a valid license, it shall be sufficient to charge that such person did, upon a certain day and in a certain county, engage in the practice of dentistry, he not having a valid license so to do, without averring any further or more particular facts concerning the same.”

Section 12 of the same act, defines what shall constitute “practicing dentistry” within the meaning of the act, as follows:

“Any person shall be said to be practicing dentistry within the meaning of this act who uses the word ‘dentist,’ or ‘dental surgeon,’ or the letters ‘D. D. S.’ or ‘D. M. D.,” or other letters or titles in connection with his name, which in any way represents him as engaged in the practice of dentistry; or owns or operates a dental office, or is the manager or conductor of the same, or advertises or permits to be advertised by sign, card, circular, handbill, newspaper, radio or otherwise, that he can or will attempt to perform dental operations of any kind,” etc. (Our italics.)

Under these sections, it would be necessary for the dental board to establish that the alleged offender did one of the acts defined by the statute as constituting “practicing dentistry,” that is, that he owned or operated a dental office, or used the letters “D. D. S.” or “D. M. D.” or the words, “dentist” or “dental surgeon,” or any of the other acts set forth at some length in section 12 of the Acts of 1931. Thus, the fact that such dentist operated a dental office which was open to the public would be sufficient to prove a violation of the act, where such dentist had no license to practice dentistry.

UNEMPLOYMENT RELIEF COMM.: Poor relief funds advanced by counties—authority of county auditor with respect to tax levy for reimbursement.

November 2, 1933.

Hon. William H. Book, Director,
Governor’s Commission on Unemployment Relief,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter in which you request an opinion as to the duty of county auditors with respect to the levy of
taxes for the purpose of reimbursing their respective counties for money advanced out of the county's general fund to township overseers of the poor. For the purpose of defining the scope of your inquiry, you cite a case where the proper township officers made a sufficient levy, but where the county board of tax adjustment thereafter entirely eliminated such levy. The county board of tax adjustment in the case cited, claimed to be acting pursuant to the authority conferred upon it by chapter 237, of the Acts of 1933, providing for the limitation of tax levies. You inquire as to what is the authority and duty of the county auditor under such circumstances.

Section 1 of chapter 147, of the Acts of 1901, provides that the township trustees of the several townships of the state shall be ex-officio the overseers of the poor of their respective townships, and section 2 of said act, provides that in discharging the duties prescribed by the act, the township trustees shall be designated as "overseer of the poor."


Section 4 of said act provides that "the county council shall appropriate and the board of commissioners in each county shall advance to the township trustees, the money necessary for the relief and burial of the poor in each township, which shall be accounted for and repaid to the county treasury as hereinafter provided." (Our italics.)

Acts of 1901, page 323; Burns Annotated Indiana Statutes of 1926, section 12258.

It will be observed that the duties of the county council, the board of commissioners and the duty to repay the advancements, are mandatory. The unequivocal and mandatory duties, as above set out, are recognized by the court in the case of Wayne Township v. Brown (Ind. Sup.), 186 N. E. 841, in the use of the following language on page 845:

"It is seen from the foregoing sections of the statute and the acts of the legislature, that it is the duty of the county to take care of and provide for the poor in the county asylum and other charitable institutions in which the poor and indigent are placed, and the duty and obligation is upon the township trustee to take care
of the poor within the township. It is also clearly shown that it is the duty of the county council to appropriate, and the board of commissioners of each county to advance to the township trustee, the money necessary for the relief and burial of the poor in each township, which money shall be accounted for and repaid to the county treasury.

"While it is the duty of the county to advance money to the township, it is a township liability to take care of its poor and not the obligation of the county. The money advanced by the county becomes a loan to the township, and the township, under the provisions of the law, must reimburse the county for all advancements or loans made."

The method of repayment provided by said acts, as referred to above, is contained in section 38 of said act, as amended in 1907. The same section appears as section 12291 of Burns Annotated Indiana Statutes of 1926, and is as follows:

"The county auditor of each county shall report to the board of county commissioners on the first day of the regular September term of said court annually the amount advanced during the preceding nine months, and an estimate of the same for the remaining three months of the then current calendar year, to the overseer of the poor for poor relief and for medical attendance of the poor of each township by said board. When the township levies are made, the proper authorities of each township for the poor of which any such advancements have been made shall levy a tax upon the property of such township, to reimburse the county treasury for payments made on such advancements, which taxes shall be collected as are other township taxes, and shall be paid into the county treasury. If the proper authorities of any township shall fail to levy a sufficient tax to repay such advancements, the county auditor shall levy the same. The county auditor shall keep a debit and credit account with each civil township, showing the amounts received on said levy and the amounts advanced by the boards of county commissioners to the overseers on account of the relief and burial of the poor, and, on the first day of January of each year,
shall balance the account, and, as soon thereafter as possible, transmit a statement of the balance to the overseers of the poor of the townships. Such balance shall be taken into account in making the levy for the reimbursement of the county the ensuing year.” (Our italics.)

