tion, came "into being" at the same time the school corporation was so created. An appointment was made for such person to hold such one year term of office prior to the time the restraining order was so issued, all as contemplated by the reorganization plan. Such appointment was, therefore, legal and it was for a term of office to begin July 1, 1962 and expire July 1, 1963. Under the last referred to authorities, the fact the appointed member was unable to occupy such office would not result in an extension of such term of office. The temporary injunction, therefore, would not toll the time of the North Adams Community School Corporation coming "into being" or extend the one year term of office of the school board member appointed to take office July 1, 1962.

OFFICIAL OPINION NO. 40

September 10, 1963

Mr. T. Michael Smith, Administrator
Inheritance Tax Division
Indiana Department of State Revenue
100 North Senate Avenue
Indianapolis 4, Indiana

Dear Mr. Smith:

This is in reply to your letter requesting an Official Opinion on the following question:

"Will you please advise me in the form of an Official Opinion as to the effective date of Senate Enrolled Act 268, Chapter 265, Acts of 1963 and as to whether the Legislature intended that the same be applied retroactively to transfers caused by decedents dying before the effective date."

An analysis of the above-quoted inquiry reveals that it actually consists of two questions, to-wit:

(1) What is the effective date of Senate Enrolled Act 268, being the Acts of 1963, Ch. 265?

(2) What is the purpose and effect of said act as to whether the Legislature intended that the same be applied retroactively to transfers caused by
death occurring prior to the effective date of said act?

For answer to the first phase of your inquiry, it is unnecessary to examine the text of said act, other than to observe that it does not contain an emergency clause and does not provide a specific date for its taking effect. Such act is included in the Acts of 1963, which were published and circulated by the office of the Secretary of State of Indiana by transmitting printed copies thereof to the office of the clerk of the circuit court in each of the ninety-two counties. The receipts from the various clerks show that the clerk last to receive his copy of said acts received the same on August 12, 1963, at 3:50 P. M. (E. S. T.), and this is evidenced by Executive Order No. 6-63 of the Governor reciting such fact, which proclamation was issued on August 13, 1963, at 10:10 A. M. (E. S. T.). From the above fact pattern, the actual time of taking effect of this act, and of other acts which contain neither an emergency clause nor a specific date for their taking effect, is dependent upon an application of the Indiana Constitution, Art. 4, Sec. 28, which section has remained unchanged from the version thereof appearing in the Constitution of 1851.

Among the very early decisions and opinions of the Supreme Court of Indiana containing a discussion of the purpose of said constitutional provision is the case of Jones v. Cavins (1853), 4 Ind. 305, particular reference being directed to the following appearing on pp. 310, 311 and 312:

"Another question is made in the cause. The information, as we have stated, was filed pursuant to the provisions of the R. S. of 1852, in April, 1853, and it is contended by the defendant that those statutes were not then in force, as they had not been filed in all the counties of the state, though they had been distributed to the county of Greene. They were not distributed to all the counties in the state till the 6th of May, 1853.

"The decision of this question must depend on the construction given to the following clause of the constitution:
“‘No act shall take effect until the same shall have been published and circulated in the several counties of this state, by authority, except in case of emergency; which emergency shall be declared in the preamble, or body of the law.’ Art. 4, s. 28.

“On one side, it is insisted that, under this provision, a general law, designed to operate throughout the whole state, cannot take effect anywhere till it is distributed to all the counties in the state; while, on the other, it is claimed that every such law comes into force in each separate county on its being filed therein. All agree that the law does not operate over the whole state till it is filed in all the counties of the state. The difference, then, is in regard to the manner in which a law in this state gets into force; one side contending that it comes in at the same moment throughout the whole state; the other, that it comes in by piecemeal, dragging its slow length along through the period of two or three months.

“By the common law, a statute took effect at once throughout the jurisdiction to be governed by it. So it did under our former constitution, where there was no express legislative direction on the subject. In England, a statute took effect from the first day of the session of parliament enacting it. In this state, under the former constitution, from the time it was ‘published in print, by authority, at any place within the state.’ Tredway v. Gapin, 1 Blackf. 299. It had, however, before the framing of the new constitution, become a common practice for the legislature to provide that laws should take effect in each county when filed therein, thus producing, for a considerable length of time, an entire want of uniformity in the laws in force.

