of the Acts of 1955, Ch. 329, as amended, would be considered a "regularly employed" teacher if he taught, even as a substitute, for more than six weeks during the school year and would be required to be under written contract. Such retiree's benefit payments from the Teachers' Retirement Fund would then cease after thirty consecutive school days of such re-employment.

OFFICIAL OPINION NO. 34

May 16, 1962

Hon. Charles O. Hendricks
Secretary of State
201 State House
Indianapolis 4, Indiana

Dear Mr. Hendricks:

Your letter concerning the Indiana Yearly Meeting of Friends, in which you request an Official Opinion from this office, reads as follows:

"This letter is in reference to a letter received December 1, 1961, by the office of the Secretary of State, concerning the corporate capacity of the Indiana Yearly Meeting of Friends.

"This Concern was originally incorporated in the State of Indiana by an Act of the Legislature of 1850. The Indiana Yearly Meeting has recently been re-incorporated under the Act of 1943, Chapter 108. There is some question as to the intent of the Act under which they were originally incorporated. This Act attempted to impose the limitation of $20,000.00 on either:

"(a) The amount of gifts which could be received each year, or

"(b) The amount of income of the corporation to be received each year, or

"(c) To limit in some other way.

"Prior to the re-incorporation, the Yearly Meeting was made the beneficiary under the will of Miss Lillian
Baldwin of Cleveland, Ohio and under an inter vivos trust agreement entered into by her prior to her death. The total amount involved in these gifts will be in the amount of $200,000.00.

“We request your official opinion as to whether or not the Indiana Yearly Meeting of Friends, as incorporated under the Act of 1850, have the capacity to receive these gifts in excess of $20,000.00.”

The question posed by your letter brings in issue the Acts of 1850, Ch. 269, Sec. 1, which is the act passed by the Legislature for the purpose of incorporating the Indiana Yearly Meeting of Friends. Section 1 of that Act created the “Indiana Yearly Meeting of the Religious Society of Friends,” and, among other powers, provides that it:

“* * * shall have power to make and use a Common Seal, and the same to change and alter at pleasure, and that they and their successors being admitted and approved of as members of said Yearly Meeting according to their Order and Discipline, shall have perpetual succession, and be able and capable in law, to Receive, Hold, and Enjoy, by Purchase, Devise, Gift, or otherwise, Lands, Tenements, Hereditaments, Goods and Chattels, Estates and Property of every kind, (not, however, exceeding the annual net value of twenty thousand dollars) of which they shall stand seized and possessed notwithstanding any misnomer or imperfect description in the gift, grant, or other transfer or conveyance thereof * * *” (Our emphasis)

Of historical significance, perhaps, are the events which apparently led to the original incorporation of the Indiana Yearly Meeting in 1850. Supplemental material, which has been supplied with the request for the Official Opinion, discloses that prior to 1850, one Josiah White, a devout Quaker from Philadelphia, while visiting the Indiana Yearly Meeting at Richmond, Indiana, evidenced a desire to leave $20,000 to that Society for the purpose of purchasing land and establishing a school for Indian children and neglected or dependent children of other races. To expressly provide the authority for the Society to receive this sum, and subsequent to this offer of
$20,000 by Mr. White, the Indiana Yearly Meeting was incorporated in 1850 and, upon the death of Mr. White in that year, the White's Indiana Manual Labor Institute was established. From its creation to the present time, White's Institute has been governed by trustees elected annually by the Indiana Yearly Meeting.

While the parenthetical phrase in Sec. 1 of Ch. 269 of the Acts of 1850, above-quoted, purports to fix a limitation upon the amount of property which this Society may receive annually, an examination of the history, the law and the facts related to this problem compel the conclusion that this apparent limitation has not been effectual for many years past. It may be that this provision in the said 1850 Act was based upon the same theory as that upon which the so-called mortmain statutes were founded in Europe in ancient times. These statutes are discussed in 10 Am. Jur., Charities, § 43, entitled "Effect of Mortmain Statutes," which reads as follows:

“When the Emperor Constantine permitted his subjects to bequeath their property to the church, the permission was soon abused; so much so that later, when it became too common to give land to religious uses, consistently with the free circulation of property, the supreme authority of every nation in Europe, where Christianity prevailed, found it necessary to limit such devises by statutes of mortmain. In some jurisdictions statutes have been in force prohibiting a religious corporation from taking land by devise, while other acts of a less stringent nature have limited the amount of property a religious corporation could receive by devise or bequest to that which would produce a stated income.

“It seems that the English statutes of mortmain, by which the right of alienation to corporations was abridged, were never in England supposed to have been meant to extend to her colonies, and were never in force in those in America which became independent states, except by legislative adoption.”

