as to certificate of registration holders and the portion of the 1935 law dealing with the same subject would give way. Therefore, then, in view of what I have said it is my opinion that if this special session of Legislature were to repeal section 7 of chapter 271 there would be in Indiana no law relative to the display of certificates of registration in holders or otherwise, Further support is found for this conclusion in section 1-307, Burns' Statutes 1933, the same being section 1 of chapter 36 of the Acts of 1877 which provides in part as follows: "Whenever an Act is repealed which repeals a former Act, such Act shall not thereby be revived, unless it shall be so expressely provided * * *

PLANNING, STATE BOARD OF: Towns. Whether towns are treated as having established a plan commission without action by the Board of Trustees.

Hon. L. F. Moorman, Director,
State Planning Board of Indiana,
239 N. Pennsylvania Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion construing Chapter 3 of the Acts of 1927 which provides as follows:

"SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That the provisions of chapter 209 of the Acts of the General Assembly of 1921, and all Acts amendatory thereof, relating to city planning in the respective cities of this state, may apply with equal and like effect to the several incorporated towns of this state, except that the rights, powers and duties of the common council and the city plan commission, as prescribed in said act, shall be possessed, exercised and performed by, and are hereby conferred upon the boards of trustees in incorporated towns; and the rights, powers and duties of the city clerk and the city controller, as prescribed in said Act, shall be
possessed, exercised and performed by and are hereby conferred upon the town clerks in incorporated towns."


The specific point upon which you desire my opinion is as to whether the above provisions operate to establish a plan commission in every town of the state without action by their several boards of trustees as is required to be done by common councils of cities by chapter 209 of the Acts of 1921 as amended in order to establish a plan commission in a city.

Chapter 209 of the Acts of 1921 as originally enacted and as thereafter amended, except for the provisions of chapter 3 of the Acts of 1927 quoted above, applied and could be made to apply only to cities. As already stated, it did not, however, establish a city plan commission in every city. It simply provided, quoting from section 1 as amended in 1925, that "the common council of each city of the state of Indiana, may, by ordinance, provide for the establishment of a city plan commission for such city." The above provision, it quite readily will be observed, does not create, but simply delegates to the common councils of cities the power to create. That this is true is emphasized by the language of section 11 of the Act which provides that,—

"In the event any city shall have a governing commission or other body performing legislative functions, then the powers herein granted to the common council with reference to the creating of a city plan commission, its representation thereon, the appropriation of funds, and the levying of taxes therefor, shall be applicable to and is hereby conferred upon such governing commission or other legislative body."

Burns' Indiana Statutes Annotated (1933) section 48-2211.

Returning now to the 1927 Act supra, it provides in unmistakable language, I think, that, with certain exceptions, "the provisions of chapter 209 of the Acts of the General Assembly of 1921, and all acts amendatory thereof, relating to city planning in the respective cities of the state, may apply with equal and like effect to the several incorporated towns of this state." But no provision of chapter 209, supra, established a
plan commission. All that chapter 209, supra, did toward establishing such a commission was to provide that the common council by ordinance COULD establish one. Chapter 3 of the Acts of 1927 makes that provision applicable to incorporated towns, with the perfectly obvious exception that since a town does not have a common council, the right to pass such an ordinance establishing a plan commission shall be possessed, exercised and performed by the board of trustees of any such town. Under chapter 209, supra, the city plan commission in case one was established consisted of nine members. Four of these were city officers who held their position on the plan commission ex officio. Obviously this scheme could not apply in the case of towns and so the Legislature provided in chapter 3 of the Acts of 1927 that the board of trustees of a town establishing the plan commission should act as the town’s plan commission. A similar purpose was served by providing that in the case of a town, the town clerk should perform the services set up in chapter 209, supra, to be performed by the city clerk and the city controller. The meaning and scope of chapter 3 of the Acts of 1927 appears to me to be clear. It does not, in my opinion, establish a town plan commission in every town irrespective of and without action by their board of trustees. A further reason for this conclusion exists by reason of the fact that nowhere in the 1927 Act can either the word create or establish be found. If the Legislature had intended to create or establish a town plan commission in every incorporated town in the state, how easily it could have done so by the simple provision, “There is hereby established in every incorporated town in this state a plan commission consisting of the several boards of trustees of such towns who shall possess all the rights and powers and shall exercise and perform all the powers and duties of the common council and city plan commission as provided in chapter 209 of the Acts of the General Assembly of 1921 and all Acts amendatory thereof.” The obvious purpose of the 1927 Act, however, is not to create or establish plan commissions in all incorporated towns, but to so extend the 1921 Act applying to cities as to enable towns to avail themselves of the provisions of said Act of 1921 upon the same terms as applied to cities, making, of course, the necessary substitution of officials of towns for those of cities as set out in the 1921 Act.