“In this state of things, the constitutional convention framed the provision we have quoted, declaring that no law should take effect till it was ‘published’ and ‘circulated’ (two words, as here used, meaning the same thing) ‘in the several counties of this state;’ and we think the intention was to arrest the piecemeal mode in which laws had, for a time, been brought into
operation, and to make their taking effect a single entire thing throughout the state. It seems to us that the language of the constitution will fairly admit of no other construction. It speaks of no partial taking effect of a law, no coming into force in the different or several counties, but it speaks of its taking effect as a single event, after distribution in the several counties. The term 'several counties,' is used in connection with the distribution, not the taking effect of the laws. Had the language been that laws should take effect in the several counties on distribution, &c., the construction contended for by the plaintiff might have prevailed; but such is not the language; it is prohibitory and clear. It says that no law shall take effect, any effect, anywhere, till a certain condition precedent has been performed, viz., till it has been distributed in, not one or more, but the several counties of the state. Now, the several counties of the state are all the counties of the state. If the law enacted that no opinion should be delivered by the Supreme Court till it had received the approval of the several judges of said Court, would it be pretended that an approval by a less number than all of said judges would fill the requirement of the law?

"We think the revised statutes did not take effect till distributed to all the counties in the state.

"If it be said that inconvenience will result from this construction, we here only answer that one way in which it may be easily obviated, is by the legislature providing that hereafter evidence shall be furnished to the auditor of state of the time of filing the laws in the several counties, and that, upon their being filed in all, proclamation shall be made of the fact, in a certain number of days after which the laws should come into force." (Our emphasis)

This case established the proposition that, pursuant to the Indiana Constitution, Art. 4, Sec. 28, supra, acts of the General Assembly are to become effective throughout the state at one and the same time. With respect to acts not containing an
emergency clause, it further established the proposition that statutes do not take effect until “distributed” to all the counties in the state, or, as the Constitution states, “until the same shall have been published and circulated in the several counties of this state, by authority * * *” (Our emphasis)

The Indiana Constitution then, and up to the present time, makes no reference to a proclamation of the Governor concerning the effective date of statutes not containing an emergency clause and does not state the “authority” by which the publication and circulation of legislative acts is to be accomplished. In Jones v. Cavins, supra, in the last paragraph quoted therefrom, the court recognized the “inconvenience” which may result from its construction of the Indiana Constitution, Art. 4, Sec. 28, supra, and suggested that the Legislature could provide that evidence be furnished to the auditor of state of the “time of filing the laws in the several counties * * *” The court also suggested that after the laws had been filed in all counties, a proclamation should be made “of the fact” and further suggested that the Legislature provide that the laws should come into force in a certain number of days after the issuance of such a proclamation. Thus, the court was suggesting that the Legislature provide not only for a proclamation as to the actual time of the completion of the filing of the laws throughout the state, but also that such laws should not come into force until the expiration of a given number of days after the issuance of such a proclamation.

It is significant that the Legislature, at its next session, apparently acted upon this suggestion, accepting the proposal for a proclamation announcing the fact of the completion of the filing of the laws throughout the state, but not accepting the proposal for staying the effective date thereof for a given number of days after the issuance of such proclamation. Reference is made to the Acts of 1855, Ch. 100, the title of which reads:

“AN ACT providing for official notice of the time when the statutes of this State are in force.”

The Acts of 1855, Ch. 100, Secs. 1 and 2, as found in Burns’ (1946 Repl.), Sections 1-102 and 1-103, read as follows:
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1-102 "It shall be the duty of the several clerks of circuit courts in this state, immediately on the receipt of the laws of any session, to transmit to the governor a certificate stating the day when such laws were so received."

