been given as to claims for money demands arising at law or in equity out of contract express or implied but no such permission is granted under existing law with respect to claimed liabilities against the State on account of tortious acts.

Burns' Indiana Statutes Annotated, 1933, Sec. 4-1501 to Sec. 4-1507.

See also on this subject the case of Busby v. Indiana Board of Agriculture, 85 Ind. App. 572, wherein the Court expressly held that the State Board of Agriculture was not liable in tort on the theory that it was an agency of the State.

PUBLIC INSTRUCTION, STATE SUPT.: Acts of 1939, p. 701, unconstitutional.

Amendatory Laws: Must contain reference to amendatory nature in body of act.

Transfer Costs, School Children: Act requiring Dept. of Education to prepare report forms for computing transfer costs is unconstitutional.

June 17, 1940.

Hon. Floyd I. McMurray,
State Supt. Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you request an official opinion as to the constitutionality of Chapter 146 of the Acts of 1939. Acts of 1939, p. 701. This request grows out of the fact that if the above Act is valid, the duty devolves upon the State Department of Education in connection with the State Board of Accounts to prepare the necessary report forms for computing the per capita transfer costs for the several school corporations in the State of Indiana.

I desire to say at the outset that this question has been before the Circuit Court of Marion County, Indiana, in Cause No. 56995, entitled Center School Township of Marion County, Indiana, et al. v. The Board of School Commissioners of the City of Indianapolis, etc., in which case the Court on June 13, 1940, entered its judgment and decree that said

Chapter is unconstitutional and void. It is my understanding that no appeal will be taken from this decision. This, of course, does not necessarily mean that no other actions will be brought. However, owing to the fact that the complaint alleged that said Chapter 146 was unconstitutional notice was served upon the Attorney General pursuant to the declaratory judgment Act and a response by the Attorney General was filed with the Court. In that response I set out at some length the construction which, I thought, should be given to the Act in the event the Court thought it was constitutional, pointing out, however, that, in my opinion, the Act violated Section 19 of Article IV of the Indiana Constitution if considered as original legislation and Section 21 of Article IV if considered as amendatory legislation. The Court in its decision apparently followed the reasoning of this response and, as already stated, declared the law to be unconstitutional.

In view of the foregoing, it is perhaps unnecessary to enter upon a lengthy discussion of your question. Briefly it should be noted that the Act is entitled: "AN ACT to amend Section 1 of an act entitled 'An act concerning the tuition of school children attending schools of public school corporations in which they are not residents and repealing all laws in conflict,' approved March 12, 1935." Acts of 1935, p. 701.

The body of the Act, however, makes no reference to its character as amendatory legislation. This, I think, clearly violated Section 21 of Article IV of the Indiana Constitution, which provides that "no act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length." The failure of this particular legislation, when tested by the provisions of Section 21 of Article IV, *supra,* is that the section amended is not set forth and published at full length. In fact, there is no reference to it as amendatory legislation at all in the body of the Act. A similar situation was presented to the Supreme Court of Indiana in the case of Wayne Township v. Brown, 205 Ind. 437, a case in which the title of the Act under consideration indicated amendatory legislation whereas the body of the Act did not so indicate. The Court, in that case, very clearly held that the Act therein involved could not be sustained as amendatory legislation but found that there were additional matters set out in the title which considered

alone, were sufficient to sustain the Act as original legislation. In sustaining that Act, therefore, the Court held that that part of the title purporting to amend existing legislation should be treated as surplusage and the Act sustained as original legislation supported by the other matter in the title.

In the case now under consideration, however, that rule could not apply because if the part of the title purporting to amend existing legislation is rejected as surplusage there is no title left at all. Therefore, upon the authority of Wayne Township v. Brown, Chapter 146, *supra,* must be held to be void as amendatory legislation because it does not comply with the provisions of Section 21 of Article IV of the Indiana Constitution; and it fails as original legislation because the subject of the Act is not sufficiently set out in the title in violation of Section 19 of Article IV of the Indiana Constitution.

In view of the decision of the Marion Circuit Court above referred to, and for the further reasons set out in this letter, I am of the opinion that Chapter 146 of the Acts of 1939 is unconstitutional.

CONSERVATION DEPARTMENT, DIRECTOR: Bids for construction must be filed with experience questionnaire.

Bids on Public Work: Must be accompanied by experience, etc., if expenditures to aggregate more than $5,000.00.

Public Work: Bids must be accompanied by experience questionnaire.

Experience Questionnaire: Must be submitted with bids if total expenditures are to exceed $5,000.

June 18, 1940.

Mr. Virgil M. Simmons,
Director, Conservation Department,
Indianapolis, Indiana.

Dear Mr. Simmons:

This will acknowledge your letter of June 14, 1940 requesting an official opinion on the following question:

> "Where the Department of Conservation advertises for bids for the construction of a public work or im-