agency, and that when such assignment is made such agency becomes, for the purposes of the Indiana Gross Income Tax Act, the "department of treasury"; further, that in making such assignment of the administration and enforcement of the Indiana Gross Income Tax Act the Governor does not act under any power conferred by Chapter 4 of the Indiana Acts of 1933, but contrariwise, under the power conferred by Chapter 50 of the Indiana Acts of 1933, and under Chapter 117 of the Indiana Acts of 1937—it being understood that any action taken during the present calendar year would be under and pursuant to the express provisions of Chapter 117 of the Indiana Acts of 1937.

DEPARTMENT OF PUBLIC WELFARE: Merit System. Authority of State Personnel Board.

August 7, 1941.

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

Dear Mr. Gottschalk:

I have your favor of recent date in which you ask for an official opinion regarding conflicting provisions of Chapter 139 and Chapter 179 of the Acts of 1941, and you ask the following questions, to-wit:

"1. Do the provisions of Section 9 of Chapter 179 control any conflicting provisions in Chapter 139 or does Section 48 of Chapter 139 prevail when both Acts are in force? These are the two sections which have the prevailing or overriding clauses as to other Acts.

"2. If Section 9 of said Chapter 179 controls, can the State Board of Public Welfare operate its own merit system for the state and county departments of public welfare?

"3. If the answer to the second question is in the affirmative can the State Board of Public Welfare request the Personnel Board, established in said Chapter 39, to operate the merit system for a state department
of welfare so there would not be two organizations operating a merit system for various state governmental agencies?

"4. May the merit system now in force in the State Department of Public Welfare be operated under the provisions of said Chapter 139 without some affirmative action by the State Board of Public Welfare transferring its operation to the State Personnel Board after said Chapter 179 is in force?

"5. If the merit system in force in the State Department of Public Welfare is taken over by the State Personnel Board, is it taken over in all respects? What about pending examinations, eligible lists, appointments less than permanent, etc.?”

 Chapters 139 and 179 of the Acts of 1941 are now in force. When it can be done, two acts passed at the same session of the legislature upon the same subject or relating thereto, should be construed together in pari materia as if parts of the same act.

Starr v. City of Gary, 206 Ind. 196, 200;  

Chapter 179 is an amendment to the Welfare Act of 1936 and it is a general rule that "where a later statute merely re-enacts the provisions of an earlier one, it does not repeal an intermediate act which has qualified or limited the earlier one, but such intermediate act will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first. 1 Sutherland Statutory Construction (2nd ed.) 273; Endlich Interpretation Statutes, Sec. 194.”

Public Service Commission v. City of Indianapolis, 193 Ind. 37, 49;  
Gaughan v. State, 187 Ind. 334, 337;  
Collins Coal Co. v. Hadley, 38 Ind. App. 637, 648;  
City of New Albany v. Lemon, 198 Ind. 127, 133, 134.

Said Chapter 139 being an intermediate act should be construed with the Welfare Act as amended if it can be done. If the two acts passed at the same session cannot be reconciled as
one piece of legislation, then the latter act in point of time will be controlling and as Chapter 179 was passed after Chapter 139 was in force, the latter will control if the two are irreconcilable in whole or in part.

In the two acts in question there is a similar provision in each one apparently intended that each act shall be considered to be separate and apart from the other. Section 48 of Chapter 139 provides that it shall supersede all conflicting provisions in any other acts and in such case the provisions of that act shall govern and Section 9 of Chapter 179 contains the same provision, using the identical words. These provisions in the two acts are irreconcilable, and if the other provisions in the two acts are inharmonious and not susceptible of a joint construction the act last passed and in effect will control. Specific provisions having reference to a limited part of a general act and inconsistent therewith will control.

City of New Albany v. Lemon, 198 Ind. 127, 134.