1-103 "So soon as certificates from all the counties have been received, the governor shall issue and publish his proclamation, announcing the date at which the latest filing took place; of the facts contained in which proclamation, all courts shall take notice." (Our emphasis)

Burns' 1-102, supra, has been supplemented by subsequent enactment as hereinafter disclosed, but Burns' 1-103, supra, apparently is the authority pursuant to which the Governor has issued a proclamation concerning the publication and circulation of the acts of the Legislature ever since 1855. It is significant that Burns' 1-103, supra, does not provide that legislative acts become effective a given number of days after the issuance of such proclamation, nor does it authorize the Governor to fix the effective date of statutes not containing an emergency clause—which would empower him, by proclamation, to fix and thereby possibly delay the effective date of such acts. Instead, this section simply authorizes the Governor to issue his proclamation "announcing" a fact, to-wit: "the date at which the latest filing took place * * *"

Comparing this section with the language appearing in the last paragraph quoted from Jones v. Cavins, supra, it would seem that the filing, to which the Legislature made reference in the statute, is the filing of the acts themselves in the several counties, since the court, in said case, suggested a proclamation to be made of the fact "of the time of filing the laws in the several counties * * *"

In an opinion of the Indiana Supreme Court issued subsequent to the Acts of 1855, Ch. 100, supra, in the case of The State, on the relation of Brown, Prosecuting Attorney, &c. v. Bailey and Others (1861), 16 Ind. 46, at p. 48, is the following:

"Whenever, then, the acts, or any portion of them, of a session of the Legislature are distributed in a
bound volume, in a manner and shape not substantially contrary to the statute on that subject, in all the counties of the State, by the Secretary of State, through his agents appointed for that purpose, they are distributed or published by authority * * *

"* * * The inconvenience, the confusion, that would result from making the coming into force of a statute a question of fact for the jury, has led to the adoption of the principle everywhere, that it shall be a question of law for the judicial knowledge of the Court. The Court informs itself as best it can. Now, it takes judicial knowledge of the proclamation of the Governor, as to the time when the general volume of biennial statutes takes effect * * *"

Thus, the court in the foregoing case took cognizance of the provisions contained within Burns' 1-103, supra, by taking judicial knowledge of the proclamation of the Governor "of the facts contained in which proclamation, all courts shall take notice." Therefore, the proclamation of the Governor is but evidentiary of the time when the publication and distribution of the acts by authority throughout the entire state was completed.

There are certain cases on this general subject from which it might seem to some that the actual time of issuance of the proclamation of the Governor is the effective date. One of such cases is The State of Indiana v. Williams (1910), 173 Ind. 414, 90 N. E. 754, in which the court stated, in 173 Ind. 416:

"It is beyond question that a legislative enactment can only go into effect either by the declaration of an emergency in the act itself, or upon distribution of the session laws to the various counties, and the proclamation of the Governor * * *"

However, this case is not authority in support of the concept that the date of the issuance of the Governor's proclamation is the effective date when there is a variance between such date and the date upon which the publication and circulation
was completed as provided by the Indiana Constitution, Art. 4, Sec. 28, supra. It does not appear from the case of The State of Indiana v. Williams, supra, that there was any difference in said dates. The case merely states in 173 Ind. 415:

"* * * The acts were published and were circulated in the several counties November 20, 1908, and the Governor's proclamation so made * * *"

Thus, this case, by its reference to the necessity for the proclamation of the Governor, affords no basis for the proposition that the date of issuance of the proclamation is the effective date of acts not containing an emergency clause, but is merely a recognition of the fact that the Legislature has provided for the issuance of such proclamation to serve as the official certification of the date and time at which publication and circulation of such acts was completed in the several counties throughout the state.