Prior to the enactment of the tax limitation statutes of 1932 and 1933, the duty of the county auditor, in case the local township officers fail to make the necessary levy, is clear, specific and mandatory. The county auditor under such circumstances shall make the necessary levy. Does chapter 237 of the Acts of 1933, creating the county board of tax adjustment and prescribing its duties and powers, change or alter the duty of the county auditor as above provided?

The county board of tax adjustment undoubtedly has very broad powers under chapter 237, supra. It is provided that:

“It shall be the duty of such board to examine and, if it deems such action necessary, revise, change or reduce, but not increase, any tax levy and any corresponding items of the budgets on which such tax levies are based and apportion the total of all of said levies so that the total levy on property within any municipal corporation for all municipal corporations for which the property therein is taxable, including the state levy referred to in section 1, shall not exceed the applicable total rate as provided in section 3 hereof; Provided, however, That if an emergency exists as to any municipal corporation, such board, by a vote of at least five members thereof, shall have the power to fix such tax levy for such municipal corporation as is necessary to meet such emergency though the total rate fixed as the result thereof shall exceed the applicable total rate as provided in section 3 of this act; Provided, further, If an emergency exists and shall be so declared by the county board of tax adjustments, such board shall set out of record their reasons for declaring such emergency, and shall state of record the nature of the emergency for which any such increased levy is made.” (Our italics.)

It is further provided that:

"If such county board of tax adjustment shall revise, change or reduce any such budget and levy as first fixed by the proper officers of any such municipal corporations, such levy as so revised, changed or reduced shall be the only levy or rate upon which taxes shall be collected for such ensuing year for such municipal corporations unless the same shall be changed by the state board of tax commissioners as herein provided, in which case the levy as fixed by said state board of tax commissioners shall be the only levy or rate upon which taxes shall be collected."


Do the above provisions set aside and nullify the method prescribed by section 12291 of Burns Annotated Indiana Statutes of 1926, whereby a county may be reimbursed for advancements made on account of poor relief, which advancements, it is clearly the mandatory duty of the board of county commissioners to make?

It should be remembered in this connection, that chapter 237, supra, does not expressly repeal section 12291, supra. Moreover, implied repeals are not favored. Especially is this true, as applied to the operation of a general law upon a previously enacted special law. When section 12291, supra, imposing upon the county auditor the duty of making a levy to repay township poor relief advancements, in case the proper township officers failed to make the levy, was enacted, there was no county tax adjustment board with authority over local township rates. Hence, the provision that "if the proper authorities of any township shall fail to levy a sufficient tax" the county auditor shall levy it. With the creation of the county tax adjustment board with authority over the levies made by such local officers, in my opinion, said language above quoted should be construed to include any tax levying authority which has been substituted for the proper township officers. In other words, the legislature in the enactment of section 12291, supra, was dealing with the situation as it then existed, and the later substitution of other officers for the township officers in the final adjustment of the township levy certainly cannot be held to repeal section 12291. The intent of the legislature was, that if the persons at the outset re-
sponsible for making the levy to effect the repayment of the poor relief advances failed in their mandatory duty, the county auditor should then do what such other officers had failed to do.

If the appropriate township's officers had failed to make the levy and the matter having been submitted to the county tax adjustment board was left unchanged, the duty of the county auditor to make the levy would be clear and literally within the language of section 12291, supra. I can see no difference in principle between the above case and the case submitted by you, where the township officers make the mandatory levy and the county board of tax adjustment strike it out. The same result follows—the officers charged initially with the duty of making the levy have failed in the performance of their mandatory duty. I call your attention in this connection to the language of the court in the case of Wayne Township v. Brown, supra, on page 847. The court said:

"In case of an emergency in any municipal corporation, such as for the relief of the poor, the board of tax adjustment not only has the power, but it becomes its imperative duty, to fix such tax levy for such municipal corporation as is necessary to meet such emergency. This duty cannot be side-stepped, or evaded on the theory that it would raise the tax levy above the one dollar or one dollar and half rate. The legislative body purposely made the exception to take care of emergencies that might exist in any municipal corporation." (Our italics.)

In my opinion, under the conditions set out by you, it is the clear and mandatory duty of the county auditor to make the necessary levy as provided by section 12291 of Burns Annotated Indiana Statutes of 1926.

TAX COMMISSION: Water works sinking fund—whether council may transfer part of same to general fund of city.

November 4, 1933.

Hon. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter submitting the question as to whether a civil city of the second class which owns and oper-