As to your third question, I see no objection to transferring any part of the fund arising from Chapter 91 of the Acts of 1907 to the General Fund, if it has been erroneously credited to the Common School Fund.

STATE HIGHWAY COMMISSION: Advertisement for bids, whether provision of appropriation act may be considered in determining whether advertisement is necessary.

July 21, 1941.

State Highway Commission of Indiana,
Mr. James D. Adams, Chairman,
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 11, 1941, wherein you call attention to Sec. 6, Ch. 231, Acts 1941 (Biennial Appropriation Act), and the definitions contained in Sec. 1 of the Act, and ask whether the provisions of this Act take precedence over any conflicting provisions contained in the previously enacted Ch. 12, Acts 1941. (Highway Act.)

You particularly refer to conflicts found between the two acts as to awarding contracts pursuant to competitive bids advertised for and received. In Sec. 11 of the Highway Act, supra, is found the following:

"It is further directed that all road, bridge, culvert and purchase contracts shall be advertised twice in all daily papers of general circulation published in the capital city of the State of Indiana and that notice of each project shall be separate in itself."

In Sec. 6 of the Biennial Appropriation Act the following is contained:

"The purchase of any of the items included under all other operating expenses, or equipment that may enter into maintenance, repairs or equipment of any institution or department of the state government covered by this appropriation act, shall be by competitive bids as far as it is practicable, and to this end it shall be the duty of the proper authorities to invite
competitive bids through sealed proposals, and the lowest and best responsible bidder shall be awarded the contract: Provided, That this requirement shall not apply to articles manufactured at the Indiana Reformatory, Indiana State Prison, Indiana State Farm and the Board of Industrial Aid for the Blind."

It is true that if the latter quoted provision takes precedence over the former, the practicability of purchasing such items as come within the definition by competitive bids would have to be determined by your Commission. Your experience of recent weeks in undertaking to advertise for every article purchased would be entitled to consideration in determining practicability.

Although Ch. 12 was filed in the office of Secretary of State on February 17, 1941, after having been duly enacted by the General Assembly, it did not become effective until May 1, 1941, pursuant to its Sec. 15 which declared an emergency for the taking effect of the Act on that date. The Biennial Appropriation Act, however, contained an emergency clause (Sec. 14) for the immediate taking effect of the Act and it was declared to be in full force and effect from and after its passage. It received the Governor's approval on March 12, 1941, and therefore was in effect prior to the effective date of the Highway Commission Act.

"The power to enact laws includes the power, subject to constitutional restrictions, to provide when in the future, and upon what conditions or event, they shall take effect. Where a particular time for the commencement of a statute is appointed, it only begins to have effect and to speak from that time, unless a different intention is manifest, and will speak and operate from the beginning of that day."

Sutherland on Stat. Construction, Sec. 107 quoted in State ex rel. v. Berghoff (1902) 158 Ind. 349, 357.

The provision of Sec. 11 of the Highway Commission, above quoted, took effect, and began to speak as of May 1, 1941, and therefore, regardless of the order of passage, it was not superseded by the provisions of an act which was in effect prior to May 1, 1941.
In my answer to your letter of April 28, 1941, I pointed out that said Sec. 11 applies to all departments of the State Highway Commission of Indiana and to all contracts enumerated in said statute made by any of such departments. This is true and is not changed by the fact that the appropriation act was subsequently passed but took effect before Ch. 12 became effective. The effect of the application of said Sec. 11 construed in connection with Sec. 6 of Ch. 231 upon such departments and contracts of the State Highway Commission of Indiana was not inquired about in your letter of April 28th, nor was any consideration of that subject given in my reply dated May 2, 1941.

Your letter, however, leads to an examination of the question as to whether the provisions of Sec. 11 of the Highway Commission Act should be construed in connection with the above-quoted language contained in Sec. 6 of the Appropriation Act, giving effect to each in making expenditures of funds appropriated for the use of your Commission, or whether Sec. 11, by reason of (a) its being a specific, as distinguished from a general, law, and (b) its subsequent effectiveness, should solely control the making of such expenditures. It may be noted at the outset that it is only where such irreconcilable conflict exists that both cannot stand, that one act must give way to another enacted at the same session concerning the same matter. If possible, they will be harmonized.

Ross, Trustee v. Chambers (1938), 214 Ind. 223, 226.

Regardless of the fact that the Highway Commission Act takes effect at a later date, certain provisions of the Appropriation Act must unquestionably be given effect. They deal with the total amount which may be expended, the amounts appropriated to the Commission for specific purposes, as miscellaneous services, maintaining highways and detours, construction and improvement of highways, administration and supervision and the sources of the funds appropriated. Likewise the provisions of Sec. 3 of Ch. 231, as to paying salaries monthly upon affidavit, the limitations and method of paying traveling expenses, and furnishing information and reports are applicable to your Commission.

It is a general rule of construction that in ascertaining legislative intent where there are two statutes enacted at the
same session of the General Assembly and dealing with the same thing, they are to be construed in pari materia unless a clear intention is apparent that one should amend or repeal the other.

