able during the school year; but they, nevertheless, are assets of the corporation, and I do not think the law contemplates that the state board of accounts in auditing claims for state aid should make appraisals of these deposits.

CONSERVATION DEPARTMENT: Statutory construction —when two acts each purporting to amend the same section of a previous act are passed by the same session and neither has an emergency clause—the one last approved prevails.

April 7, 1933.

Hon. Walter Shirts, Superintendent,
Fisheries and Game,
Indianapolis, Indiana.

Dear Sir:

Chapter 100 of the Acts of 1933, (Senate Enrolled Act 100), was passed by the house of representatives on February 28, 1933. It was received by the governor on March 6, 1933, and approved by him on March 8, 1933.

Chapter 202 of the Acts of 1933, (House Enrolled Act 375), was passed by the senate on March 3, 1933. It was received by the governor on March 6, 1933, and approved by him on March 9, 1933.

Both acts purport to amend section 28 of chapter 37 of the Acts of 1927. Acts of 1927, page 93. The provisions of said acts are not the same. Neither act contains an emergency clause so that the effective date of both are made to depend upon their publication as provided by the Constitution.

You submit the question as to which of said acts will become the law upon the publication of the Acts of 1933.

In my opinion chapter 202, supra, will become the law upon the publication of the Acts of 1933. "When two acts are passed at the same session of the legislature, the presumption is strong against implied repeal, and effect must be given to each if possible; but if the two are irreconcilable, the one which was approved last will prevail." Newbauer v. State, 200 Ind. 118 at p. 122. Applying the above principle, chapter 202 having been approved last will prevail.

The facts in the case submitted by you present a somewhat different question, however, from the question presented
in Newbauer v. State, *supra*, in that both acts purport to amend the same section of an existing law. It is well settled that an attempted amendment of a section of an act which has already been amended is unavailing, from which it might be contended that since chapter 100 was approved before chapter 202 there was nothing left for chapter 202 to operate upon as an amendment. The fallacy of this contention, however, lies in the fact that the amendment of section 28, *supra*, by chapter 100 of the Acts of 1933 would not take the place of the original section until publication of the Acts of 1933. As said by the court in Metsker v. Whitsell, 181 Ind. 126 at page 141: "Where an amendment is adopted without an emergency clause, the old act remains in force until the publication of the session acts." Also, as said by the court in Sudbury v. Board, 157 Ind. 446 at page 451: "The publication of an act in the constitutional mode, and the taking effect thereof, are concurrent acts" * * *. (Our italics.) And, again, as said by the court in the case of Cummins v. Pence, 174 Ind. 115 at page 124: "But the rule is that with the going into force of the amendment the prior section is merged therein; they are simultaneous acts in the process of legislation." (Our italics.)

Conformably with the principle as stated in the above cases, chapters 100 and 202 became effective at exactly the same time, so that it would be no more true to say that said chapter 100 took the original section 28, *supra*, out of the statutes leaving nothing for said chapter 202 to amend than to say that said chapter 202 took the original section 28, *supra*, out, leaving nothing for said chapter 100 to amend.

Under such a condition, I think the rule giving effect to the latest expression of the legislative will is especially applicable. In the case of Metsker v. Whitsell, 181 Ind. 126, already referred to the court had before it a question similar to the question presented by you. In that case, two acts purporting to amend the same section of an existing law were approved respectively on March 14, 1913, and March 15, 1913. The latter act went into effect at once by virtue of an emergency clause. The court held that said act took the original section of the law out of the statutes so that at the effective date of the act approved on March 14, 1933, there was no such original section to amend. Note the language of the court on page 141:
"Where an amendment is adopted without an emergency clause, the old act remains in force until the publication of the session acts. Cummins v. Pence, (1910), 174 Ind. 115, 91 N. E. 529. When the act of March 14, 1913, was adopted, Sec. 62 of the original highway act was in existence, and, consequently, when the act of March 15, 1913, supra, was passed, Sec. 62 of the original act of 1905 was constitutionally amended, and thereafter ceased to exist; and when the session laws were subsequently published, there was no Sec. 62 of the act of 1905 to which the amendatory act of March 14th could apply. Had there been no emergency clause to the act of March 15, nevertheless it would have superseded the act of March 14." (Our italics.)

While the italicized language, supra, was, of course, dictum, I think the conclusion therein stated is irresistible, if for no other reason, as a matter of necessity, when applied to the facts of the case presented by you. For the reasons above given, in my opinion, chapter 100, supra, is void, and upon the publication of the Acts of 1933 said chapter 202 will be in full force and effect.

DENTAL EXAMINERS, BOARD OF: Dental board appropriations—effect of act changing the beginning of the fiscal year upon existing appropriations.

April 3, 1933.

Hon. J. M. Hale,
Secretary-Treasurer,
Board of Dental Examiners,
Mount Vernon, Indiana.

Dear Sir:

Your letter to the state board of finance with reference to your appropriations in view of chapter 33 of the Acts of 1933, changing the beginning of the fiscal year from October 1 to July 1, has been referred to me for reply.

You refer particularly to section 2 of chapter 33, supra, which provides that all previous regular appropriations shall be reduced by one-fourth thereof, and that the unexpended balance of such appropriations, so reduced, shall expire on