However, there is a section in Chapter 139 which is intended to give the State Personnel Board created by that chapter, power to take over the system in use in the Welfare Departments and this section is as follows:

"Sec. 45. Notwithstanding any provision of this act, there is hereby adopted such federal or state merit system, or systems, as the federal government may have established or approved or may establish, as a condition to federal aid for any purpose to which any part of the state service as herein defined pertains; and it is hereby further provided that this act shall be administered in harmony with such federally established or approved merit system, or systems, and that in all cases where any provision of such federally established or approved merit system, or systems, hereby adopted, is in conflict with any provision of this act, then such provision of such federally established or approved merit system, or systems, so adopted shall prevail and this act shall in such case be administered as though such conflicting provision of such federally established or approved merit system or systems herein adopted were written out at length as a part of this act, that nothing in this act shall be construed as operating in such way as to result in delay or stoppage of grants-in-aid to the State of Indiana by agencies of the federal government."
If this was purely a state matter, this section would be ample justification for taking the present merit system now in force in the Welfare Department under the administration of the State Personnel Board to be operated and enforced by that board, but the merit system now in force in the Welfare Department was approved by the Social Security Board and its continued operation must meet the approval of that board.

The Social Security Act provides that the State agency administering the "assistance" provisions of the act "must provide such methods of administration * * * relating to the establishment and maintenance of personnel standards on a merit basis * * * as are found by the Board to be necessary for the proper and efficient operation of the plan."

Sections 2(a)(5); 402(a)(5); 1002(a)(5), Social Security Act as amended.

These provisions of the Social Security Act makes it obligatory that the personnel standards now in force in the Welfare Department be continued and that any changes therein would have to be approved by the Social Security Board. In addition Sec. 45 adopts such system and provides the new merit system shall be administered in harmony with the federal aid merit system and "the provisions of the federal aid approved personnel system shall control in that part of the state service to which it pertains, in case of conflict as though such conflicting provisions were written out at length as a part of said act."

This section evidences an intention by the Legislature to transfer the merit system in force in the Departments of Welfare to the new State Personnel Board.

This intention may be carried out (a) by some affirmative action by the State Board of Public Welfare, and (b) with the approval of the Social Security Board. The Indiana Legislature cannot control the Federal Government. It may fail to act, but it may not act directly contrary to an act of Congress. The Social Security Act provides that the state plan for administering assistance of the different categories provided by the act shall "either provide for the establishment or designation of a single state agency to administer the plan or provide for a single state agency to supervise the administration of the plan," and follows this provision with the quotation set out above with reference to the "maintenance of personnel standards on a merit basis." This is in turn followed by the provision that the state agency will make reports in such form and contain
such information as the Board (Social Security) may require.

The methods of administration of a merit system required by the Social Security Board have been formulated under the Welfare Act and approved by the federal authority. The State Department of Public Welfare was the State agency fixed by law to supervise the prior administration of the plan, and this administrative agency was the only body so authorized. The Social Security Board could not be required to approve a new merit system operated by a different agency over which it has no control, but if the merit system operated by the new agency absorbs the present merit system in operation in the Welfare Department and such absorption is with the consent of the State Welfare Board and Social Security Board, there would be no objection to such procedure so long as it is administered to the approval of such boards.

There are some conflicting provisions in the two merit systems, and if the merit system as operated in the Welfare Department is completely taken over by the State Personnel Board under the provisions of Section 45 of said Chapter 139, it will still have to be administered in accordance with the obligatory requirements of the Welfare Act as amended by said Chapter 179 and with the approval of the Social Security Board.

It appears that in the states where there is an established civil service commission covering other employees besides the employees in the state agency administering a provision of the Social Security or federal relief statutes, the Social Security Board has permitted that commission or similar body to supervise the merit personnel systems as applicable to all the employees in such state agency, and has taken the general position that the operation of one merit program may be better managed and financed than the operation of several merit programs in a single state, and that in the interest of economy and good administration the plan of the single merit agency for the various programs is desirable.

