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OFFICIAL OPINION NO. 16

July 10, 1969

Hon. Adam Benjamin, Jr.
504 Broadway, Suite 828
Gary, Indiana 46402

Dear Representative Benjamin:

This is in response to your request for an Official Opinion on the interpretation of Senate Enrolled Act No. 216, to be published as Acts of 1969, Ch. 367, as found in Burns' (1969 Supp.), Sections 47-2606, 47-2608a, 47-2704, as follows:

(1) "Whether Section 5, Senate Enrolled Act No. 216 is void as violative of so much of Article 4, Section 19, Indiana Constitution, which provides that every act shall embrace but one subject matter and matters properly connected therewith?

(2) "Whether Section 5, Senate Enrolled Act No. 216 is void as violative of so much of Article 4, Section 19, Indiana Constitution, which provides that the subject of the act shall be embraced in the title?

(3) "I would further ask that if such opinion finds said section to be constitutional and the law of this state, whether Section 1, Chapter 124, Acts of 1931 (Burns' 42-102) is considered repealed by the aforementioned section."

In answer to your questions numbered one and two, it has long been established in Indiana that the repeal of a former law on any given subject is properly connected with the subject matter of a new law on the same subject, even though the repeal of former laws is not mentioned in the title of the new enactment. *Gabbert v. Jeffersonville R. Co.* (1858), 11 Ind. 365. This principle was reaffirmed in *White v. Board of Medical Registration & Examination* (1956), 235 Ind. 572, 134 N. E. (2d) 556.

Senate Enrolled Act No. 216, Section 5, specifically repeals Acts of 1961, Ch. 345, Sec. 14 and Sec. 15, as found in Burns' (1965 Repl.), Sections 47-2601a and 47-2602b, and also repeals all other acts or parts of acts which are in conflict with

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this act. It is my opinion that the law specifically repealed is sufficiently connected with the subject matter of the new law to be well within the meaning of Indiana Constitution Art. 4, Sec. 19. This question, however, is moot insofar as Section 15 is concerned and probably insofar as Section 14 is concerned. Section 15 was rendered unconstitutional in the case of *State v. Gilbert* (1966), 247 Ind. 544, 219 N. E. (2d) 892, and Section 14 held to be of doubtful constitutionality. Repeal of an unconstitutional act or part of an act can in no way have any effect on its constitutionality.

In answer to your third question, provisions of Acts of 1931, Ch. 124, Sec. 1, as amended and found in *Burns'* (1965 Repl.), Section 42-102 are basically the same as found in the two aforementioned repealed sections in that proof of payment of poll tax and personal property tax must be given before certain licenses can be issued. However, this section is much broader in scope in that it covers issuance of licenses to practice any profession, trade, or occupation which is required by state law, as well as the licensing of motor vehicles. (Driver's licenses also.)

The provisions of this law requiring the payment of poll taxes were repealed in 1965 by Acts of 1965, Ch. 234, Sec. 1. It is my opinion that the provision requiring payment of personal property tax prior to issuance of motor vehicle registration licenses is not repealed by Senate Enrolled Act No. 216 which will be published as Acts of 1969, Ch. 367, as this Act is not in direct conflict. However, House Enrolled Act No. 1630, which will be published as Acts of 1969, Ch. 423, will repeal this section as of January 1, 1971, insofar as it applies to motor vehicle registration. The new law states:

“* * * No person shall, after January 1, 1971, be required to give proof of the payment of ad valorem property taxes as a condition to the registration of any vehicle.”

It is, therefore, my opinion that Acts of 1931, Ch. 124, Sec. 1, as found in *Burns'* (1965 Repl.), Section 42-102, is *not* repealed by Senate Enrolled Act No. 216. *This section will remain in full force and effect until January 1, 1971, when that part which pertains to registration of motor vehicles*

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will be superseded by House Enrolled Act No. 1630 to be published as Acts of 1969, Ch. 423. *However, this section will continue in effect after January, 1971, with respect to driver's licenses.*

Therefore, until January 1, 1971, it is incumbent upon the Bureau of Motor Vehicles and its various branches to require proof of payment of personal property taxes prior to issuance of motor vehicle licenses and driver's licenses, and it is incumbent upon county treasurers and county assessors to provide appropriate receipts and other proof of payment or explanation for non-payment of personal property taxes to individual taxpayers for this purpose. These requirements will continue in force *after January 1, 1971, for driver's licenses only.* (Reference Burns' Section 42-102)