printing and the board has such work done by other than the contractor awarded the contract for letterpress printing, such action shall in no manner be considered a violation of printing contract."

The Haywood Publishing Company take the position that at the time the contract was let there was a verbal discussion relative to the meaning of the terms, conditions and specifications, etc., in the contract. They are now insisting that the Board of Public Printing made verbal statements not in harmony, as they understood them, with the written contract. The rule of law which is applicable is to the effect that all oral negotiations, or stipulations between the parties, which preceded or accompanied the execution of the instrument must be regarded as merged in it, and the latter must be treated as the *exclusive* medium of ascertaining the agreement to which the contractors bound themselves.

McClure v. Jeffrey, 8 Ind. 79;
Oiler v. Guard, 23 Ind. 212.

This rule of law is so well settled in our jurisdiction that no discussion of it seems necessary.

Applying this rule then to the facts presented by you, the Board of Public Printing, when it deems advisable to use the offset, planograph, photographic and/or other than letterpress methods of printing may have such work done by anyone whomsoever it chooses, wherever they may be and such decision by the Board of Public Printing shall in no manner be considered a violation of the printing contract.

MOTOR VEHICLES, BUREAU OF: Poll tax, soldiers and sailors receiving disability compensation, not exempt from delinquent.

June 25, 1937.

Hon. Frank Finney, Commissioner,
Bureau of Motor Vehicles,
Indianapolis, Indiana.

Dear Sir:

Your inquiry of April 15, 1937, has to do with an Act passed by the General Assembly in 1937 which reads as follows:

"A bill for an Act exempting soldiers and sailors who receive service connected disability compensation from payment of poll tax.

"Section 1. Be it enacted by the General Assembly of the State of Indiana, That every soldier and sailor who receives service connected disability compensation shall be exempted from the payment of any and all poll tax. A certificate from the United States Veterans' Administration certifying that such soldier or sailor receives connected disability compensation shall be sufficient evidence that such soldier or sailor is entitled to the exemption herein prescribed."

This Act was passed without an emergency clause and became effective on the date named in the Governor's proclamation of the promulgation of the Acts passed in the session of 1937, as provided by law in Burns Indiana Statutes Annotated, 1933, section 1-103. It is Ch. 118, p. 645, Acts of 1937.

Your inquiry reads as follows:

"Inasmuch as poll taxes are due and payable one year after assessment the department would like to know whether or not such soldier or sailor above described is exempt at the present time from such payment or whether the exemption should not be effective until such time as that person is actually assessed."

The first question raised by your letter is:

"Are the persons who are exempted from the payment of poll tax by the above quoted Act thereby relieved from the payment of poll tax which had been levied and was due and payable prior to the effective date of the Act?"

A poll or capitation tax is one imposed upon the person without regard to his property, business, or other circumstances. Leedy v. Town of Bourbon (1894), 12 Ind. App. 486, 489. Poll taxes are levied by the state and by municipal subdivisions thereof. They are levied directly by the General Assembly for the use of the general fund (Sec. 61-103, Burns, etc., 1933), and the common school relief fund (Sec. 28-901, Burns, *supra*), and by counties, cities, towns, townships, civil and school, of the state for purposes and at rates authorized by the General Assembly in the township and

town or city of the taxpayer's residence. (Secs. 64-101; 64-102; 61-103; 65-301; 28-1101; 28-1908; 28-1104; 48-301; 38-6708, Burns *supra.*) The statutes require the county auditor to make out the tax duplicate, to set down thereon "the poll tax for state, county and all other purposes" and on or before the last day of December of each year to deliver the tax duplicate to the county treasurer who shall give notice, by posting and publication, of the amount of tax charged, including poll tax, for state, county, and other purposes. All taxes charged thereon "shall be due and payable in two equal installments on or before the first Monday in May and the first Monday in November. (Secs. 64-1403; 64-1404; 64-1501; 64-1508; Burns, *supra.*)

Immediately prior to the time chapter 118 of the Acts of 1937 became effective, poll taxes for the year 1936, payable in 1937, had been levied and entered upon the tax duplicate and notice had been given of the tax charged. The obligation to pay poll tax for the year 1936 had theretofore been created and the first installment, if unpaid, was past due and delinquent. No change was made by chapter 118, *supra,* in the method of levying poll tax and charging same on the tax duplicate or in the time when such taxes should become due and payable but the change made by the Act is with reference to the persons subject to the poll tax. The Act provides that the persons named therein "shall be exempted from the payment" of poll tax.

