would not be acceptable investments under section 147 (d) of the Indiana Insurance Law.

WELFARE, DEPARTMENT OF: Specific act controls general act where two conflict; Acts 1917, chapter 83, requiring purchase of prison-made goods by all governmental divisions controlling over Acts 1913, chapter 156.

April 6, 1939.

Mr. T. A. Gottschalk, Supervisor,
Division of Institutions,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Gottschalk:

I have your communication of recent date in which you request an official opinion in answer to the following questions:

1. Is chapter 83 of the Acts of 1917 in full force and effect and binding upon boards of county commissioners, township trustees, superintendents of county poor asylums and county sheriffs?

2. What effect, if any, has chapter 156, Acts of 1933, page 817 (Sec. 26-536, Burns Ind. Stat. 1933) in regard to said Act of 1917?

3. Would a yearly contract let to other parties for county supplies, which could be furnished by the state penal institutions, in violation of said Act of 1917, be legal?

4. Is it necessary for the political subdivisions of the state to advertise and take bids on items manufactured by the penal institutions of the State of Indiana?

5. If the board of county commissioners advertised for bids on supplies some of which are manufactured in the state penal institutions, the advertisement being in connection with other general supplies not manufactured by the penal institutions, is it at all necessary that such institutions at the time fixed by the advertisement, make any bid for the purpose of competing with other persons in regard to the supplies which are manufactured in such penal institutions?"
Your first and second questions may be answered together. The Act of 1903, chapter 175, page 318 (Sec. 5897, Burns Ind. Stat., 1926), applied to the purchase of county supplies generally and gave the details of the procedure to be followed in making requisitions, bids and contracts, and subsequent thereto the Act of 1917, chapter 83, page 237, modified the Act of 1903 to the effect that the articles made in the prison institutions of the state were required to be purchased by all political divisions of the State if the same could be bought at not to exceed the market price of similar goods and such articles could be used by the local body.

The provisions of this Act of 1917 are binding upon each of the political divisions of the State and include the boards of county commissioners, township trustees and superintendents of poor asylums. Chapter 83 of the Acts of 1917 was a special Act and it supersedes a general Act upon the same subject.

The Act of 1903 (chapter 175, page 318) is a part of the County Reform Act and was a part of a general statute. The Act of 1917 by its terms was repugnant to the provisions of the County Reform Law and being a later Act would control so far as the two acts would conflict.

"A general statute must give way to a special statute on the same matter."

Kingham & Co. v. Ossam, 190 Ind. 554, 557.

"The enactment of a law specifically and fully covering the same subject matter that is covered or embraced in a general law, or any part of a general law, creates an exception to the general law, and operates to suspend or repeal to the extent of conflict between the two. Specific expression controls to the extent of its terms."

State, ex rel. v. Greenwald, 186 Ind. 321-327.

It is true that in 1933 an amendment of the 1903 Act was passed and it covers substantially all of the matters embraced in the 1903 Act. It being an amendment by its express terms to the Act of 1903, and being a substantial re-enactment of the section which it purported to amend, it became a part of the original Act.

"In arriving at the effect of an amendment to a statute, the courts must consider the amendment as a part
of the original Act, and the entire Act as amended must be given the same construction as if the amendment had been a part of the original Act."


Unless there is a substantial change from the former Act in the results to be achieved by the amended Act, it would not supersede or repeal the intervening specific Act regulating purchases by boards of commissioners, township trustees, superintendents of institutions and others.

This Act of 1933 had no repealing clause so it did not expressly repeal the penal institutions Act of 1917, and without such repealing clause and being a substantial re-enactment of the 1903 law, except as to a few minor changes, it would not affect or modify or repeal the 1917 Act. If it is contended that the Act of 1933 is contrary to the provisions of the 1917 Act, then if there was a repeal of the latter, it would have to be by implication.

"Repeal of statutes by implication is not favored."


An even stronger expression was stated in a quite recent case:

"Repeals by implication are disfavored, and are never recognized in the absence of irreconcilable repugnancy."

Goldsmith v. City of Indianapolis, 208 Ind. 465-469.

A leading writer on statutory construction uses the following language:

"'A later law which is merely a re-enactment of a former does not repeal an intermediate Act which has qualified or limited the first one, but such intermediate Act will be deemed to remain in force, and to qualify or modify the new Act in the same manner as it did the first.' This is especially true if the intermediate law is special or particular and the re-enacted law is a general law on the same subject. * * * Where a law is substantially re-enacted it is said to show that the
legislature did not regard it as repugnant to an intermediate Act to some extent covering the same subject.” (Our italics.)

Lewis Sutherland Statutory Construction (2d ed.), section 273.

It has been held that:

“Where a later statute merely re-enacts the provisions of an earlier one, it does not repeal an intermediate Act which has qualified or limited the earlier one, but such intermediate Act will be deemed to remain in force, and to qualify or modify the new Act in the same manner as it did the first. 1 Sutherland Statutory Construction (2d ed.), section 273; Endlich, Interpretation Statutes, section 194.”

Public Service Com. v. State of Ind., 193 Ind. 37-49.

The above construction has repeatedly been held by our higher courts:

Gaughan v. State, 187 Ind. 334;
Monical v. Heise, 49 Ind. App. 302-305;
Collins Coal Co. v. Hadley, 38 App. 637, 647-648;

“It is a well recognized principle that a general statute, on the same subject, without apt language showing such intention, will not be held to repeal or modify a former special Act which is limited in its application.”

