No. 139 would be invalid for the reason that the Act of 1933, which repealed Section 7 of Chapter 24 of the Acts of 1913, was still in existence at the time Senate Bill No. 139 was supposed to have become a law.

Since Senate Bill No. 139 is void because it attempts to amend an Act already repealed, it follows that the attempted abolition of the present State Board of Education by that Act is a nullity and that the State Board of Education appointed by you in the month of January, 1941, under the authority of Chapter 4 of the Acts of 1933, is still in existence.

Authority of a circuit court judge to increase the salary of a court reporter, as an emergency, in December, after having been formerly fixed, upon court order, at the preceding annual meeting of the county council.

March 21, 1941.

Mr. Henry S. Murray, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

You request an official opinion in your letter of March 13th which reads as follows:

"Does a Circuit Court Judge have authority to increase court reporter's salary on December 31st after a fixed salary amount was requested in August by the Judge, submitted to and appropriated by the Council in the exact amount as requested by the Judge, approved by the County Tax Adjustment Board and the State Board of Tax Commissioners without change, and a tax rate fixed to raise the amount of salary appropriated by County Council?"

"This question now comes to this Board in the form of an additional appropriation. Budget form No. 30 filed by Starke County for 1941 shows $1,800 requested for court reporter's salary, $1,800 appropriated by the County Council, a tax rate fixed to raise only $1,800 for court reporter's salary, and then on Dec. 31st, the
Judge fixed the salary at $2,400. Our Board is now asked to approve an additional appropriation of $600 to increase the court reporter's salary."

Certain correspondence is enclosed with your letters supplying further details as to the facts and points involved in your inquiry.

The problem which you present is answered in large measure by a carefully prepared opinion furnished your Board by my predecessor, dated November 7, 1939, which dealt with the subject of the inherent powers of courts as applied to an inquiry much the same as presented at this time.

I agree with the conclusions stated in that opinion but you raise additional questions, partly in the correspondence accompanying your letter, which were not discussed in that opinion and which should have consideration.

By statute, every judge of a circuit court in the State is required to appoint an official reporter, Section 4-3501, Burns 1933; and his salary shall be fixed by the judge, payable monthly out of the county treasury, Section 4-3507, Burns 1933, Pocket Supplement.

The point is made that since the reporter’s salary was fixed by request of the Judge of the Starke Circuit Court in August, 1940, and the amount requested subsequently appropriated by the County Council at its regular annual meeting, the Judge could not thereafter, in December, increase such salary, nor could the County Council act upon such request, until the time of the next annual meeting of the Council in 1941.

In support of this view, an Attorney General’s opinion of July 2, 1937, is cited. This opinion holds as contended, but it also definitely states that additional appropriations are authorized in the event of emergencies. A quotation from Section 1, Chapter 212, Acts 1937, is set out in the opinion bearing upon emergency appropriations, and the observation is made that mere legislative enactment increasing certain salaries, would not in itself be deemed to create an emergency such as contemplated in the statute, and such as would warrant an emergency appropriation before the next regular meeting of the Council; but that possible conditions might exist warranting such emergency action, and that any such emergency would become a question of fact, to be determined, upon the circumstances involved, by the local authorities. This opinion
appears clear in its presentation of the question, and I think correctly states the law.

As the facts are furnished me in the present case, Judge Pentecost of the Starke Circuit Court sought an increase of the reporter's salary in question upon the basis of an emergency. He states his reasons for the emergency. This County Council granted the increase on that basis. Whether an emergency actually existed was a question of fact for the County Council to decide. This question, together with the reasonableness of the request, having been decided by the County Council I do not believe the State Tax Board has any jurisdiction to review the matter. As part authority for this position I call attention to the last paragraph of the opinion of July 2, 1937.

With reference to the citation of Section 9, Chapter 119, Acts 1937, and the case of Finerty, Auditor v. State ex rel. Greenwald 215 Indiana 346, it may be said that Section 1, Chapter 212, Acts 1937, referred to above, provides for emergency appropriations and the County Council in acting upon any such appropriation passes upon the question of the existence of an unappropriated balance against which a warrant may legally be drawn, and any such question is therefore not in dispute.

The case of Hull v. Board of Commissioners, LaPorte County 195 Indiana 150 is cited as an authority to the effect that a Board has no equity powers and cannot therefore reverse a former decision. No such question arises in this case if an emergency actually arose calling for new and independent action by the County Council.

A final question is the suggestion that the reporter's salary could not be increased in view of Section 2, Article 15, of the Indiana constitution, as amended, 1926, which provides in part that the salary of any officer shall not "be increased during the term for which such officer was elected or appointed." A court reporter, insofar as the application of this provision of the constitution is concerned, is an employee and not an officer. This has been decided, although upon a somewhat different set of facts, in Freyermuth v. State ex rel. Burns, 210 Indiana 235, but the principle is the same and would govern here.

From the foregoing, it is apparent that my opinion is that the court's order pertaining to the increase of salary in question, as approved by the County Council, cannot be denied or modified by your Board.