referred to is not repealed by the amendment of section 19 standing alone but remains to modify section 19 as amended in the same way and to the same extent as it had modified the original section 19. It should be remembered, however, that the above rule is simply a rule of construction and furnishes an exception to the general rule that the later act of two conflicting Acts impliedly repeals the former. It is designed to give effect to the intent of the legislature, but when the legislature has expressly evinced a different intent, the expressed intent should be given preference to an intent derived simply from the application of the foregoing rule of construction. The amendatory act of 1935 contains a section repealing all laws or parts of laws in conflict with the provisions of the Act. The particular provisions of the biennial appropriation act referred to are clearly in conflict with said Act of 1935, and while Section 19 as amended would not in and of itself operate as a repeal by reason of the foregoing rule of statutory construction, it seems to me that the legislature has disavowed this rule by expressly providing that conflicting laws or parts of laws are in fact repealed.

From the foregoing it seems to follow that the applicable provision is section 4 of Chapter 252 of the Acts of 1935.

INSURANCE DIVISION: Fire insurance—Rate deviations; bureau rules.

March 6, 1936.

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

Dear Sir:

I have before me your letter of February 6, 1936, requesting an opinion concerning the following filings by fire insurance companies as deviations from rates:

1. "If this policy shall be for a term of years (more than one year) the premium named in said policy shall be payable in equal annual installments, the first installment of said premium shall be payable on the delivery of this policy and a like equal installment of such premium shall be payable each year thereafter
in advance on the anniversary of the policy, and this policy shall be in force only for such year or years as the premium therefor shall be paid to this company.

"Attached to and forming a part of Policy No. ..... of the .................. Insurance Company. Date .................. Agent .................."

(Our italics).

2. "In consideration of the intention of the insured to purchase insurance, under this policy, for five successive years, it is understood and agreed that this policy may be renewed for four successive years by the issuance of properly countersigned Renewal Certificates and that the premium charged thereunder shall be $........ per annum.

"No insurance shall exist hereunder beyond the expiration date of the policy or last renewal certificate.

"Attached to and forming a part of Policy........ issued by the .................., Agent."

(Our italics).

Your first inquiry concerns whether the above filings are deviations from rates or rules. It is my opinion that such are deviations from rules of the rating bureau and not from rates.

Rules of a rating bureau prescribe the manner and method of making insurance and are not a part of the rate schedule. The sole object of rules is to enforce fair and uniform practices for making insurance contracts and exacting rates pursuant to schedules.

Rates are detailed bases resting on engineering inspections and analyses, formulated by relative consideration of all insurable property having similar characteristics, and imposing an equitable insurance burden on each comparatively with all other like property in the state. The purpose being to produce a reasonable compensation for insurance, including a fair profit.

Both of the above proffered filings contemplate the collection of a premium for five consecutive years equal in amount to the five-year term policy requiring the premium to be paid at the issuance of the policy. Their only difference arises in
the collection of this rate. Instead of complying with the "term rule" and collecting the entire rate in advance, one filing attempts to charge the regular annual (single year) rate for the first year and a lesser rate for successive renewals, while the other collects 80% of the regular annual rate for each of the five successive years. The actual premium charged for the five-year period being the same as premium resulting from the application of the rating bureau's rate for a five-year term policy. Therefore, this actually results in a deviation from a rule and not a rate.

In answer to your second inquiry, it is my further opinion that Section 178, Chapter 162, Acts of 1935 does not allow a deviation from a rating bureau rule by a member thereof.

As indicated in the above definition a "rule" is merely a by-law or constitutional proviso of the rating bureau. It governs the conduct of the members of that bureau and there is no provision for deviation by a member. The applicable subsections of Section 178 are:

"(a) Every fire insurance company * * * shall maintain or be a member of a rating bureau. No such insurer shall be a member of more than one rating bureau for the purpose of rating the same risk. * * *.

(b) (Provides for the membership of the bureaus; pro-rata of expenses thereof; voting power; and, offices.)

"(c) Within sixty days after the establishment of any rating bureau in this state, it shall file with the department a copy of its articles of association and by-laws and any and all schedules used by it as a basis for the making of rates. The bureau shall also file with the department the classification of each town in Indiana together with the basis or table rate that is used in that particular town. It shall also file with the department all regulations or rules of any such rating bureau."

(e) (Provides for filing of rates and surveys by the rating bureau).

"(f) In the event the rating bureau should desire to make a change in its established schedules, rules, regulations, contracts or agreements, it shall submit such proposed change in writing to the department and the department shall * * *."

“(j) Any deviation of any company or insurer from the schedule of rates established and maintained by the bureau which it maintains, or of which it is a member, shall be uniform in its application to all of the risks in the class for which the variation is made, and no such uniform deviation shall be made unless notice thereof shall be filed with the bureau of which the insurer is a member and the department, at least fifteen days before such uniform variation is in effect, and schedules providing for such variation shall be filed with the rating bureau and the department showing amended basis rate and amended charges and credits and application of the amended schedules to individual risks in the class or classes affected. Every company or insurer shall be permitted to make uniform percentage reductions in the specific rates of any bureau of which it is a member, and rating bureaus shall not have rules and regulations which interfere with making such uniform reductions.” (All italics ours.)

The above provisions of the section seem clear, concise and definite in their intent and meaning. First, every insurer is required to maintain, or be a member of, a rating bureau. Second, the members maintain the bureau and have a vote therein. Third, the bureau must file both schedules and rules on regulations. Fourth, if the bureau desires to change its rules it may submit the same, etc. Fifth, the bureau members (companies) may file deviations from rates.

This section distinguishes rates from rules. It provides that the companies can deviate from rates, but only the bureau from rules. It is clear that the statute treats the rules as a part of the governing code of the bureau, with which all members must comply, unless the rules were changed at the desire of the bureau. Therefore, Section 178 does not provide for a deviation from a rating bureau rule by a company member.

The two previous answers, in my opinion, obviate the necessity of answering your third inquiry. However, in the event some persons still contend that the two filings under discussion are rate deviations, in order to remove the necessity of a further opinion, I will also answer that question.
It is also my further opinion that the filings in question here result in discriminations against policyholders sufficient to constitute a violation of the uniform application clause contained in subsection (j) of Section 178.

Both filings merely constitute a one-year contract of insurance with an option to purchase renewals at a rate lower than the regular one-year premium. Both are meticulous to be certain that such insurance is effective and in force only for the year or years for which the premium has been paid. The only contract of insurance which exists is a one-year contract. The option would hardly be enforceable by the company, since there was no consideration passed from it to the insured for said option. The insured would be in a peculiar position to attempt enforcing his option when his consideration was the "intention" to purchase insurance in the future. Unilateral contracts are unheard of in the law of insurance, and surely have no standing under the Indiana Insurance Law of 1935 and the powers given insurers thereunder. At the best the entire filing is merely an avenue to increase sales.

It surely could not be contended, at least seriously, that uniformity exists where one person can purchase insurance for one year and under a non-enforceable option could purchase another year's insurance, at the expiration of the first year, for a cheaper rate than his next-door neighbor who took his insurance in two distinct policies for the same period within the same class. Therefore, it is my opinion that such gross discrimination exists that all uniformity is erased, and that the approval of such filings would allow to remain open an alley of misrepresentation to be visited upon the policyholders of this state.

In conclusion I wish to add that the foregoing opinions are sustained by the opinion of the Supreme Court of Ohio in the cases reported at page 774 of Volume 196 Northeastern Reporter, and by the able briefs and opinions filed in the various cases now pending in other states.