lations as deal with the rates and service of the proposed utility and the rates and service between the proposed utility operating the rural line and the utility which generates or distributes the current at the point of interchange with the rural line. While perhaps the Commission should be vested with authority to control the contractual agreements of the parties prior to the construction of the proposed line, I do not believe the Commission has such jurisdiction and parties who might so desire to contract are free to do so without the approval of the Commission first having been obtained. If they have made an unwise contract or agreement, it is a matter over which the Commission has no jurisdiction.


April 18, 1933.

Hon. Wayne Coy, Under Secretary
To the Governor,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter concerning Chapters 203 and 237 of the Acts of 1933.

Chapter 203, supra, is an act entitled,

"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." (Our italics.) Acts of 1933, page 981.

Chapter 237, supra, is an act entitled,

"An Act relating to tax levies and providing for the fixing thereof, limiting the amount of the same and repealing all laws in conflict therewith and declaring an emergency."


Both of the above acts were passed by the General Assembly on March 6, 1933; both were received in the Governor's office on March 6, 1933; both were approved by the Governor on March 9, 1933, and by virtue of emergency clauses both became effective at the same time. It is true that the record in the office of the Secretary of State indicates that Chapter 203, supra, reached that office and was filed there at 5:34 p. m. of March 9, 1933, and that Chapter 237, supra, reached that office and was filed there on March 11, 1933, at 1:35 p. m. But I do not think that fact affects the question as to the exact date when the two acts became effective.

It is stated in Lewis Sutherland Statutory Construction (2nd Ed.), Section 180, that "where two acts are approved on the same day, the presumption is that they were approved in numerical order," but I do not think this rule can apply in the present case where one act is a House Act and the other a Senate Act. Chapter 203, supra, is House Enrolled Act No. 397 and Chapter 237, supra, is Senate Enrolled Act No. 319.

The same author in the same section uses the following further language:

"But the court will take judicial notice of the facts and ascertain the actual order of approval, and, if the two acts are inconsistent, the one last approved will prevail, though it may have been the first to pass the legislature."
This rule, however, is of no particular benefit as applied to the two acts under consideration for it should be noted, too, that there is no record available that I have been able to find as to the exact time of the day on March 9, 1933, when the Governor approved the above acts.

It was said by the court in the case of Stalcup et al. v. Dixon, 136 Ind. 9, at page 18, that “in the absence of the precise time when approved, an act with an emergency clause operates during the whole day of its approval.” The same rule is stated in the case of Croveno v. Atlantic Avenue Railroad Company of Brooklyn (N. Y.) 44 N. E. 968, at page 969-970. See also Lewis’ Sutherland Statutory Construction (2nd Ed.), Section 172. This author points out, however, that in Minnesota the day of passage in such a case is excluded, and that in Wisconsin where an act takes effect from and after its passage and publication, the day of publication is excluded. Lewis’ Sutherland Statutory Construction (2nd. Ed.), Section 179. But whichever of the above rules as to the effective date of the two acts is adopted, the same result is reached so far as the present question is concerned. Both acts went into effect at precisely the same time, and the two acts, in my opinion, must be interpreted upon that basis.

Before entering further upon a consideration of the construction of the two acts referred to by you, however, I desire to consider briefly a question of the constitutionality of said Chapter 203. It will be observed that the opening words of its title proceeds upon the theory of an amendatory act. Note the language—“An Act to amend section 1 and the title of an act entitled” etc. But the body of the act does not purport to amend anything. Note the language—“Section 1. Be it enacted by the General Assembly of the State of Indiana,

“That the boards of commissioners of any county of this state are hereby authorized to estimate the amount of money which will be required,” etc.

Since the decision of the case of The Greencastle Southern Turnpike Company v. The State, on the relation of Malot, 28 Ind. 382, the general method followed in the enactment of amendments to statutes is to use language similar to the following, “Be it enacted by the general assembly of the State of Indiana that section . . . . . of the above entitled act be
amended to read as follows: Section ....,” etc., filling in the blanks with the appropriate section number.

