ACCOUNTS, BOARD OF: Board of County Commissioners—whether such boards may legally contract for repair of highways in view of Chapter 27 of the Acts of 1933.

May 5, 1933.

Hon. William P. Cosgrove,
State Examiner,
Indianapolis, Indiana.
Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

"1. Does Chapter 27 of the Acts of 1933 repeal Section 8518 of Burns' Annotated Indiana Statutes of 1926?

"2. If Section 8518, supra, is not repealed, what notice is required in letting contract therein provided for?"

Section 8518, supra, is Section 1 of Chapter 154 of the Acts of 1919, entitled "An Act concerning the maintenance and repair of free gravel or macadam roads," and provides as follows:

"Whenever in the opinion of the board of county commissioners of any county the traffic on any gravel or macadam road is of such volume that it is impracticable because of the necessity of frequent repairs, to repair such road or roads with stone or gravel, or with material like that with which the road or roads was originally improved, said board may in such case repair such road or roads with any other material which it may deem proper and superior to the material with which such road or roads was originally improved; Provided, That whenever the repair work under the provisions of this act is such that the highway superintendent has not the facilities, tools or machinery to perform such work, then the county commissioners may have such work done by contract, as now provided by the law; Provided, further, That all roads over which the State Highway Commission now has, or may hereafter acquire, jurisdiction shall not come under the terms of this act."

Prior to the passage of the above act, the original "county highway superintendent" act of 1913 had provided in section 2 thereof that:

"The county highway superintendent shall have general supervision of the maintenance, and repair of all highways, bridges and culverts of the county which are maintained or repaired from the gravel road repair fund of the county." (Our italics.)

Burns Annotated Indiana Statutes of 1926, section 8507.

The provisions of section 8518, supra, were enacted into law apparently for the purpose of enabling the respective boards of county commissioners to make the type of repairs therein provided for out of the gravel road repair fund, but by contracting it rather than by having it done by the county highway superintendent as was contemplated by the "county highway superintendent" act of 1913. In other words, except for the provisions of section 8518, supra, under section 2 of the 1913 "county highway superintendent" act, the gravel road repair fund provided for by that act was to be expended under the supervision of the county highway superintendent. Section 8518, supra, therefore, modified the provisions of section 2 of the "county highway superintendent" act of 1913, and the question now is as to whether it is repealed by implication by chapter 27 of the Acts of 1933 or whether it remains to modify the 1933 act, supra, as it modified the previous "county highway superintendent" act.

It is interesting to note in this connection that section 2 of chapter 27 of the Acts of 1933 is almost a re-enactment of section 2 of the previous "county highway superintendent" act, except for the substitution of "county surveyor" for "county highway superintendent" and "the highway fund of the county" for "the gravel road repair fund of the county" where the above phrases appear in the previous act.

Under such a state of facts the rule seems to be well settled, quoting from Lewis Sutherland Statutory Construction (2d ed.), section 273, that:

"'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.)

To the same effect see:

Gaughan v. State, 187 Ind. 334, at p. 337;
Monical et al. v. Heise et al., 49 Ind. App. 302, at p. 305;

I think the above principle applies to the question now under consideration, especially in view of that other well established rule of statutory construction that implied repeals are not favored. In my opinion, therefore, section 8518 of Burns Annotated Indiana Statutes of 1926 is not repealed by chapter 27 of the Acts of 1933. Your first question is answered in the negative.

Your second question is as to the notice required in letting such a contract. The language of the statute, section 8518, supra, is “the county commissioners may have such work done by contract, as now provided by law.” I think the above language “as now provided by law” has reference to the existing provisions of law for the letting of construction contracts for public works by boards of commissioners and as to the required notice the same is governed by the provisions of section 5898 of Burns Annotated Indiana Statutes of 1926, which provides as follows:

“In all cases in which the board of commissioners are (is) now or may hereafter be authorized by law to contract for the execution of any public undertaking, said board shall cause to be prepared and placed on file in the office of the auditor complete and detailed specifications of the same, including full and complete drawings if the same consists of the construction or reconstruction or material alteration of any bridge, jail,
court house, asylum, or any other public structure. Likewise, such specifications shall be supplemented by full and complete drawings or models in all other cases where the same are needful or desirable to completely and definitely define the work so proposed to be undertaken. Upon the filing of said specifications and drawings in the office of said auditor, said board shall cause a brief notice to be published one time in each of two leading newspapers of general circulation, published in the county, if there be such, representing respectively the two political parties casting the highest number of votes in such county at the last preceding general election, informing the public of the general nature of the proposed undertaking, and of the fact that drawings and specifications are on file at such office, and calling for sealed proposals for such work by a day fixed in said publication, but not earlier than two weeks after said publications. In all cases where the amount involved exceeds two thousand ($2,000) dollars, such advertisement shall be published twice in each of such newspapers, and the time for receiving bids shall be not earlier than four weeks after the first of such publications. Further publications may also be made when deemed for the public interest.” (Our italics.)

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INSURANCE COMMISSIONER: Reinsurance contract—liability thereunder of company to policyholders.

May 5, 1933.

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

Dear Sir:
I have before me your letter of April 17th, which reads as follows:

“The Fort Dearborn Insurance Company, a fire and casualty company, licensed to do business in the State of Indiana, under date of December 31, 1932, reinsured all outstanding policies in the State of Indiana with the Central Mutual Insurance Company of Chicago, also licensed to do business in the State of Indiana.