out in the 1937 Act is, in my opinion, clearly contrary to the provision of the 1937 Act which makes it unlawful to levy such a tax without the procedure therein referred to having been observed. While implied repeals are not favored, where the inconsistency is irreconcilable as a matter of fact, the provision of the former Act must give way to the provision of the later Act for the very obvious reason that both cannot be given effect.

Stiers v. Mundy, 174 Ind. 651 at p. 656; City of Gary v. Cosgrove, 211 Ind. 294 at p. 300.

I do not think, however, that it can be said that the 1937 Act repealed the 1933 Act in its entirety. I do think the mandatory provisions of the 1933 Act, as above referred to, are repealed as to all cases where the procedure set up in the 1937 Act has not been followed; and the 1933 Act is further modified by the 1937 Act to require that the procedure set up in the 1937 Act shall be followed before any tax levy can be made to pay the principal and interest upon bond issues thereafter made. I think, too, it is apparent that the provisions of Section 9 of the 1933 Act are impliedly repealed by the 1937 Act. Your first question is answered accordingly.

As to your second question: Notwithstanding the well recognized rule that the term "town" as used in the State Constitution includes cities, I think as used in the Act of 1933, supra, it has reference to only towns in their more restricted meaning. Your second question is answered in the affirmative.

HIGHWAY COMMISSION, STATE: State Highway employees are authorized to go upon private property to remove illegal signs.

May 13, 1940.

Honorable T. A. Dicus,
Chairman, State Highway Commission, 
State House Annex, 
Indianapolis, Indiana.

Dear Mr. Dicus:
I have your request of May 3, 1940 asking for an official opinion upon certain questions. You invite my attention to
Section 1, Chapter 272, Acts of 1937 (Sec. 36-2931 Burns' Supp.) and to Section 37, Chapter 48, Acts of 1939 (Sec. 47-1908 Burns' Supp.), both of which laws are concerned with the erection of signs and markers upon highways under the jurisdiction of the State Highway Commission. I am specifically asked to answer the following questions raised by an examination of these sections:

“1. If a sign is erected on private property adjacent to highways, which is in violation of these sections, are we authorized to enter onto said private property to effect the removal of said signs?

“2. May the owners of said property have our employees arrested for trespassing on private property if they attempt to remove these signs without consent of the property owner?

“3. If we do not have authority to remove these signs from private property, what is the proper legal action to take to insure compliance with the law?”

The first statute, Section 1, Chapter 272 of the Acts of 1937, provides in general terms that it shall be unlawful to erect or maintain any sign or device within two hundred feet of the right-of-way of any highway in the state highway system. The same section makes such an act a misdemeanor providing for a fine, and authorizes the State Highway Commission to remove any such signs or devices maintained in violation of the provisions of the Act.

In 1939 the General Assembly passed a long Act (Chapter 48, Acts of 1939) which was, in reality, a codification of all the laws affecting traffic on highways in this state. The specific section to which you refer in your letter (Section 37, Chapter 48, Acts of 1939), has to do with the display of unauthorized signs, signals or markings. This section covers in general the same subject matter as Section 1, Chapter 272, Acts of 1937 but it is in many ways incompatible with the former law and is, in effect, a re-enactment of the same subject matter expressed in the former law with many changes and additions. In view of Section 171, Chapter 48, Acts of 1939, which provides as follows: "All laws and parts of laws in conflict with any of the provisions of this act are hereby
repealed”, I am of the opinion that the 1937 Act, specifically Section 1, Chapter 272, Acts of 1937, is impliedly repealed, consequently, the answers to your three questions must be governed by the provisions of Section 37, Chapter 48, Acts of 1939, which is here set out:

“(a) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal, and no person shall place or maintain, nor shall any public authority permit, upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

“(b) No person shall place, maintain or display any advertising sign, signal or device on or over the roadway of any highway.

“(c) No person shall place, maintain or display any advertising sign, signal or device on any highway in cities between the curb and sidewalk and, in case curb and sidewalk join, no person shall place, maintain or display on the sidewalk any advertising sign, signal or device closer than ten feet from the curb line, and overhanging signs shall not overhang the curb.

“(d) No person shall place, maintain or display any advertising sign or device of any character within one hundred feet of any highway outside the corporate limits of any incorporated city or town, which obstructs the view of such highway, or of any intersecting highway, street, alley or private driveway, of a person traveling such highway for a distance of five hundred feet or less from such sign or device as he approaches the same.
“(e) No person shall place, maintain or display any advertising sign or device of any permanent or semipermanent character on any highway, right-of-way, outside or inside the corporate limits of any incorporated city or town.

“(f) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.”

The above quoted section prohibits the maintenance by any one of signs, signals, markings or any devices which purport to be imitations of official traffic control signals or which purport to direct the movement of traffic or which hide from view official traffic signs, or which bear any kind of commercial advertising. Subsection (d) of the Act provides that no advertising sign or device of any character may be displayed within one hundred feet of any highway outside the corporate limits of any incorporated city or town if such sign would obstruct the view of the highway or of any intersecting highway with regard to a person traveling on such highway and approaching at a distance of five hundred feet or less from such sign.

With regard to your first question, it is my opinion that if a sign is erected on private property adjacent to highways, the erection of such a sign is a violation of this Act unless the sign is restricted to the giving of “useful directional information” and does not in any way carry any commercial advertising, is not an imitation of an official highway sign, or obstruct from the view of the driving public any official sign. It is also my opinion that the State Highway Commission, through any of its employees, is authorized to enter onto said private property and remove such signs unless the sign falls into the one exception stated above.

Since in subsection (f) of the Act the State Highway Commission, which has jurisdiction over the highway, is expressly empowered to remove prohibited signs, it follows that employees of the Commission cannot be arrested for trespassing on private property in the attempt to remove such prohibited signs with or without consent of the property owner.
In the light of my answers to your first two questions, it is unnecessary to answer your third except to point out that although Section 37, Chapter 48, Acts of 1939 does not in terms provide a penalty for the erecting and maintenance of prohibited signs, Section 160 of the same Act provides that "it is a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other law of this state, declared to be a felony." The above section further provides in subsection (b) thereof for certain fines and penalties for misdemeanors under the Act. You can find the complete text of the section in Section 160, Chapter 48, Acts of 1939 and in Sec. 47-2304 Burns' Supplement. You will readily see that this penalty section gives the Commission power to institute criminal action against persons who erect prohibited signs, as well as the expressed power and authorization to go upon private property and remove the same.

TAX COMMISSIONERS, STATE BOARD OF: Mechanics liens not taxable as intangibles.

May 14, 1940.

Mr. Philip Zoercher,
Chairman, State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Mr. Zoercher:

I have your letter of May 11, 1940, in which you present the following question:

"Is a Mechanics Lien for material taxable as an intangible?"

If it is taxable, the authority therefor must be found under Section 1 of the Intangibles Act, subdivision (a), which is as follows:

"(a) The term 'intangible' and/or 'intangibles' shall apply to, mean, and include promissory notes, stocks in foreign corporations, bonds, debentures, final judgments from their date of finality, postal savings certificates, excepting postal savings bonds, certificates