With the exception of shows and carnivals operating under
tents, the act seems to me to be directed to places wherein
such exhibitions and entertainments are given having a per-
manent and fixed location, providing shelter and facilities to
the public, structures and buildings capable of being examined
and inspected for the discovery of fire and other hazards
imimical to the safety of the public.

Because of the impossibility of classifying outdoor moving
picture exhibitions within any of the permit classifications
and the attendant impossibility of issuing any kind of a per-
mit therefore, under the act, it is my conclusion that outdoor
moving picture shows are clearly without the purview of the
act and were not intended by the Legislature to be covered
by it. They are temporary and transient. There is no structure
or building of any kind in which the exhibitions are given for
the State Fire Marshal to inspect.

It is, accordingly, my opinion that such shows and exhibi-
tions are not within the purview of Chapter 83, Acts of 1937.

AUDITOR OF STATE: Industrial Board, status of such Board
in view of the repeal of Sections 50 and 51 of the Work-
men's Compensation Act of 1929.

July 12, 1941.

Hon. Richard T. James,
Auditor, State of Indiana,
Indianapolis, Indiana.

Dear Mr. James:

I have before me your letter requesting an official opinion
with respect to what now constitutes the industrial Board
provided for in Chapter 34 of the Acts of 1937, in view of the
provisions of Chapter 40 of the Acts of 1941.

Chapter 40 of the Acts of 1941 is entitled "An Act to repeal
certain laws and parts of laws concerning the administrative
affairs of the State of Indiana; and declaring an emergency." Section 1 of this Act provides:

"That there are hereby repealed each of the follow-
ing designated Acts and parts of Acts" (hereafter is
contained language describing the Acts referred to by
Chapter number, the session at which they were en-
acted, and the date of approval.)
The language having particular application to the question which you submit is designated as sub-division (k) and reads as follows:

"Secs. Fifty (50) and Fifty-one (51) of the Act (approved March 14, 1929), which is Chapter 172 of the laws of the State of Indiana passed at the 76th regular session of the General Assembly."

This Act of the 76th regular session of the General Assembly will hereafter be referred to as "The Indiana Workmen's Compensation Act of 1929" or abbreviated as "The Workmen's Compensation Act of 1929," and Sections 50 and 51 will hereafter be referred to as Sections 50 and 51 of that Act.

Chapter 34 of the Acts of 1937, referred to in your question, creates a Division of Labor to be administered by a Commissioner of Labor. It also creates (see Sec. 4) the following boards and bureaus:

(a) The industrial board;
(b) A bureau of mines and mining;
(c) A bureau of factory inspection;
(d) A bureau of boiler inspection;
(e) A bureau of women and children.

The Act itself can hardly be classified as a Workmen's Compensation Act but the Industrial Board, created by it, is given charge of the administration of the provisions of the Workmen's Compensation Act, evidently referring to the 1929 Act and such amendments as may have been made to it. (See Sec. 5 (a) of the 1937 Act). Acts of 1937, p. 218.

Section 7 of the 1937 Act provides as follows:

"All of the rights, powers and duties conferred by law on the industrial board and the department of mines and mining, when not otherwise in conflict with any of the provisions of this act, are hereby continued in full force and effect and are hereby, except as herein reserved and retained by the Industrial Board, transferred to and conferred upon the division of labor, as created by this act, and shall be held, exercised and performed by the division of labor under the provisions of this act and the several acts now in force."

Section 8 of the 1937 Act deals more in detail with the authority of the Industrial Board to do such things as are necessary to carry into effect the provisions of the Workmen's Compensation Act of Indiana, evidently referring to the Workmen's Compensation Act of 1929 and its amendments.