"Statutes which relate to the same thing, or to the same subject, person or object are in pari materia and it is presumed that such acts are imbued with the same spirit and actuated by the same policy, 36 Cyc. 1151, and they should be construed together as if parts of the same act, 36 Cyc. 1157, to determine their effect. State v. Rockley (1829), 2 Blackf. (Ind.), 249; State v. Gerhardt (1896), 145 Ind. 439, 44 N. E. 469, 33 L. R. A. 318; 25 R. C. L. 1060. This rule applies with peculiar force to statutes passed at the same session of the legislature-statutes contemporaneous or nearly contemporaneous. Bishop v. Boyle (1857), 9 Ind. 169, 68 Am. Dec. 615, and note; Swinney v. Ft. Wayne, etc., R. Co. (1877), 59 Ind. 205; State, ex rel. v. Flynn (1903), 161 Ind. 554, 582, 69 N. E. 159; City of New Albany v. Lemon (1925), 198 Ind. 127, 149 N. E. 350; 25 R. C. L. 1062; 36 Cyc. 1151."

State ex rel. v. Grange (1929), 200 Ind. 506, 509, 510.

If, to construe Sec. 6 of Ch. 231, as applicable to Highway Commission expenditures would render any part of Sec. 11, Ch. 12, meaningless, such a construction would be clearly erroneous for the reason that no part of a statute should be considered of no effect.

"It is a well established rule in the construction of statutes, that the court will not presume that the legislature intended any part of a statute to be without meaning; but it is also a rule equally well settled, that every part of the statute must be viewed in connection with the whole, so as to make all its parts harmonize, if practicable, and give a sensible and intelligent effect to each."

Sutherland on Stat. Const. Sec. 325; Lime City, etc., Ass’n v. Black (1894), 136 Ind. 544, 553;

State ex rel. v. Berghoff (1902), 158 Ind. 349, 355.
However, the only effect of construing the language of Sec. 6, Ch. 231, as applicable to the requirement of Sec. 11, Ch. 12, is to authorize your Commission to dispense with the necessity of advertising those particular contracts which should not be advertised because not practicable to buy upon competitive bids. In my earlier letter wherein Sec. 11 of Ch. 12 was under consideration, it was pointed out that the notices referred to in the section were required to be given at least ten days prior to the time for receiving the proposals. The apparent purpose of such notices and advertising is to secure the best possible proposals among the competitive bids received. This purpose would not be served by advertising where competitive bids are not to be received because not practicable.

No part of Sec. 11, supra, is rendered meaningless, nor is any conflict found between it and Sec. 6, Ch. 231, in construing Sec. 11 as not altering or amending the language of Sec. 6 to the effect that if not practicable certain limited items may be purchased without competitive bids and the advertising of contracts for such items would not be required.

On the other hand, such a construction of Sec. 11, Ch. 12, gives full effect to the rules requiring statutes enacted by the same legislature dealing with the same matter to be construed together so as to constitute one harmonious body of legislation unless a contrary intent is inescapable.

"It would be the better policy that courts should recognize and give vitality to general acts, rather than to those of restricted usefulness, when that can be done without violence to the well recognized rules of statutory construction."

Ross, Trustee v. Chambers (1938), 214 Ind. 223, 228.

Under the construction thus adopted, the test of practicability could only be applied to the purchase of items defined under Sec. 1 as "all other operating expenses," and "equipment" that may enter into maintenance, repairs or equipment of your department. The General Assembly has not authorized you to fix a definite and arbitrary purchase price to constitute the sole test of practicability, but has undoubtedly required that other factors be taken into consideration. These would include such matters as whether the need would be ordinarily foreseeable so as to permit advertising and competitive bid-
ding, the extent of the emergency, and the relative consequences of making the purchase after notice and bids, rather than at once.

You should view these and other considerations which you find bear upon the question of practicability in the light of a legislative policy implied by both Ch. 12 and Ch. 231 of securing competitive bids, pursuant to legal notice, for as many authorized expenditures as are possible and practicable.

INDIANA STATE POLICE: Whether sale of articles on the right-of-way of a public highway may be prosecuted under the Public Nuisance Statute.

July 22, 1941.

Mr. Don F. Stiver, Supt.,
Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue concerning the rights and duties of the State Police to arrest itinerant peddlers who use the State Highway right-of-way as their place of business, and who maintain on such right-of-way display racks, shelves, or structures, as well as displays of merchandise and stores of articles offered for sale.

In Section 535 of Chapter 169 of the Acts of the General Assembly of the State of Indiana of 1905 (p. 584 at p. 709), the following language is used in definition of what constitutes a public nuisance:

"* * * Whoever obstructs or encumbers by fences, buildings, structures, or otherwise, any public grounds, or erects, continues or maintains any obstruction to the full use of property so as to injure the property of another, or essentially to interfere with the comfortable enjoyment of life, shall, on conviction, be fined not less than ten dollars nor more than five hundred dollars * * *"

4 Burns' Indiana Statutes (1933 Ed.) 10-2502.