Reference is made to the case of Herrick v. Sayler (1957), 245 F. 2d 171, which, among other things, concerned the effective date of the Indiana Acts of 1955. In this case, although the date of the receipt of a copy of the Acts of 1955 by the clerk last to receive such copy and the date of the proclamation of the Governor was the same date, to-wit: June 30, 1955, the court, in an opinion written by the Hon. H. Nathan Swaim of the United States Court of Appeals, Seventh Circuit, stated in 245 F. 2d 173:

"* * * The amendment was signed by the governor on March 11, 1955, and the governor's proclamation as to legislative acts was on June 30, 1955. The amendment did not contain an emergency clause nor any provision concerning its effective date. In these circumstances Indiana law is clear that the amendment did not become effective until distributed to the several counties as shown by the proclamation of the governor on June 30, 1955, which was subsequent to the date of the alleged tortious act and the commencement of this action. Ind. Const. art. 4, § 28; State ex rel. White v. Grant Superior Court, 202 Ind. 197, 172 N. E. 897, 71 A. L. R. 1354; Schwomeyer v. State, 193 Ind. 99, 138
Under the Indiana Constitution, Art. 6, Sec. 1, the Secretary of State "shall perform such duties as may be enjoined by law * * *" Concerning the instant situation, the latest enactment of the Legislature provides that the publication and distribution of the acts shall be by the Secretary of State, as provided in the Acts of 1897, Ch. 69, as last amended by the Acts of 1957, Ch. 335, as found in Burns' (1963 Supp.), Section 49-1607 et seq. Burns' 49-1607, supra, directs the Secretary of State to print copies of the acts of each session of the General Assembly. Burns' 49-1612, supra, specifically directs that the Secretary of State "shall distribute the acts of each session of the General Assembly to the clerk of the circuit court of each county within the state of Indiana." Burns' 49-1613, supra, directs that the clerk of the circuit court of each county shall send to the Secretary of State, by first mail, a statement under the seal of such clerk's office showing his receipt for said acts. Thus, from the foregoing cases, together with the Acts of 1957, Ch. 335, which is the present statute providing for the printing and distribution of the Acts of the General Assembly, it is made to appear that the "authority" presently charged with the duty of publishing and circulating the Acts of the General Assembly, as contemplated by the Indiana Constitution, Art. 4, Sec. 28, supra, is the Secretary of State.

I am informed that the official receipt from the clerks of the various circuit courts of this state is a printed form which has been in use for many years and which is directed "To the Secretary of State and/or the Governor of Indiana." This apparently is because of the fact that the Acts of 1855, Ch. 100, Sec. 1, supra, (Burns' 1-102) providing for the receipts to be transmitted to the office of the Governor, has never been explicitly repealed, whereas the Acts of 1957, Ch. 335, as found in Burns' (1963 Supp.), Section 49-1607 et seq., supra, prescribed that such receipts be returned to the Secretary of State. I am also informed that some of these receipts are received by the one office and some by the other, but that
in practice, the office of the Governor forwards all such receipts received by that office to the office of the Secretary of State. Upon all clerks of the circuit courts of the 92 counties having transmitted such receipts and the same having been ultimately received by the office of the Secretary of State, that office determines from the dates and times shown upon said receipts, the date and time at which the clerk last to receive such copy of the acts received the same. Thereafter, the Secretary of State certifies this fact to the office of the Governor, which certification furnishes the basis for his official proclamation announcing the date and time at which such state-wide circulation was completed.

The Executive Order No. 6-63 by the Honorable Matthew E. Welsh, Governor of Indiana, issued on August 13, 1963, at 10:10 A. M. (E. S. T.) does not purport by order to fix the effective date of the Acts of 1963, but specifically states that the proclamation is merely the "announcing" of the date of August 12, 1963, at the hour of 3:50 P. M. (E. S. T.) "as the day and hour at which the last receipt and distribution of said Acts took place with each of the several Clerks of the Circuit Courts of the State of Indiana; and declaring said distribution of said Acts to have been completed as [of] said hour and said date * * *" This is in harmony with the theory that it is the fact of the completion of circulation of the acts, by authority, which establishes the effective date.

Therefore, as stated in the above case, the proclamation of the Governor is but the official notice of the time of completion of the process of circulation of the Acts of 1963 "in the several counties of this State, by authority," which time is the effective date of said acts which do not contain an emergency clause. Therefore, the same became effective on August 12, 1963, at 3:50 P. M. (E. S. T.) and not on August 13, 1963, at 10:10 A. M. (E. S. T.), the latter date being merely the date upon which the proclamation itself was issued.

