“Driving a vehicle while under the influence of intoxicating liquor or narcotic or other habit-forming drug: Provided, That the license or permit of any person so convicted shall not be suspended for any period longer than that fixed by the court. * * *”

This section mandates the commissioner to suspend licenses upon receiving a notice of conviction of any of the offenses enumerated in the statute. One of the offenses specifically enumerated in this section is the offense of drunken driving. The legislature has seen fit to limit the power of the department with respect to the suspension of drivers' licenses for the offense of drunken driving.

The proviso hereinabove set out unequivocally provides that in cases of drunken driving the license shall not be suspended for a period longer than fixed by the court. The language is too plain to require construction and definitely limits the power of the department.

The question of the power of the department in case of a second offense is answered by the statement that with respect to the suspension of licenses the court's recommendation is controlling and the department can not exceed it.

PUBLIC WELFARE, DEPARTMENT OF: Old Age Assistance liens as affected by Chapter 201 of the Acts of 1941.

May 1, 1941.

Hon. T. A. Gottschalk, Administrator,

State Department of Public Welfare,
141 South Meridian Street,
Indianapolis Indiana.

Dear Mr. Gottschalk:

I have your letter of recent date in which you ask for an official opinion construing the effect of Chapter 201 (House Bill 158) passed by the General Assembly of 1941. You ask the following questions depending upon such construction:

"1. May a recovery be made on an old age assistance lien duly filed in the office of the county recorder
for such assistance paid prior to March 12, 1941, with interest to said date?

"2. May the welfare department recover for old age assistance furnished prior to March 12, 1941, (a) Through proceeds of insurance assigned to a county department before said date, or (b) Through proceeds of insurance in which the county department has been named beneficiary before said date, or (c) Through money or other personal property accruing to the county department by virtue of an agreement given by a recipient of assistance prior to March 12, 1941?

"3. Can a lien for the amount of old age assistance granted be placed upon the property of an aged person if his first application for assistance was made prior to March 12, 1941, but if his application was not acted upon officially by the county board of public welfare until sometime subsequent to March 12, 1941?

"4. Can a lien for the amount of old age assistance granted be placed upon the property of an aged person whose first application for assistance was made and rejected by official county board action prior to March 12, 1941, if sometime subsequent to that date he files another application for assistance and is granted an award following his reapplication?

"5. Can a county department require as a condition of eligibility an assignment to them of the insurance or other intangible property of an applicant for aged assistance under circumstances set forth in Item 3 above? (a) Would it make any difference if an assignment had been executed in favor of the county department, between time of application and March 12, 1941?

"6. Can a county department require as a condition of eligibility an assignment to them of the insurance or other intangible property of an applicant for
aged assistance subsequent to the reapplication filed under the circumstances set forth in Item 4 above?

(a) Would it make any difference if an assignment executed in favor of the county department at the time of the first application had been cancelled prior to the filing of the reapplication?

“7. When an applicant for old age assistance desires to set aside a sum out of his intangible property for burial purposes rather than use it up as a resource before receiving assistance, may a county department of public welfare, under the rules and regulations of the state department of public welfare, limit the amount to be so set aside, and require that it be placed in a joint bank account, trust agreement, escrow, assigned to the county department of public welfare or other approved arrangement so that the same will be used for the purpose intended? If he refuses to make such arrangement, may he be considered ineligible for such assistance so long as he has such available resource?

“8. Does the old age assistance lien attach to real property which is acquired subsequent to March 11, 1941, by a person who was receiving assistance prior to that date?

“9. Is it the effective date of official county board action on an application or the effective date of the award, or the date of filing of the certificate of award in the recorder’s office that will determine whether or not a lien attached to the property of an aged assistance recipient prior to March 12, 1941?

Section 1 of Chapter 201 is an amendment to Section 38 of the Welfare Act. This section provided that from the date of filing a certificate of award in the office of the county recorder, it “shall be and constitute due notice of a lien against the recipient and his estate for any amounts recoverable under this act, which lien shall continue from the date of the filing of such notice until such lien is satisfied.”
The amendment of Section 38 as set out in Section 1 of Chapter 201 eliminates all provisions relating to the lien and is in effect a repeal of the proceedings and provisions relating thereto. The section of the Welfare Act relating to the application for assistance provides that it shall be in writing and shall be made in the manner and upon the form prescribed by the State Department and shall be verified by the oath of the applicant. It also provides that every such application shall contain a statement of the amount of property, both personal and real, in which the applicant has an interest and of all income which he may have at the time of the filing of the application. (Section 35, Chapter 3, Acts of 1936).