In determining the effect to be given the statute, it should be borne in mind that even though certain words used in a statute are broad enough in their literal sense to impair present rights or affect accrued obligations, the statute is not given such an effect but is considered to operate prospectively unless, from all of the language used, it is clear that a retrospective effect is intended. The legislative intent is to be determined from a consideration of all the language of the Act and in the absence of a plain expression of a contrary design an act is deemed to operate prospectively.

See Lewis' Sutherland Stautory Construction.

Too, the situation intended to be dealt with by the Act will be considered and a result that is reasonable, rather than unreasonable and inequitable, will be reached, where the language used is subject to more than one interpretation.

Further, where construction is necessary to determine its meaning, a tax exemption statute is subject to strict construction, upon the theory that the taxing power will be surrendered or diminished only by plain and explicit terms.

Orr v. Baker (1853), 4 Ind. 86.

In my opinion, the use of the language "shall be exempted" indicates a legislative intent that the provisions of the Act should operate prospectively, that an immediate exemption from existing obligations to pay poll tax then due was not being created but that the Act should have the effect of providing for certain persons an exemption at the time the liability to pay poll tax would, in the due course of events, be imposed upon all persons generally.

While it is true that there is no occasion for the application of rules of construction when the meaning of a statute is clear from the language used, the interpretation of certain language used in the above quoted statute is necessary to determine its meaning. In my opinion, the words "any and all poll tax" as contained in the Act are used to indicate that the exemption created should include poll tax levied by the state and all other municipal subdivisions or taxing units thereof. To interpret such language as affording a basis for the release from liability for past due poll tax would produce a result which would be inequitable and unreasonable in that no provision is made for refund to persons of the class named in the Act who had paid poll taxes when they became due and the Act would, in this respect, affect only those who had failed to discharge their obligations for poll taxes. Such an effect would be clearly inequitable and unreasonable, and while there may be no lack of legislative power to pass such a statute, language clearly indicating that intent must be contained in the Act.

I am of the opinion that the language used in chapter 118, Acts of 1937, does not clearly indicate an intent to produce such an unreasonable result and that it may reasonably be construed as exempting the persons named only from poll taxes which should thereafter become due and payable. It follows that the liability for poll taxes due and payable in May, 1937, and preceding years is not affected by chapter 118, Acts of 1937. In view of the fact that under the statute the second installment of poll taxes payable in 1937 is payable

on or before the first Monday in November, 1937, and would not be delinquent until that day, the Act may be construed as relieving the persons named therein from the obligation to pay the November, 1937, installment of poll taxes without (a) giving the Act a retroactive effect or (b) producing an unreasonable result in its operation.

BEAUTY CULTURISTS, BOARD OF: Demonstrators, licensing of as beauty culturists.

June 29, 1937.

Lucille M. Booher, Secretary,
State Board of Beauty Culturist Examiners,
219 State House,
Indianapolis, Indiana.

Dear Madam:

Your letter of June 22 asks whether or not you have a right to prevent demonstrators working on customers for the purpose of demonstrating the commodities which they sell, without first obtaining a license in Indiana as a beauty culturist.

Section 2 of chapter 72 of the Acts of 1935 provides in part:

> "Anyone or any combination of the following practices when performed upon the head, face, neck, shoulders, arms and/or hands for cosmetic purposes and done for the public generally for pay or compensation shall constitute the practice of beauty culture. * * *"

Section 1 of the Act says that it shall be unlawful to practice beauty culture without a license.

In view of the definition of what shall constitute the practice of beauty culture as hereinabove set out, it is my opinion that the demonstrators of whom you speak in your letter do not need an Indiana license to continue with their work of demonstration. This is true for the reasons that first: the demonstrators are not doing these things for the public generally; and second: they are not doing these things for the public generally for pay. The use of the words "for pay" clearly means that the pay or compensation shall flow to the individual doing the work from the public generally and shall