time he made application for a renewal certificate being less than five years, he was entitled to have a certificate of registration renewed upon payment of all lapsed annual renewal fees. As he made no tender of said fees, he could now only be issued a certificate upon taking the examination as provided for in section 9 of the Act.

PUBLIC INSTRUCTION, DEPARTMENT OF: Validity of amendatory act which omits amendatory clause from body of act although expressed in title.

March 31, 1939.

Mr. Floyd McMurray,
Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an official opinion, which letter reads as follows:

"Is House Bill No. 71 made invalid because of the omission of the following clause immediately succeeding the enacting clause in sections 1 and 2, the omission being as follows:

"That section 1 (2) of the following entitled Act be amended to read as follows":

In order to construe this Act fairly, I quote from the title and the act.

"A bill for an Act to amend sections 1 and 2 of an Act entitled 'An Act concerning the awarding of contracts to bus drivers by the several school townships of the state,' approved March 5, 1931, and declaring an emergency.

"Section 1. Be it enacted by the General Assembly of the State of Indiana. On either the first Tuesday in May or the first Tuesday in June of the year 1939 * * *"

Section 2 similarly leaves out any reference to an amendment of any former act.
Section 19, article 4, of the Constitution of Indiana reads as follows:

"Every Act shall embrace but one subject and the matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, the Act shall be void only as to so much thereof as shall not be expressed in the title."

Section 21, article 4, of the Constitution of Indiana reads as follows:

"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 question which then confronts us is whether or not this Act, together with its title, has met the requirements of the Constitution.

I call your attention to the case of Wayne Township v. Brown, 205 Ind. 437, in which an Act similar to the one in question was construed by our Supreme Court. In that case the title to the Act read as follows:

"An Act to amend section 1 and the title of an Act entitled 'An Act to amend sections 1 and 2 of an Act entitled 'An Act authorizing the borrowing of money by boards of commissioners of counties in Indiana to pay claims incurred and filed with such boards by township trustees for relief of the poor, which claims are in excess of appropriations and tax levies made therefor, and where such counties have no funds with which to pay said claims, and for the payment of claims incurred and filed by trustees of townships for relief of the poor where appropriations and tax levies for such purpose have been exhausted, or are in danger of being exhausted, and requiring townships to levy a tax to repay such counties for any such funds so borrowed for either or both of such purposes, and declaring an emergency," approved March 6, 1931,' approved August 16, 1932, and providing for the borrowing of money by such boards of commissioners in anticipation of claims to be incurred and filed by trustees of townships for relief of the poor, and declaring an emergency."
Section 1 of said act reads in part as follows:

"Section 1. Be it enacted by the General Assembly of the State of Indiana, that the boards of commissioners of any county of any state * * * ."

It will be noted that section 1 did not contain the words "That section 1 of the above entitled act be amended to read as follows:". The court held in that case that the part of the title which was pertinent to the act was as follows:

"An act * * * providing for the borrowing of money * * * boards of commissioners in anticipation of claims to be incurred and filed by trustees of townships for relief of the poor, and declaring an emergency."

The court further said at page 454:

"The Act embraces but one subject and we think it is expressed in the title of the act and that part of the title purporting to amend chapter 46 of the Acts of 1932 should be regarded as surplusage and the Act should be sustained as original legislation." (Our italics.)

The court thus sustained the act not as amendatory but as original legislation upon the basis that by rejecting the parts of the title indicating an amendment of a previous Act, there was yet left a sufficient title to sustain the legislation. Not so in this case, however. If, in this case, all of the title is rejected which indicates an amendment of previous legislation, there is left simply the following: "An Act * * * declaring an emergency." This, of course, clearly cannot be a sufficient title for any purpose.

The title of the Act under consideration clearly indicates an amendment of previous legislation. In the case of Wayne Township v. Brown, supra, the title in the opening words indicated an amendment, whereas the Act, like the Act in this case, indicated original legislation. The court in that case apparently had no difficulty in holding that so much of the title as indicated an amendment was insufficient to support the Act as amendatory legislation in view of the fact that the body of the legislation did not purport to be amendatory, saying on page 453:
"Under the above sections" (sections 19 and 21 of article 4) "the Act cannot be held to be an amendment."

But in the present case, unless the Act is an amendment (and it clearly is not) it is nothing, since there is no title which could possibly sustain it as original legislation.

Since the body of the Act in the present case must be regarded as original legislation, and since the title is appropriate for only an amendment to a previous Act, it is apparent that the subject of the act is not expressed in the title as required by section 19 of article 4, of the Indiana Constitution. It is, therefore, in my opinion, invalid.

SECRETARY OF STATE: Securities Commission, authority to promulgate rule requiring all issuers of securities to make deposit of securities for benefit of holders.

March 31, 1939.

Hon. James M. Tucker,
Secretary of State,
Indianapolis, Indiana.

Dear Mr. Tucker:

I have before me your letter to which you have attached a proposed rule to be promulgated, adopted and enforced by the Indiana Securities Commission.

You submit the following question with respect to such proposed rule and request an official opinion in answer thereto, viz.:

"1. Is the proposed rule, attached hereto, within the authority and the powers conferred upon the Securities Commission of the State of Indiana under the provisions of The Indiana Securities Law (Acts 1937, chapter 120, p. 656) ?"

The rule referred to is as follows:

"The Indiana Securities Commission, acting pursuant to authority conferred upon it by the Indiana Securities Law of 1937, particularly section 2 and section 8 thereof, hereby adopts the following rule:

"That all issuers of investment contracts or investment certificates, or annuity contracts, or installment