The justification and apparent requirement of the above method in amending statutes is because of the provisions of Section 21 of Article 4 of the Indiana Constitution providing that “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”; Burns' Annotated Indiana Statutes of 1926, Section 124, and because of the provisions of Section 19 of Article 4 providing that “every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title.” Burns' Annotated Indiana Statutes of 1926, Section 122. In other words, the act does not purport to be an amendment at all and that part of the title which indicates that it is amendantory, in so far as it thus indicates, probably can not be said to truly express the subject of the legislation. I am aware of the fact that irregularities in title such as appear in the case of Chapter 203, supra, have occurred before in legislation in Indiana; but I know of no case where such an irregularity has occurred and where the act has been attacked in the courts on that ground. For that reason, I do not have legal precedent to guide me, but, in my opinion, in so far as the title of Chapter 203, supra, purports to indicate as the subject of the legislation that it is amendantory of a previous act, the legislation violates the above provisions of the Constitution.

It should be noted, however, that what Section 19 of Article 4, supra, requires is that the subject of the legislation must be expressed in the title. Burns' Annotated Indiana Statutes of 1926, Section 122. Moreover, the fact that the title of an act may include more than the act is not fatal to the act.

Lindsay v. State, 195 Ind. 333, at p. 337;

In the case last above cited the court used the following language on page 562,

“In this state, a constitutional provision (Const. art. 4, sec. 19) requires the subject-matter of a legislative enactment to be expressed in the title, and a failure in this respect will invalidate the part not so expressed. Mewherter v. Price (1858), 11 Ind. 199; Indianapolis,
etc., Traction Co. v. Brennan, (1910), 174 Ind. 1, 87 N. E. 215, 90 N. E. 65, 90 N. E. 68, 91 N. E. 503, 30 L. R. A. (N. S.) 85. But we know of no rule of law, or case, holding a legislative enactment invalid on the ground that its title is broader than the subject of the legislation."

I think the above principle has a bearing here. It is well settled that all reasonable presumptions should be indulged in favor of the constitutionality of an act of the General Assembly; and, I think that presumption should be given effect in this case. While this act, in my opinion, can not be sustained as an amendment to Chapter 46 of the Acts of 1932, I do not think that fact destroys it. Looking at the act alone, it does not purport to be an amendment. It purports to be an original act. Separated from its title no one would think of it as amendatory. It is not difficult to harmonize the subject expressed in the title of Chapter 203, supra, with the subject of the act, wholly disregarding the question of amendment. There is enough in the italicized language of the title alone, as set out earlier in this opinion, to sustain it as an independent act; and the fact that the title may include more than the body of the act, as already pointed out, is not objectionable. What is the subject of Chapter 203, supra? Is not its subject the borrowing of money by boards of commissioners in anticipation of claims to be incurred and filed by trustees of townships for relief of the poor? I think that is very clearly its subject. Is that subject expressed in the title? Note the following, I quote from the title:

"An act to amend * * * AND providing for the borrowing of money by * * * 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." (Our italics and capitals.)


From the foregoing analysis, I think it is clear that the subject of the legislation embodied in Chapter 203, supra, is expressed in the title and that the act embraces but one subject which is all that Section 19 of Article 4 of the Constitution requires. The parts of the title purporting to amend Chapter 46 of the Acts of 1932, in my opinion, may be re-
garded as surplusage, but even if not so regarded, the same general subject is present so that the legislature could not have been misled as to real subject of the legislation. In my opinion, Chapter 203, *supra*, can not be sustained as an amendment of Chapter 46 of the Acts of 1932, but that it is not subject to constitutional objection as original legislation which it, in fact, purports to be.

I am thus confronted with the duty of construing Chapters 203 and 237, *supra*. Chapter 237, *supra*, is a tax limitation act, Section 3 of which provides as follows:

"The total of all tax levies on property within any municipal corporation for all municipal corporations for which the property therein is taxable, except as provided in section 4 of this act, shall not exceed the following total rates:

"In territory outside of the corporate limits of incorporated cities and towns, the total tax rate for all purposes, including the state levy referred to in section 1 of this act, shall not exceed one dollar on each one hundred dollars of taxable property therein.