Greenbush Cemetery Ass’n v. Van Natta, 49 Ind. App. 192-199.

The principal changes made by the amendment of 1933 are that in the former Act the forms were prepared by the auditor and board of commissioners while in the later Act the forms are prescribed by the State Board of Accounts. Also with reference to the letting of contracts for county printing, the date is stated specifically in the latter Act, while the former Act had provisions as to the classification of this kind of supplies, that is, printing, stationery, blank books, etc. The latter Act provided for the filing of a bond while the Act of 1903 was covered under the general provisions for filing bonds in making public bids. The last difference is with regard to the
penalty and the Act of 1903 provided that a contract should be void that did not follow the law, while the 1933 Act provided a specific penalty. Except as above noted, the amendment followed all the provisions of the 1903 Act and was a substantial re-enactment of the Act of 1903.

Many other authorities could be cited in support of the above proposition that the Act of 1933 did not repeal the Act of 1917 and that the two must be construed together. Under the general rule that a specific Act will govern a general one where the two conflict, then the Act of 1917 must govern the purchase of prison made goods and the Act of 1933 to that extent is inoperative.

Your third question should be answered in the negative. That is, a yearly contract let to a third person for the purchase of county supplies, which could be furnished by the state penal institutions, would be in violation of the Act of 1917 and would be illegal.

I desire to call your attention to the specific provision of this Act of 1917. Section 2 of the Act (Sec. 13-102, Burns Ind. Stat., 1933) provides that the political divisions of the state using such articles as may be produced in the prisons shall be required to purchase such articles at a price fixed by the Board of Classification, which price shall not exceed the market price for articles of the same grade.

It is also provided that the Board of Classification of Industries shall fix a price upon the manufactured articles at a rate not to exceed the market price for articles of the same grade. (Sec. 3, Ch. 83, Acts of 1917; Sec. 13-103, Burns Ind. Stat., 1933). This protects the purchaser of these articles from having to pay an excessive price, and in no event to exceed the market price.

The fourth section of this law is mandatory and is as follows:

"It shall be the duty of the board of trustees of the Indiana Reformatory, the Indiana State Prison and the Indiana State Farm, from time to time, after the taking effect of this Act, to notify, by printed catalog or otherwise, the various state institutions and the political divisions of the state of the kind of articles the said institutions produce and are prepared to furnish and the prices thereof; and when said state institutions, or the political divisions of the State of Indiana, are in need
of such articles, the boards of trustees and the heads of such institutions, boards of county commissioners, township trustees, superintendents of county poor asylums and county sheriffs shall make requisition on the board of trustees of said Indiana Reformatory, Indiana State Prison and the Indiana State Farm for such articles as are needed, giving the board of trustees a reasonable time to manufacture the articles so required, and shall not purchase any such articles elsewhere unless the same cannot be furnished by said Indiana Reformatory, Indiana State Prison or Indiana State Farm. Said boards and above named officers shall not contract for or pay any bill for such articles as are made at the Indiana Reformatory, Indiana State Prison or Indiana State Farm until a written statement has been given them that such articles cannot be furnished by any of the said institutions. (Acts 1917, Ch. 83, Sec. 4, p. 237; our italics.)"

Sec. 13-104, Burns Ind. Stat. 1933.

"When the word 'shall' is used in a statute, it is presumed to have been used in its imperative sense."


It would be difficult to write a law that would be more binding upon the persons and bodies affected; that is the officers named:

(a) shall make requisitions,
(b) shall not purchase any such articles elsewhere,
(c) shall not contract for or pay any bills for such articles as are made in the institutions named.

Under the mandatory provisions of the section last above quoted, the boards of county commissioners have no alternative and cannot enter into a yearly contract with a third person or persons for any of the articles that are manufactured in these penal institutions and a contract entered into with such third party would be illegal.

Your fourth question asks if it is necessary for the political subdivisions of the state to advertise and take bids on items manufactured by the penal institutions of the State of Indiana. This question must also be answered in the negative. It being a mandatory duty upon the part of the board of com-
missioners to purchase from the prison authorities the sup-
plies manufactured therein, the advertisement by the board
and bidding by third parties on the classes of articles referred
to would be a waste of time and money for the board of com-
missioners could not legally let a contract to such third per-
sons under the law.

Your fifth question is also answered in the negative and
the statements made in answer to the third and fourth ques-
tions are applicable in answering your fifth question.
The price of the prison made articles is made by the Board
of Classification of Industries and is binding upon the local
officers and bodies except in case of fraud, and must not exceed
the market value of articles of like kind and quality. The
legislature at the session just closed approved the necessity
of keeping prisoners occupied by exempting the sale of prison
made articles to political subdivisions of the state, from the
provisions of a law relating to the sale of such articles, thus,
in effect, recognizing the validity of the Law of 1917. It is
incumbent upon the trustees of the various penal institutions
named in the statute to keep the local bodies and institutions
notified of the products made in such institutions and this
notice having been brought to the attention of the purchasing
officials and institutions, it then becomes the duty of such
officials and institutions to requisition such articles and to
purchase and use the same.

As above stated, the local officials and institutions must be
governed by the provisions of section 4 of this Act of 1917
and the Act is sufficiently specific in itself to guide such offi-
cials in the purchase of such supplies.