I think this statement will suffice to show what the question is; and first of all I desire to examine the 1937 Division of Labor Act with reference to the Workmen's Compensation Act of 1929, of which Sections 50 and 51, referred to in your letter, are a part. I do this because even a superficial examination of the two Acts would naturally give rise to the first branch of your question (that is, the number of members of the Industrial Board), at the time when the 1937 Division of Labor Act became effective. In other words, it was just as true then as now that the 1937 Division of Labor Act in creating "The Industrial Board" does not define the number of members which this Board is to have. Apparently, this question was originally resolved by construing the two Acts together according to well settled rules of construction, resulting in the very reasonable conclusion that in creating the Industrial Board in the Division of Labor Act, the number of members of such Board should be the same as in the then existing Industrial Board as created in the Workmen's Compensation Act of 1929. This result was very easily reached; in fact, it was the only result which could be reached by well settled rules of statutory construction, amounting in fact to a simple adoption of the language of the 1929 Act to supply the number of members of the Board. In other words, if the number of members of the Industrial Board is in doubt now, it seems to me that the same doubt has existed since the Division of Labor Act of 1937 became effective and yet, so far as I am advised, the question has not heretofore been raised. This, of course, is not conclusive upon the question but it does tend strongly to support (if other support were needed) the conclusion which I have already stated, and which firmly rests upon the rule requiring statutes such as these to be construed in pari materia, and which authorizes the adoption by one statute of the terms of another.

The question may arise as to whether the conclusion which I have reached as to the number of members of the Industrial Board at the present time is affected by the repeal of Sec. 50 of the Workmen's Compensation Act of 1929. However, when the terms of one statute is adopted by another and later stat-
ute the repeal of the first, including the provisions adopted by the later Act does not affect the future construction of such later Act, and so the repeal of Section 50, assuming for the purposes of the case, that Chapter 40 of the Acts of 1941 is sufficient to effect the repeal of Section 50 of the Workmen’s Compensation Act of 1929, does not operate to repeal that part of Section 4 of the Division of Labor Act of 1937 which creates the Industrial Board, having engrafted on it by construction and by adoption those provisions of Section 50 fixing the number of members of such Board.

See Lewis’ Sutherland Statutory Construction (2d Ed.) Section 405, where it is stated as follows:

“The effect” (referring to the effect of the adoption by a statute of the provisions of an earlier statute) “may be thus comprehensively stated: Where a statute is incorporated in another, the effect is the same as if the provisions of the former were re-enacted in the latter, for all the purposes of the latter statute; and the repeal of the former statute does not repeal its provisions so far as they have been incorporated in an act which is not repealed, where the adoption was for the purpose of providing for a subject matter not within the original statute.”

See also In Re Heath, Petitioner, 144 U. S., page 92, where the Court said on page 93:

“Prior acts may be incorporated in a subsequent one in terms or by relation, and when this is done, the repeal of the former leaves the latter in force, unless also repealed expressly or by necessary implication. * * *”

Upon the basis of the above rule, I do not think that the repeal of Section 50 of the Workmen’s Compensation Act of 1929 can be held to create any doubt as to the present existence of the Industrial Board as created by the Division of Labor Act of 1937; nor does such repeal change the number of the members of the Board or leave in doubt as to what that number is. The number undoubtedly remains unchanged and unaffected by the repeal of Section 50, supra.

You next raise the question as to the authority of the Board, created by Chapter 34 of the 1937 Acts, to employ
assistants and to make expenditures. I think the rule which has just been stated applies here except to the extent expressly provided for in the Division of Labor Act of 1937 (which is still in effect), and as later provided in Sections 1, 2 and 3 of the Budget Act of 1937. (See Chapter 184 of the Acts of 1937).

Moreover, on the subject of the fixing of salaries, if it be deemed that Sections 1, 2 and 3 of Chapter 184 of the Acts of 1937 be repealed by Chapter 106 of the Acts of 1941, there is in that Act authority for fixing the salaries of the officers of this Board and its employees. See Acts of 1941, page 270, where it is provided that:

"The salaries of all appointive state officers and employees, except those now being paid as fixed by statute, shall be fixed by the appointing power or if otherwise provided by law then in the manner provided subject to the approval of said committee consisting of the governor and the Budget Committee." (Our italics.)

In conclusion, in my opinion, the Industrial Board, created by Chapter 34 of the Acts of 1937, as a Board of five members, continues to exist, and that the authority to employ assistants and make necessary expenditures under existing laws is ample.

EMployment Security Division: Bond of State Treasurer—whether general bond of treasurer is sufficient to cover funds in his custody belonging to the Employment Security fund.

July 14, 1941.

Honorable Wilfred Jessup, Director,
Employment Security Division,
Department of Treasury,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue interpreting the Employment Security Act, Section 13 (c), as amended by the 1941 session of the General Assembly, with special reference to the question whether or not the State