For answer to the second phase of your inquiry, it is necessary, now, to examine the text of the specific act to which it relates. Senate Enrolled Act No. 268, being the Acts of 1963, Ch. 265, as found in Burns' (1963 Supp.), Section 7-2403, as passed by the 1963 Indiana Legislature, reads as follows:
“SECTION 1. Acts 1931, c. 75, s. 3, as amended by Acts 1947, c. 311, s. 1, is amended to read as follows: Sec. 3. There shall be exempt from the tax imposed by this act (a) all transfers to or for the use of any municipal corporations within this state; (b) all transfers to any public institutions for exclusive public purposes; (c) all transfers to any trustee or trustees in trust for the sole benefit of any charitable, educational, or religious organization, fund, or foundation; and (d) all transfers to any corporation, institution, society, association, or trust, wherever incorporated or organized, formed for charitable, educational, or religious purposes: Provided, That in all cases under subdivisions (a), (b), and (c) and in the case of transfers under subdivision (d) to corporations, institutions, societies, associations or trust not incorporated or organized under the laws of the State of Indiana, the exemption shall be granted only if the entire property transferred or the entire income therefrom is to be used exclusively, either according to the provisions of the will or other instrument of transfer or according to the past practices of the donee or donees, for one or more of such purposes within the State of Indiana, and in the case of transfers under subdivision (d) to corporations, institutions, societies, associations or trusts incorporated or organized under the laws of the State of Indiana the exemption shall be granted only if more than a merely nominal part of the property transferred or of the income therefrom is to be used, either according to the provisions of the will or other instrument of transfer or according to the past practices of the donee or donees, for one or more of such purposes within the State of Indiana, and only if, as respects that part of the property transferred or the income therefrom which is not to be used for one or more of such purposes within the State of Indiana, the use or uses which are to be made of a material share of such property or such income, either according to said provisions or according to said past practices, are for the benefit of mankind generally and not for the exclusive benefit of a particular locality outside the
State of Indiana; but in all cases under subdivisions (a), (b), (c) and (d) no such transfer shall be so exempt if any officer, member, shareholder or employee of such corporation, institution, society, association or trust shall receive or may be lawfully entitled to receive any pecuniary profit from the operation thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of a strictly charitable purpose, or if the organization of any such corporation, institution, society, association, or trust for any of the foregoing avowed purposes be a guise or a pretense for directly or indirectly making it, or for any of its officers, members, shareholders or employees any other pecuniary profit, or if it be not in good faith organized or conducted for one or more of such purposes: and Provided further, That the exemptions in all cases under subdivisions (b), (c) and (d) shall extend to persons, organizations, associations and corporations organized under the law of other states, and resident therein, provided the law of such other state grants to persons, organizations, associations and corporations organized under the law of the State of Indiana, and resident therein, a like and equal exemption.

"Transfers to a wife and transfers to a husband shall be taxable only to the extent that the value of the property so transferred exceeds fifteen thousand dollars ($15,000), and transfers to any child of decedent under the age of eighteen shall be taxable only to the extent that the value of the property exceeds five thousand dollars ($5,000), and transfers to any other person in Class A shall be taxable only to the extent that the value of the property exceeds two thousand dollars ($2,000). Transfers to any person in Class B shall be taxable only to the extent that the value of the property so transferred exceeds five hundred dollars ($500). Transfers to any person or corporation in Class C shall be taxable only to the extent that the value of the property transferred exceeds one hundred dollars ($100). The foregoing exemptions shall be deducted from that portion of the assigned

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interest of any transferee which may be taxable at
the primary rate of tax.” (Our emphasis)

The only change made by the 1963 Legislature by its en-
actment of Ch. 265, supra, was the addition of the words “and
transfers to a husband” (emphasized above) at the beginning
of the second rhetorical paragraph. The remainder of said
act is a re-enactment of Section 3 of the Indiana Inheritance
Tax Law, being the Acts of 1931, Ch. 75, Sec. 3, as amended,
as found in Burns’ (1953 Repl.), Section 7-2403.

It has been held that where provisions of the original act
are re-enacted in the same, or substantially the same, language
as in the amendatory act, then they are considered a continua-
tion of the original act.