"In territory inside of the corporate limits of incorporated cities and towns, the total tax rate for all purposes, including the state levy referred to in section 1 of this act, shall not exceed one dollar and fifty cents on each one hundred dollars of taxable property therein."


Section 4 of the above act creates a county board of tax adjustment and prescribes its duties and powers together with certain limitations thereof. I call attention to the following limitation:

"The county board of tax adjustment shall have no authority under this act to reduce specific tax levies made by the local officers for the purpose of providing funds for the payment of obligations of the several municipal corporations incurred prior to August 8, 1932, of funding or refunding obligations of such municipal corporations heretofore or hereafter authorized or issued for the purpose of procuring funds to pay obligations incurred prior to August 8, 1932, or
any judgment against such municipal corporation or obligations issued to refund the same, below the amount required to meet such obligations and the interest thereon at the times and in the amounts required by the terms of such obligations. It shall be the duty of the proper governmental bodies and officers charged with the levying of taxes to levy taxes in an amount necessary, after applying all funds then available from other sources, to pay the principal and interest of such obligations as the same become due.”

It will be noted that the only exceptions provided above limiting the county board of tax adjustment in revising and reducing levies, except levies to pay judgments and obligations issued to refund the same, are levies to pay obligations incurred prior to August 8, 1932, the date upon which the original so-called $1.50 law became effective. That would not include by specific reference bonds for poor relief issued pursuant to Chapter 46 of the Acts of 1932, the validity of which, if regularly issued, I do not think can be successfully assailed. Moreover, I do not think the statute (Chapter 237 of the Acts of 1933) should be construed as evidencing the intention of the legislature to renounce any valid obligation, and the fact that all mention of poor relief bonds was omitted in the act indicates, I think, that the legislature did not consider them within its terms even though a strict construction of it without reference to other legislation would probably include them.

Implied repeals are not favored. This is especially true in the case of two acts passed by the same session. Newbauer v. State, 200 Ind. 118, at page 122. But even this rule of construction does not meet the situation presented here if the two acts under consideration be regarded as in irreconcilable conflict. Under such a state of facts, the two acts having become effective at the same time, there would be as much reason for holding that Chapter 203, supra, repeals Chapter 237 as that Chapter 237, supra, repeals Chapter 203 in so far as the conflict exists.

However, I do not think that these acts need be considered in irreconcilable conflict with each other when construed in conformity with well established canons of construction. In the first place statutes should be construed, if possible, to
avoid conflict. Moreover, statutes bearing on the same subject should be construed together, so as to provide a consistent body of law on that subject. They should be so construed as to give effect to every part thereof, if possible, and so as to allow the same to be effective in their entirety. If this can not be done, then only so much as can not be given effect upon any reasonable interpretation must fall.

Upon the theory of irreconcilable conflict between these two acts, if Chapter 237, supra, be held to prevail, then for all practical purposes Chapter 203 in its entirety fails. On the other hand if Chapter 237 be construed as above indicated so as to permit Chapter 203 to operate, it may be considered, perhaps, as modifying the strict letter of said Chapter 237 as applied to poor relief but otherwise said act is untouched. Upon the latter basis, I think both acts may stand and the true legislative intent be made effective.

INSURANCE COMMISSIONER: Right of commissioner to examine into affairs of agency corporation acting as general agent for life insurance company.

April 18, 1933.

Hon. Harry E. McClain,
Commissioner of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

Replying to your letter of April 13, 1933, requesting an opinion upon the right of the Commissioner of Insurance to examine into the affairs of an agency corporation acting as general agent for a life insurance company under the provisions of an act of the General Assembly of the state of Indiana entitled "An Act to examine into insurance corporations, prescribing the duties of the Auditor of State in connection therewith, repealing all laws and parts of laws in conflict therewith, and declaring an emergency," approved March 6, 1913 (Acts of 1913, page 271), I desire to advise as follows:

The body of the law contains the provision that "it shall be the duty of the Auditor of State to see that all the laws of this state respecting insurance companies and the agents there-