Section 44 of the Welfare Act provided as follows:

"Sec. 44. Applicant’s agreement to reimburse the state. The county department shall, under rules of the state department, require, as a condition to granting assistance to an aged person, in any case, that the applicant shall submit a properly acknowledged agreement to reimburse the state and the county for all assistance granted, from whatever source such assistance may have been derived. In such agreement, the applicant shall assign as collateral security for such reimbursement, such part of his personal property as the county department shall require, in accordance with the rules and regulations of the state department.” (Sec. 44, Ch. 3, Acts 1936).

You state that the verified application for assistance has the following conditions:

"D. 1. For any assistance granted to me I hereby agree to reimburse the state of Indiana, the County of .........., and any other county or counties of the state from any and all real or personal property which I now own or may hereafter acquire, and I further agree to submit to the County Department of Public Welfare such additional properly acknowledged agreements or instruments as may be required to carry out this agreement. I also agree to duly assign as collateral security for such agreement such part of my personal property as the County Department shall require in accordance with the rules and regulations of the State Department of Public Welfare, under the pro-
visions of The Welfare Act of 1936. I further agree to all other requirements and provisions of said act, and any rules and regulations issued thereunder.

2. I understand that any assistance granted me together with interest at 3% becomes a lien against me and upon any real property, whether now owned or subsequently acquired by me, and that such assistance together with interest at 3 per cent becomes a preferred claim against my estate.

Section 44 is one of the sections repealed by said Chapter 201. Sections 46 and 47 provide for a recovery from the recipient and Section 48 provided for the disposition of the money recovered under any of the provisions of the sections which are repealed by Chapter 201. There is also a provision in The Welfare Act providing for repayment to the United States government of 50% of the net amount collected by reason of old age assistance exclusive of general expenses. Any money recovered by reason of the old age assistance is apportioned under the provisions of The Welfare Act to the county and state and to the federal government. The agreement for a lien upon the real estate of the recipient and for repayment of the assistance granted was a necessary prerequisite under The Welfare Act before amendment before any assistance was awarded.

There is no saving clause in Chapter 201. We have two general saving clauses of our statutes which under certain circumstances might be applicable and I quote the same:

"Vested rights—No rights vested, or suits instituted, under existing laws shall be affected by repeal thereof, but all such rights may be asserted, and such suits prosecuted, as if such laws had not been repealed. (1 R. S. 1852, ch. 92, sec. 2, p. 430.)"

Sec. 1-302 Burns' Ind. Stat. 1933.

"Effect of repeal—Repealed act not revived—Saving provision.—Whenever an act is repealed which repealed a former act, such act shall not thereby be revived, unless it shall be so expressly provided. And the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute, unless the repealing act
shall so expressly provide; and such statute shall be
treated as still remaining in force for the purposes of
sustaining any proper action or prosecution for the
enforcement of such penalty, forfeiture or liability.
(Acts 1877 (Spec. Sess.), ch. 36, sec. 1, p. 73."

Sec. 1-307 Burns' Ind. Stat. 1933.

These two saving clauses have been construed by our courts
and Section 1-302 Burns supra, has been held applicable in
cases arising since this statute was enacted, but it has also
been construed by our highest courts as only being applicable
to rights vested at the time of the passage of the act which was
in 1852. The other saving section has been construed in the
following cases mentioned, in the absence of a specific saving
clause, that the amendment or repeal of the act in force would
not take away the right to recover on a liability given by the
statute before it was amended or repealed. The statute in each
of the following cases was amended or repealed, but the lia-