Huff v. Fetch (1924), 194 Ind. 570, 143 N. E 705;
636.

Therefore, rights and liabilities which have accrued under
the provisions of the original act are not affected by the
amendment.

People v. Zito (1908), 237 Ill. 434, 86 N. E. 1041;
Moore v. Commonwealth (1930), 155 Va. 1, 155
S. E. 635.

It appears that the great weight of authority does not
favor retroactive operation of statutes.

“Retrospective operation is not favored by the courts
* * * and a law will not be construed as retroactive
unless the act clearly, by express language or necessary
implication, indicates that the legislature intended a
retroactive application.”

Sutherland Statutory Construction, 3rd Ed., Vol. 2,
Sec. 2201, p. 115.

Indiana is clearly in accordance with the above conclusion
as shown by the following cases:
This same principle is applied to the operation of amendatory acts, where the amendment affects substantive as contrasted to procedural rights:

"* * * In accordance with the rule applicable to original acts, it is presumed that provisions added by the amendment affecting substantive rights are intended to operate prospectively. Provisions added by the amendment that affect substantive rights will not be construed to apply to transactions and events completed prior to its enactment unless the legislature has expressed its intent to that effect * * *"

Sutherland Statutory Construction, 3rd Ed., Vol. 1, Sec. 1936, p. 434.

A contrary position has been taken by the Supreme Court in cases involving statutes of limitation and repose, wherein the Court has held that such statutes have, in effect, retrospective operation.

In re Batt's Estate (1942), 220 Ind. 193, 41 N. E. (2d) 365;

State ex rel. Trimble v. Swope (1855), 7 Ind. 91.

The statute herein in question, however, is clearly not of this type.

The Supreme Court of Michigan, in ruling on whether an amendment allowing an exemption from the Michigan sales
tax was retroactive, stated in Montgomery Ward & Co., Inc. v. Fry (1936), 277 Mich. 260, 269 N. W. 166, at pp. 170, 171:

"Act No. 167, Public Acts 1933, carried no exemption of tangible personal property for consumption or use in 'agricultural producing' (Boyer-Campbell Co. v. Fry, 271 Mich. 282, 260 N. W. 165, 98 A. L. R. 827), but the amendment (Act No. 77, Public Acts 1935) so provides, and states that the amendment 'shall be construed as declaratory of the intention of the legislature in the enactment of act number one hundred sixty-seven of the public acts of nineteen hundred thirty-three, and the state board of tax administration shall not collect or receive any tax upon the gross proceeds of any sales not taxable under this act as amended' * * *

"The tax here involved and its payment under protest preceded the amendment, but plaintiff seeks to have the amendment operate retroactively and thus permit return of the tax so paid under such declaration of previous intention. Such declaration of legislative intention cannot so operate; its purpose is fulfilled by the restraining upon collections thereafter." (Court's emphasis)

See also: Salt Lake Union Stock Yards v. State Tax Commission (1937), 93 Utah 166, 71 P. (2d) 538.

Whereas your inquiry concerns the issue of whether an increase in an exemption, granted by the Indiana inheritance tax statute itself, is to be applied retroactively, a case from the State of California, which is distinguishable in that it concerns an increase in allowance in fees for the executrix and her attorney provided by amendment to the California Probate Code and the question of the retroactive applicability of such increased fees as deductions in computing the amount of tax liability accruing under the California inheritance tax law, is, nevertheless, here referred to because of the similarity of the basic question. Reference is made to In re Skinker's Estate (1956), 47 Cal. (2d) 290, 303 P. (2d) 745, at pp. 747 and 748, wherein that Court stated the following:
"In fixing the inheritance tax due by reason of the death of decedent, should there be permitted as a deduction the statutory commissions allowed the executrix and her attorney as set forth in section 901 of the Probate Code in effect at the time of decedent's death on July 19, 1955, or the increased fees as allowed by section 901 of the same code as amended and effective September 7, 1955?