Inquiry has developed that the Social Security Board is familiar with the new provisions for a general merit system in this state and would have no objection to the employees of the State Department of Public Welfare coming under such system so long as the system applicable to the employees of such State Department is along the lines approved by the Social Security Board as being within the requirements of such board. The Social Security Board recognizes that the plan adopted by the Indiana Personnel Board must be according to rules and regu-
lations of the State Board of Public Welfare, and within the standards set by the Social Security Board, and whatever rules and regulations that are hereafter adopted by the State Personnel Board so far as the same affect welfare department employees must be with the approval of the State Board of Public Welfare and must meet the standards of the Social Security Board and that the rules and regulations so agreed upon must be approved by the Social Security Board. Under this permissive ruling by the Social Security Board there would be this new state agency—the State Personnel Board in administrative control of the merit system now operated by the State Department of Public Welfare as provided in Section 45 of said Chapter 139, but if the State Personnel Board sought to change the rules and regulations now in force, governing welfare department employees, such rules and regulations would have to be approved by the State Board of Public Welfare and in turn approved by the Social Security Board, so while the State Personnel Board operating under the provisions of Chapter 139 was administering the merit system as now operated by the State Department of Public Welfare, the State Personnel Board would proceed in accordance with such personnel system now in effect, and the rules and regulations governing the same. If in the future the State Personnel Board wished to modify or change such rules and regulations, the matter should be taken up with the State Board of Public Welfare and the new rules and regulations would have to be worked out by said state board and submitted to the Social Security Board for its approval. In such case, while the rules and regulations could not be adopted by the State Personnel Board alone so far as the State Department of Public Welfare was affected, yet the actual administration of the system under such rules and regulations so adopted would be in the State Personnel Board and it would have the sole control over said administration.

1. Answering your questions specifically, I am of the opinion that as of the effective date of the promulgation of the Acts of 1941, Chapter 179 thereof will override and supersede Chapter 139 so far as the component parts of said Act are in conflict.

2. Your second question is answered in the affirmative, that is, the State Board of Public Welfare can operate its own merit system for the State and County Welfare Departments.
3. The third question is also answered in the affirmative, that is, the State Board of Public Welfare could permit the State Personnel Board to operate the federal aid approved merit system, that is, the actual administrative procedure thereof, if such procedure was in conformity with the requirements of the Social Security Board.

4. Your fourth question could be answered in the affirmative with a qualification, that is, the State Department of Public Welfare could permit the State Personnel Board to take over the actual administration of the merit system now in force in the State Department of Public Welfare and permit the State Personnel Board to have full control of said administration so long as the same was within the rules and regulations adopted by the State Board of Public Welfare and approved by the Social Security Board. If the regulations were to be changed, such change could not be done by the State Personnel Board alone, so far as the State Department of Public Welfare is concerned, but the regulations would have to be adopted by the State Board of Public Welfare and submitted to the Social Security Board for its approval. In other words, the full administration of the system is by the new State Personnel Board, but the methods thereof, as determined by the regulations, would be under the regulations approved by the Social Security Board and adopted by the State Board of Public Welfare.

5. Your fifth question is answered in the affirmative. If the system now in force in the Departments of Welfare is taken over by the State Personnel Board, it is taken over "as is," that is, in all respects, and will include pending examinations, eligible lists, appointments permanent and less than permanent, etc., for Section 45 of Chapter 139 says that the federally approved merit system is adopted as a part of said Act, and that where any provision of said federally approved merit system is in conflict with any provision of this act, then such provision of such federally approved system shall prevail as if the same were written out at length in said chapter. If the procedure is not in con-
flict, there will be no question raised, and if at all in conflict, the present system in force in the Welfare Departments will control.

These answers only apply to employees in the Welfare Departments and do not apply to any other state employees in a merit system established under the provisions of said Chapter 139.

DEPARTMENT OF EDUCATION: Authority of Auditor to draw warrants for payment of claims under Chapter 93 of Acts of 1941. Sufficiency of appropriation.

August 8, 1941.

Department of Education,
Administration Division,
Clement T. Malan,
State Superintendent of Public Instruction,
Raymond Gladden,
Statistical Officer,
Indianapolis, Indiana.

Gentlemen:

I have before me your letter of the 16th inst., in which you request my opinion as to the ability of the Auditor of State to draw warrants for the payment of claims incurred under Chapter 93, p. 233, of the Acts of 1941, together with two other questions in your said letter submitted.

Chapter 93, Acts 1941, is "An Act concerning transfer tuition for public school children in hospitals for tuberculosis treatment, setting forth the amount of transfer tuition to be paid, providing for its payment, assigning powers and duties to school authorities, repealing all laws in conflict herewith and declaring an emergency."

QUESTION 1.

"May the Auditor of the State pay claims against the State of Indiana which have been made legal through the enactment of Chapter 93 of the 1941 Acts?"

This question involves:

(a) Art. 10, Sec. 3, of the State Constitution providing:
"No money shall be drawn from the Treasury, but in pursuance of appropriations made by law," and,