Chadwick, Treasurer v. City of Crawfordsville,
24 N. E. (2d) 937;
Wheeler v. City of Indianapolis, 205 Ind. 86;
Wise v. McKeever, Trustee, 184 Ind. 686;
Indianapolis v. Ritzinger, 24 Ind. App. 65;
Starr, Treas. v. State ex rel. Ketcham, Att'y
Gen., 149 Ind. 592;
Bruce, Treasurer v. Cook, et al., 136 Ind. 214;
Daggy, Trustee v. Ball, 7 Ind. App. 64;
Western Union Telegraph Co. v. Brown, 108
Ind. 538;
State ex rel. Goodman, Prosecuting Att'y v.
Halter, 149 Ind. 292;
State v. Lewis, 195 Ind. 344;
Piedmont v. State, 198 Ind. 511;
Burk v. State, 185 Ind. 47;
State v. Hardman, 16 Ind. App. 357.

These decided cases indicate that the provisions of Section
1-307 Burns, supra, are applicable to the determination of the
questions that you ask with reference to the effect of Chapter
201 of the acts of the last General Assembly. There was no
saving clause in this act. Neither is there an express provision
that the amendment of Section 38 and the repeal of the other sections shall extinguish any liability incurred under the sections in question. It is my opinion that such sections and the liability and engagements made thereunder are still in force as to the liens, transfers, assignments, and commitments made prior to the effective date of said Chapter 201, to-wit, March 12, 1941.

Your first and second questions are answered in the affirmative as to each part thereof. The liability incurred by reason of receiving assistance prior to March 12, 1941, is not lost, by reason of the general saving statute, Sec. 1-307 Burns' Ind. Stat. 1933, for the repealing act did not expressly provide that the former liabilities were extinguished and the portions of the Welfare Act which were repealed still remain in force for the enforcement and recovery of such liability.

Your third and fourth questions are answered in the negative for the lien provision was taken away March 12, 1941.

Your fifth and sixth questions are likewise answered in the negative as to each part thereof, for such power was taken from the county departments by said Chapter 201. The time of making the award governs and if an assignment of insurance had been made prior to March 12, 1941, and the award was not made until after that date the previous assignment would be nullified by the repeal of Sections 44 and 45. However, the answer to your seventh question indicates a possible modification of the answer to your sixth question.

The answer to your seventh question and both parts thereof is in the affirmative. Available resources are to be considered with regard to the question of need when application for old age assistance is made to the county department of public welfare and if applicant has intangible personal property, such property may be required to be used up before assistance is granted. This is in accordance with the provisions of Sections 34 and 37 of the Welfare Act and is emphasized by Section 2 (a) (7) of the Social Security Act, which latter provision is effective July 1, 1941. An applicant may prefer to have a better burial than is provided by the Welfare Act and may ask that he may use the amount permitted and limited by regulations of the state and county departments of public welfare for such purpose. If the applicant asks and is granted such privilege by the county department of public welfare, it is within the power of that department to see that it is so used and it may require the applicant to place it in such shape that it will be used for
such purpose only, and one of the methods suggested in your question would probably be sufficient. If the applicant refuses to do so, assistance could be denied on the ground that he has available resources and is not in need and therefore is ineligible at the time investigation is made and application passed upon and your question is so answered.

Your eighth question is answered in the negative, for after March 12, 1941, there was no provision for a lien.

Your ninth question may be answered in a general way that the time of filing the certificate of award in the office of the county recorder determined the time of the attachment. As a general rule, the lien would not become effective as to the recipient or to third persons until the date of the filing of the certificate of award in the office of the recorder of the county. It is provided by said Section 38 of the act that from the date on which such certificate is filed in the office of the county recorder it shall give a lien in favor of the county department against the real property of the recipient which lien shall continue from the date of filing such notice until said lien is satisfied. Accordingly, your question should be answered that the date of filing under the original act as passed and as effective prior to the amendment of said section by said Chapter 201 fixes the time of commencement of the lien and if the award was made prior to March 12th of this year but the certificate of award had not been filed in the office of the recorder of the county prior to that date then there would be no lien against the property of a recipient. The certificate of award must have been filed in the office of the recorder of the county prior to March 12, 1941, to constitute a lien against the property of an old age recipient. To this general statement there may be an exception where old age pensions were paid to the pensioner as an old age recipient after March 18, 1936, but this exception is only stated in this connection.

If you desire it to be amplified and will so indicate, we will do so.