"We are of the opinion that the commissions of the executrix and her attorney, allowed as deductions for inheritance tax purposes, should be the amount of the statutory commissions in effect at the time of decedent's death, to wit, July 19, 1955, and not the increased fees as allowed by section 901 of the Probate Code as amended and effective September 7, 1955.

"The question here posed is clearly determined by the provisions of section 13988 of the Revenue and Taxation Code, which reads in part as follows:

"The ordinary expenses of administration in the estate of any decedent are deductible from the appraised value of property included in any transfer subject to this part made by the decedent.

* * *

"The reasonable interpretation of section 13988 of the Revenue and Taxation Code based upon the examination of the statutory provisions is that there should be allowed as deductions for inheritance tax purposes commissions based upon the schedule of rates provided by section 901 of the Probate Code at the time of decedent's death, that is, in the instant case, the so-called 'old rates.'

"Such an interpretation is in keeping with the whole tenor of the inheritance tax law, which keys everything to the date of decedent's death. * * *

* * *

"These statutory provisions indicate a clear legislative intent to restrict the deductions for executor's
and attorney's commissions to that computation in effect at the date of decedent's death, that is, in the present case, pursuant to the 'old rates.'

"* * * It is established that inheritance taxes are fixed and determined in accordance with the law in effect at the date of the transfer, which in this case would be the date of death." (Court's emphasis)

With respect to the tax upon transfers defined in Section 1 of the Inheritance Tax Act, being the Acts of 1931, Ch. 75, Sec. 1, as amended, as found in Burns' (1953 Repl.), Section 7-2401, it has been held that the tax is upon transfers effected or motivated by death and that such taxes accrue upon the date of death. This results from the statutory provision of Section 31 of the Act, as found in Burns' (1953 Repl.), Section 7-2431:

"All taxes, imposed by this act shall be due and payable at the time of the transfer, except as herein provided."

Speaking of the nature of the transfers to which our Inheritance Tax Law is applicable, the Appellate Court of Indiana in the case of Indiana Department of State Revenue, Inheritance Tax Division, State of Indiana v. Kitchin, Admr. (1949), 119 Ind. App. 422, 86 N. E. (2d) 96, stated, in 119 Ind. App. 425:

"Our tax is upon the transfer of property by will, by intestate laws or in contemplation of death. The tax is based upon the value of the property so transferred * * *" (Court's emphasis)

It is, then, the incident or fact of death which creates the transfer upon which the tax is imposed. Therefore, in the case of any decedent dying before the effective date of the act here involved, a transfer would have been made and the liability for the tax fixed at the moment of death, and such liability could only be determined in accordance with the statute in effect at the time of death.

In In re Cress' Estate, 335 Mich. 551, 56 N. W. (2d) 380, the Supreme Court of Michigan held that the right of the
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state to inheritance tax becomes fixed at the moment of
death, although the value of the taxable interest is determined
at a later time.

As noted from the Indiana Inheritance Tax Law and cases
construing the same, to which reference has heretofore been
made, our statute, likewise, has been interpreted "in keeping
with the whole tenor of the inheritance tax law, which keys
everything to the date of the decedent's death." In re
Skinker's Estate, supra.

It is, therefore, my opinion that Senate Enrolled Act 268,
being the Acts of 1963, Ch. 265, became effective on August
12, 1963, at 3:50 P. M. (E. S. T.), the time at which the
distribution of the Acts of 1963 to all the counties of this
state was completed as provided in the Indiana Constitution,
Art. 4, Sec. 28, supra; and that the amendment in said act is
not retroactive as to transfers caused by death occurring
prior to said effective date.

OFFICIAL OPINION NO. 41

September 12, 1963

Mr. Harry E. McClain
Insurance Commissioner
Department of Insurance
509 State Office Building
Indianapolis 4, Indiana

Dear Mr. McClain:

Your letter of August 12, 1963, requesting my Official
Opinion presented the following questions:

"May a domestic insurance company formed under
the 1935 insurance act use the word 'assurance' in its
name in place of the word 'insurance' and be in com-
pliance with the act?"

Your second question is stated as follows:

"A. If a foreign or alien insurance company not
admitted to do business in this state at the effective