GOVERNOR'S OFFICE: Joint resolution creating committee to investigate highway claim, whether any state officer or department is authorized to issue warrant if sums are found due.

January 18, 1940.

Hon. M. Clifford Townsend,
Governor of the State of Indiana,
State House,
Indianapolis, Indiana.

My Dear Governor:

I have before me your letter of January 17th reading in part as follows:

"My attention has been called to recommendations of the Sch lensker Investigating Committee which were adopted by the 1939 General Assembly, as follows:

"'We therefore recommend:

"1st. That your committee and the state highway commission select a Certified Public Accounting firm of national reputation to go into all the records concerning said transaction whereby they may determine all the facts and when said accounting is completed they shall report same forthwith to the Governor, as to any sum or sums of money they may find now due said state from the said Otto F. Sch lensker. We recommend that said attorney general shall at once institute proceedings to recover any sum due the state. The expense of such audit shall be borne by the state highway commission.

"2nd. If said audit shall show that any sum is owing to said Otto F. Sch lensker by the said state highway commission, the said commission shall promptly cause to be issued to the said Sch lensker a warrant for the amount so found to be due him.'"

You submit the following question:

"On the basis of this action, is the Governor, the State Highway Commission, or any other administrative agent of state government authorized to issue a
warrant to said O. F. Schlensker, if any sums are due him according to the audit and investigation?"

The action referred to is the result of the resolution of the General Assembly embodied in Chapter 167 of the Acts of 1939. Acts of 1939, p. 782. This resolution recommended and prayed that:

"a nonpartisan committee consisting of two (2) members be named by the speaker of the House, and two (2) by the president of the Senate for the purpose of ascertaining through their deliberations and investigations the merits of the controversy",

the controversy being stated in the preamble as follows:

"Whereas, Through a misunderstanding and lack of complete information, a mistake may have been made in a settlement of a charge contained in a report of an examination made by the State Board of Accounts and possible harm may have been done one Otto F. Schlensker, a citizen of the state; therefore," etc.

The law is quite clear that this resolution does not have the dignity or force of law. The Constitution is specific upon this subject providing, as it does in Section 1 of Article 4, among other things, that: "The style of every law shall be: 'Be it enacted by the General Assembly of the State of Indiana'; and no law shall be enacted, except by bill".

Other sections of the Constitution make it very clear that the Constitution makers distinguished between bills and joint resolutions. Moreover, if there were any room for doubt upon the question, our Supreme Court has definitely settled the matter in the decision of the case of May v. Rice, 91 Ind. 546, where, among other things, that identical question was before the court. After discussing the question quite elaborately on pages 548, 549 and 550, the court concludes, quoting from pages 550 and 551, as follows:

"By such resolution, the two houses may adjourn for more than three days. Article 4, section 10. Certain officers may be removed by such resolution. Article 6, section 7. Possibly, under section 17, of Article 5, the powers granted to grant pardons, etc., may be exercised by such resolution. Besides the authority thus
expressly granted, a joint resolution doubtless may be the means of expressing the legislative will in reference to the discharge of an administrative duty if such expression falls short of the enactment of a law. The general and most common use of resolutions is in the adoption of rules and orders relative to the proceedings of the legislative body. Cushing, supra, section 779; May’s Par. Prac., pp. 440, 447, 450. Our conclusion upon this branch of the case is, that a joint resolution under our Constitution is not a bill, and that laws for the appropriation of money for public purposes, or the payment of private claims, such as Mrs. May’s, cannot be enacted by joint resolution”.

This last statement “that laws for the appropriation of money for public purposes, or the payment of private claims * * * cannot be enacted by joint resolution” arose out of another express provision of the Constitution which provides that “no money shall be drawn from the Treasury but in pursuance of appropriations made by law”. Constitution of Indiana, Article 10, Section 3.

If Chapter 167, supra, does not have either the dignity or force of a law, and this is quite clear, much less will the action referred to in your letter be so considered.

In addition to what has already been said it must be clear that no one treated this resolution as an Act because it was treated to be in effect from the time it was passed, although no emergency was stated either “in the preamble, or in the body, of the law”. The action referred to in your letter was taken pursuant to its provisions without a prior publication, as is required by the Constitution to put an Act into effect except in case of emergency declared in the preamble, or in the body of the law. Moreover, the particular action referred to in your letter never has had any publication or circulation as required by the Constitution to put an Act into effect.

On the basis of what has been said, I think it is very clear that neither the original resolution nor the action by the legislature upon the recommendations of the committee can be treated as an appropriation for the purpose of authorizing the issuance of a warrant by anyone, and it is my understanding that no one is claiming that there is any appropriation for this particular purpose other than what might be considered
as contained in the resolution and in this action adopting the recommendations of the committee. It is, therefore, clear, in my opinion, that your question must be answered in the negative.

Further, supporting this conclusion, you are referred to Burns' Indiana Statutes Annotated 1933, Section 49-1809, which provides among other things that: "The Treasurer of State is expressly prohibited from paying any money out of, or transferring any money, from the treasury of state, except upon the warrant of the Auditor of State"; and Section 49-1810, which provides in part that: "The auditor of state shall, at no time, draw a warrant upon the treasurer of state unless there be money in the treasury belonging to the fund upon which the same is drawn to pay the same, and in conformity to appropriations made by law" * * * (our italics); also Section 10-3715 providing a penalty for the issuance by the auditor of an illegal warrant. While, of course, these sections to which I have referred, are laws only, as distinguished from constitutional provisions, and subject to legislative repeal either expressly or by implication, it certainly cannot be considered that they may be repealed by resolution.

Your question is answered in the negative.

POLICE, INDIANA STATE: Right of justice of the peace to charge prosecutor's fee if prosecutor is present at hearing.

January 24, 1940.

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

Dear Sir:

This will acknowledge receipt of your letter of January 22nd requesting an official opinion relative to the legal right of a justice of the peace to charge a prosecutor's fee in the absence of the prosecutor.