In view of the Court's description in the Willett and other cases of the method of operation of the burial association plan, it will be readily seen that in the enactment of the above-quoted grounds for refusal to grant or renew a license the General Assembly had recognized a situation contrary to public welfare resulting from the association of an embalmer or funeral director with a burial association plan. Therefore the statute was enacted to prohibit that association.

The legislative determination that such a situation was contrary to the public welfare and should be prohibited is entitled to great weight and should not be disturbed.

In my opinion the provision quoted in your letter from the 1939 Act is constitutional.

DEPARTMENT OF PUBLIC WELFARE: Constitutional Law
—The question of validity of Sec. 1, Chap. 179, of the Acts of 1941 discussed.

Constitutional Law—Sec. 1 of Chap. 179 of the Acts of 1941 is unconstitutional.

June 27, 1941.

Mr. T. A. Gottschalk, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Gottschalk:

I have your letter of the 27th instant in which you ask as to the validity of Section 1, Chap. 179 of the Acts of 1941 when the same becomes effective. Your question is as follows:

"Is any part of this section valid, or is the section so based on the appointing power of the Lieutenant Governor and his privilege to sit and vote as a member of the State Board of Public Welfare that the section as a whole is invalid under the decision in the case of Tucker et al. v. State of Indiana et al., decided yesterday by our Supreme Court?"

The original Welfare Act of 1936 provided that the State Board of Public Welfare shall consist of five members who are to be appointed by the Governor. Section 1 of Chapter 179 also provides for a Board of five members. It is true that in the first
part of Section 1 it provides that the State Board of Public Welfare shall consist of four members, two of whom shall be appointed by the Governor and two by the Lieutenant Governor, but the act goes on to provide that the Lieutenant Governor shall *ex officio* be a member of the State Board and in case of a tie shall be empowered to cast the deciding vote. This indicates that it was not the intention of the legislature to cut down the membership of the Board from five to four, but to continue with a five board membership. A further indication of this intention of the legislature is that Section 1 requires that three affirmative votes shall be required for the adoption of any official action. Under the decision in the case to which you refer (Tucker et al. v. State of Indiana et al.), the Lieutenant Governor would not have the power of appointment of any members of the State Board of Public Welfare. This whole section being based primarily upon the right of the Lieutenant Governor to make certain appointments and to perform certain duties which would not be his by virtue of his office, I am firmly of the opinion that the whole section is so interwoven and so based upon the power of the Lieutenant Governor that the section is invalid, and that no part of the same would be lawful.

The provisions of this new section are firmly interlaced. There is a complete and indivisible unity. The unification is so thorough that no separation can be effected, and nothing remains but to take the section as an entirety and as it is written, and as so written it is invalid and unconstitutional. The appointing power of the Lieutenant Governor is the foundation of this section and when the foundation is taken away the superstructure cannot stand.

In a case decided in 1918, the Court said:

"It is equally well settled that: 'Where a part of a statute is unconstitutional, if such part is so connected with the other parts as that they mutually depend upon each other as conditions, considerations or compensations for each other, so as to warrant the belief that the legislature intended them as a whole, and if they could not be carried into effect the legislature would not have passed the residue independently of that which is void, then the whole act must fall.' State ex rel. v. Blend, *supra*, 521. See also Board, etc. v. Knight (1917), ante 108, 117 N. E. 565, 571; State ex rel. v. Fox (1901), 158 Ind. 126, 130, 63 N. E. 19, 56 L. R. A. 893."
Caldwell v. State et rel., 187 Ind. 617, 621;
Board of Election Commissioners v. Knight, 187 Ind. 108, 125;
Morris v. Powell, 125 Ind. 281, 296;
Board of Commissioners Newton Co. v. State ex rel. Bringham, 161 Ind. 617, 627.

This proposition is further stated as follows:

"The Legislature passes an entire statute, on the supposition, of course, that it is all valid, and to take effect. The courts find some of its essential elements in conflict with the Constitution, strip it of those elements, and leave the remaining portion mutilated and transformed into a different thing from what it was when it left the hands of the Legislature. The statute thus emasculated, is not the creature of the Legislature; and it would be an act of legislation on the part of the courts, to put it in force. The courts have no right thus to usurp the province of the Legislature. The general rule stated by Judge Cooley is approved and applied in State ex rel. v. Denny, 118 Ind. 449.

"It is undoubtedly the law that when the several provisions of an act are independent, some may stand although others may fall, but this occurs only when the provisions are clearly independent. As said by Shaw, C. J., in Warren v. Mayor, etc., 2 Gray 84, the rule that some portions of a statute may stand while others fall 'must be taken with this limitation, that the parts, so held respectively constitutional and unconstitutional, must be wholly independent of each other.'

"In the statute under discussion the invalid provisions are not independent, and if the unconstitutional provisions are stripped from it, then it becomes an entirely different act from the one which left the hands of the Legislature."

Griffin, Secretary of State v. The State ex rel. Griffiths, Reporter, 119 Ind. 520, 522.

Paraphrasing a part of the decision in the Caldwell case, it is inconceivable that this section would have been enacted by the legislature except upon the theory that the Lieutenant Gov-
ernor was to be a member of the State Welfare Board, and was to have the power of appointment of at least two of the members thereof, and by his appointments and the right to cast a deciding vote, he would, in effect, be the State Welfare Board. It follows, therefore, that the provision for appointment of the members by the Lieutenant Governor being invalid, that the rest of the section which is based thereon would be invalid, and that the entire section must, therefore, be governed by the rule that where valid and invalid provisions of an enactment are so connected, one with another, that it is apparent that the legislature would not have passed that section of the act except as a whole, and in such case the entire section must fall. Section 1 of Chapter 179 of the Acts of 1941 is invalid, and of no force and effect, and it will, therefore, leave Section 3 of Chapter 3 of the Acts of 1936 in full force and unchanged, as it was before this later and invalid section was passed.

GROSS INCOME TAX DIVISION: Whether Department can release income tax returns of designated persons to the Treasurer of State.

June 30, 1941.

Mr. G. K. Hewitt, Director,

Gross Income Tax Division,

Department of Treasury,

Indianapolis, Indiana.

Dear Mr. Hewitt:

I have before me your request that an official opinion issue in response to the following inquiry:

"The Treasurer of State has made a demand upon the Gross Income Tax Division to furnish him with certain certified copies of the Gross Income Tax Returns of ten individuals. The Treasurer states that he wishes to use these certified copies for tax purposes, and in conjunction with an investigation which he is conducting under the authority of Senate Enrolled Concurrent Resolution No. 1, which was passed on February 10, 1941.

"Can the writer, as the Director of the Gross Income Tax Division, provide the Treasurer of State with cer-