states. This distribution is made to some extent in accordance with the population which each state bears to the total population of the United States. Without definite information, therefore, as to the amount of money actually allocated to the State of Indiana by the United States Government for the year 1937, I am unable to state the amount which the governor might be authorized to appropriate for these purposes. However, reference to the Federal statute discloses that these appropriations end June 30, 1938, and if additional appropriations were made by Congress before adjournment we do not have such laws at hand.

It will be noted from a reading of section 40-614, Burns' Indiana Statutes, 1933 Revision, above quoted, that in the event the United States Government fails to renew these allotments "then and in that event the governor is hereby authorized to appropriate such sum of money as is necessary to carry out the provisions of this Act, not exceeding, however, the maximum amount otherwise appropriated by the assembly for the purposes in this Act specified."

It is my opinion that the governor is limited by the provision last quoted and would accordingly be unauthorized to permit expenditures by the commission in amounts in excess of that charged against the general fund for the calendar year ending June 30, 1938. However this may be, answering your question specifically, it is my opinion that no part of the million dollars appropriated by the Indiana General Assembly of 1938, and referred to in Section 52-804, Burns' Indiana Statutes, 1933 Revision, first above quoted, can be used by the Governor's Commission on Unemployment Relief for operating expenses of the commission.

TAX COMMISSIONERS, STATE: County highways. Tax for maintenance and repair. September 21, 1938.

Hon. Philip Zoercher,
Chairman State Tax Commission,
State House,
Indianapolis, Indiana.

Dear Mr. Zoercher:

This will acknowledge receipt of your letter of September 16, in which you submit the question as to whether or not
county officials have authority to levy a tax for the maintenance, repair and preservation of county highways.

In reply to this question, your attention is directed to the original Act concerning the maintenance and repair of free gravel or macadam roads, which is chapter 330, Acts of the Indiana General Assembly 1913. Section 3 of this Act charged the county highway superintendent with the duty of maintenance of the various highways of the county and provided that the board of commissioners should levy a proper tax for the purpose of raising the necessary funds to pay the expense of such highway repairs.

Section 8 of this Act provided for the levying of county tax in counties containing free gravel, macadamized or other improved roads, such tax not to exceed one cent upon each one hundred dollars of taxable property for every ten miles of such road, the proceeds of such levy to constitute a gravel road fund in the county treasury to be paid out only upon the warrant of the county auditor, etc.

Section 3 of this Act was amended by chapter 34 of the Acts of the Indiana General Assembly 1932 Special Session, which Act became effective September 30, 1932, and which Act contained the following provision:

"Hereafter no tax levy shall be made for the maintenance and repair of county highways, but all expenses incurred in the maintenance and repair of such highways shall be paid out of the funds accruing to the several counties from the gasoline tax and the motor vehicle registration fees distributed to such counties by the state, as provided by law."

At the same special session of the Indiana General Assembly 1932: "An Act transferring all township highways to the respective counties in which such townships are situated, providing for the maintenance, repair and preservation of such highways and prohibiting the levy of a tax for the maintenance, repair and preservation of county highways" was passed. This was chapter 16 of the Acts of the Indiana General Assembly 1932 Special Session. This Act was approved August 10, 1932, and section 5 thereof reads as follows:

"Sec. 5. Hereafter all expenses incurred in the maintenance, repair and preservation of county highways, including all township highways which are transferred
to the counties and incorporated in the county highway system, as hereinbefore provided, shall be paid out of such funds as may be derived from the gasoline tax and the motor vehicle registration fees and which are paid to the several counties by the state, as provided by law, and no tax shall be levied hereafter by any county in this state for the repair, maintenance or preservation of county highways, except by unanimous vote of the county council in a case of extraordinary emergency or indispensable necessity."

The question therefore presented is whether or not a tax may now be levied for the repair, maintenance or preservation of county highways in case the county council by unanimous vote find an extraordinary emergency or indispensable necessity therefor.

It will be noted that the Act last quoted in section 7 provided that "This Act shall be in full force and effect on and after the 10th day of September, 1932." Since the Act failed to declare an emergency, however, it is obvious that declaring the Act in force on the 10th day of September is a nullity and the Act in truth and in fact did not become operative until it was properly promulgated by executive order. The Act accordingly did not become effective until the governor's proclamation, which was on September 30, 1932. The provisions of chapter 34, above quoted, also became effective by the governor's proclamation on September 30, 1932. But since this Act was approved by the Legislature on August 15, 1932, it is in effect controlling. The rule is that "when two acts are passed at the same session of the Legislature, the presumption is strong against implied repeal and effect must be given to each position; but if the two are irreconcilable the one which was approved last will prevail." Newbauer v. State, 200 Ind. 118.

It is apparent, therefore, that the provisions of Chapter 34, which absolutely forbid the levying of a tax for the maintenance and repair of county highways, is controlling in the matter and, therefore, impliedly repeals the section which authorizes a levy in the case of extraordinary emergency or indispensable necessity.

Chapter 34 of the Acts of the Indiana General Assembly 1932 Special Session was repealed by chapter 19 of the Acts of the Indiana General Assembly 1933, but its repeal was not
accompanied by any provision which attempted to reinstate the provisions of Chapter 16 of the Acts of the Indiana General Assembly 1932 Special Session.

It therefore follows that said last named Act is not reinstated and is not in force and effect at this time. Our statute provides that "whenever an Act is repealed, which repeals a former Act, such Act is not thereby revived unless it so expressly be provided." Section 1-307, Burns' Indiana Statutes, 1933 Revision.

It is my opinion, therefore, that the provisions of section 5, chapter 16 of the Acts of the Indiana General Assembly 1932 Special Session, does not authorize the levying of a tax for the repair, maintenance or preservation of county highways.

ACCOUNTS, STATE BOARD OF: County Council. No appropriation of P.W.A. funds necessary.

September 22, 1938.

Hon. W. P. Cosgrove,
State Examiner,
Division of Accounting and Statistics,
State House,
Indianapolis, Indiana.

Dear Mr. Cosgrove:

This will acknowledge receipt of your letter of September 20, in which you submit the following questions:

"Is it necessary to have the funds received from a P.W.A. grant appropriated by the county council, before the county auditor can legally draw a county warrant against such funds?

"Can the proper officials legally enter into a contract for the construction of a county hospital which exceeds the amount appropriated for that purpose by the county council?"

In answer to your first question, your attention is directed to chapter 110 of the Acts of the Indiana General Assembly 1935 which deals generally with the necessity for appropriations by the county council before a warrant may be drawn and payment made out of the county treasury. After reciting