assembly passed an Act which is known as Senate Bill No. 139, which purports to provide for the appointment of a new State Board of Education. The Legislature attempted to accomplish this purpose by amending Section 7 of an Act entitled ‘An Act to provide for the encouragement, maintenance and supervision of vocational education in industries, agriculture and domestic science,’ approved February 22, 1913. I have been informed that the 1913 Act was repealed by an Act passed by the Legislature in 1933 and that since the 1913 Act has been repealed, any attempt to amend it by the 82nd General Assembly, is a nullity. If this Act is void because its attempts to amend an Act which has already been repealed, then the question arises as to whether or

not we now have any State Board of Education, and also whether or not there is any method of appointing one, if none now exists."

Senate Bill No. 139 is entitled "An Act to amend Section 7 of an Act entitled 'An Act to provide for the encouragement, maintenance and supervision of vocational education in industries, agriculture and domestic science,' approved February 22, 1913; and declaring an emergency."

Section 7 of the Act of 1913 provides that "Section 7. The State Board of Education shall consist of the Superintendent of Public Instruction, the Presidents of Purdue University, the State University and the State Normal School, the Superintendents of School of the three cities having the largest enumeration of children for school purposes annually reported to the State Superintendent of Public Instruction, as provided by law, three citizens actively engaged in educational work in the state, at least one of whom shall be a county superintendent of schools, and three persons actively interested in, and of known sympathy with, vocational education, one of whom shall be a representative of employees and one of employers.

"The governor shall appoint the members of the board except the ex-officio members, for a term of four years."

Chapter 4 of the Acts of 1933, which was "An Act concerning the executive, including the administrative department of government of the state of Indiana, repealing all acts and laws in conflict herewith and declaring an emergency" provided in Section 2 thereof "that there be and there is hereby created and established eight executive including administrative divisions of the executive including the administrative department of the state of Indiana, to exercise and discharge all of the executive including the administrative powers, duties and functions of said department, the same known and designated as and being: \* \* \* (6) The Department of Education."

Section 15 of Chapter 4 of the Acts of 1933 provides "The Department of Education shall be in charge of the board of department of education, which board shall consist of the state superintendent of public instruction, who shall be the chief administrative officer thereof, the governor, the lieutenant-governor, and six additional persons, four of whom are actively engaged in educational work."

Section 30 of Chapter 4 of the Acts of 1933, provides "That all Acts and parts of Acts in conflict herewith, including all

Acts heretofore passed by the Seventy-eighth Session of the General Assembly, are hereby repealed."

From the above quoted sections of Chapter 4 of the Acts of 1933, it is apparent that Section 7 of Chapter 24 of the Acts of 1913 which Senate Bill No. 139 purports to amend, was repealed by the Legislature in 1933, and that said Section 7 of the Act of 1913 has not existed since the effective date of Chapter 4 of the Acts of 1933, and therefore, was not in existence at the time of the purported amendment attempted to be accomplished by Engrossed Senate Bill No. 139 passed by the Eighty-second General Assembly. It is a well recognized principle of law which has long been well established by Supreme Court decisions of the state of Indiana, that an Act professing to amend a section of the statute which has already been superseded by an amendment is unconstitutional and void.

Metsker v. Whitesell, 181 Ind. 126;  
Kramer v. Beebe, 186 Ind. 349;  
Pindell v. State, 196 Ind. 175.

It is also the rule, established by both statute and decision in Indiana, that where a former Act is repealed the subsequent repeal of the repealing Act does not revive the former Act unless expressly provided by statute.

Burns' Indiana Statutes Annotated, 1933, Sec. 1-307;

Buchanan, et al. v. Morris, et al., 198 Ind. 79, 85.

I am cognizant of the fact that by certain Acts of the Eighty-second General Assembly, Chapter 4 of the Acts of 1933 is repealed as of the effective date of May 1, 1941. Senate Bill No. 139, which attempts to amend the Acts of 1913, has an emergency clause which, if valid, would make it effective immediately upon its approval by the Governor, or in the absence of such approval, upon it being filed with the Secretary of State. It follows, therefore, that at the time of the purported effective date of Senate Bill No. 139, Chapter 4 of the Acts of 1933 was still in existence, and even in the absence of the rule that the repeal of a former Act by the subsequent repeal of a repealing Act, the former Act is not thereby revived, still Senate Bill

No. 139 would be invalid for the reason that the Act of 1933, which repealed Section 7 of Chapter 24 of the Acts of 1913, was still in existence at the time Senate Bill No. 139 was supposed to have become a law.

Since Senate Bill No. 139 is void because it attempts to amend an Act already repealed, it follows that the attempted abolition of the present State Board of Education by that Act is a nullity and that the State Board of Education appointed by you in the month of January, 1941, under the authority of Chapter 4 of the Acts of 1933, is still in existence.

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**Authority of a circuit court judge to increase the salary of a court reporter, as an emergency, in December, after having been formerly fixed, upon court order, at the preceding annual meeting of the county council.**

March 21, 1941.

Mr. Henry S. Murray, Chairman,  
State Board of Tax Commissioners,  
State House,  
Indianapolis, Indiana.

Dear Sir:

You request an official opinion in your letter of March 13th which reads as follows:

“Does a Circuit Court Judge have authority to increase court reporter’s salary on December 31st after a fixed salary amount was requested in August by the Judge, submitted to and appropriated by the Council in the exact amount as requested by the Judge, approved by the County Tax Adjustment Board and the State Board of Tax Commissioners without change, and a tax rate fixed to raise the amount of salary appropriated by County Council?”

“This question now comes to this Board in the form of an additional appropriation. Budget form No. 30 filed by Starke County for 1941 shows \$1,800 requested for court reporter’s salary, \$1,800 appropriated by the County Council, a tax rate fixed to raise only \$1,800 for court reporter’s salary, and then on Dec. 31st, the