As above-stated, the mortmain statutes did not extend to any states of the United States except by legislative adoption. Whether the parenthetical phrase in Sec. 1, Ch. 269 of the
Acts of 1850, *supra*, represented an effort to perpetuate the reasoning behind the mortmain statutes as applied to this particular Society, or whether it was intended, in reality, merely as authorizing the receipt of the specific sum of $20,000 which Josiah White desired to leave to the Society, the fact is that the language, at the time of its enactment, purported to fix a limitation upon the property which the Society was capable of receiving, holding, enjoying by purchase, devise, gift or otherwise of every kind not to exceed "the annual net value of twenty thousand dollars." There is no question but that the theory of the mortmain statutes is no longer followed in Indiana, and that many years ago the Legislature of this state and its courts established the rule that bequests, devises and gifts for charitable uses are to be highly favored. That this rule is in force in Indiana, is recognized by our courts which have held that such gifts are to be construed by the most liberal rules that the nature of the case will permit. This is indicated by the following cases which are but a few of the cases which could be cited:


In Dykeman *et al.* v. Jenkines, Executor, *et al.*, *supra*, at p. 555, the Indiana Supreme Court stated:

"* * * gifts to charitable uses should be highly favored, and construed by the most liberal judicial rules that the nature of each case, as presented, will admit of, rather than that the gift should fail and the intent of the donor not be accomplished * * *"

This statement by the court is followed by the citation of many supporting authorities. Undoubtedly, the rule, as announced above, is in force in Indiana today and must be considered in the construction of the Acts of 1850, Ch. 269, *supra*, as well as any other statute which has any application to the capacity of the Indiana Yearly Meeting of Friends to accept a gift in excess of the purported statutory limitation contained therein.
Confirming this general rule is the fact that for many years gifts to charitable organizations have been, under various conditions, eligible for exemption from tax liability imposed both by inheritance and income tax statutes of this state. At least, as far back as 1913 in the Indiana Inheritance Tax Law of that year, being the Acts of 1913, Ch. 47, Sec. 4, all property transferred to trustees or a governing body of a religious institution or to corporations organized for religious purposes was exempt from liability for the tax imposed by that act when such property was used exclusively for the purpose of their organization within the State of Indiana. While the language has been changed, the same basic tax-exempt status of such property is provided by Indiana's present Inheritance Tax Law, being the Acts of 1931, Ch. 75, Sec. 3, as amended, as found in Burns' (1953 Repl.), Section 7-2403. Also, Indiana's original and present Gross Income Tax Law, Acts of 1933, Ch. 50, Sec. 6, as amended, as found in Burns' (1961 Repl.), Section 64-2606(i), exempts from liability for the tax imposed by that act, amounts received by institutions, trusts, groups and bodies organized and operated exclusively for religious, charitable, etc. purposes.

It is stated in 13 Am. Jur., Corporations, § 782 entitled "Collateral Attack on Devise to Corporation because of Incapacity to Take," in substance, that the better and majority rule is that the question of legal capacity of a corporation to receive property in excess of an amount prescribed in its charter can be questioned only by the state, and not collaterally by private persons, such as the testator's heirs or next of kin. This section states, however, that in some jurisdictions the heirs or next of kin of the testator may attack the validity of a devise to a corporation on the ground of its incapacity to take. Because the estate, to which your letter makes reference, concerns property under the jurisdiction of the courts of Ohio, it is for the courts of that state, in this instance, to determine whether the majority or minority rule prevails, and thus determine the question of whether any persons, other than the State of Indiana, may question the right of the Indiana Yearly Meeting of Friends to accept the subject bequest.

Nevertheless, insofar as the question pertains to whether Indiana will challenge the Society's right to receive the subject trust funds, this much may be said of a certainty with respect
to Indiana's position in this matter. Since the enactment of the Acts of 1935, Ch. 157, Sec. 29, as amended, as found in Burns' (1960 Repl.), Section 25-535, all not-for-profit corporations are required to file annual reports, irrespective of whether they were incorporated under that 1935 statute or some other act, which reports, among other things, are required to include a "verified itemized statement of revenue received by the corporation from all sources during the preceding calendar year * * *." Pursuant to this requirement, the Indiana Yearly Meeting of Friends has filed annual reports for every year since 1935, excepting only the year 1940. These reports, which are required to be filed with your office, disclose that the smallest amount reported as cash receipts during any one year by this Society was for the year 1935 in which the sum of $58,268.43 was received. The largest amount having been reported to the State of Indiana as received by this Indiana Yearly Meeting of Friends was for the year 1947 in which the total receipts disclosed were $302,879.45. Without exception, the annual receipts for all years since 1935, when such receipts were required to be reported to this state, to the present time far exceeded the purported $20,000 limitation which appears in the Acts of 1850, Ch. 269, Sec. 1, supra. These facts are conclusive evidence that, although the state authorities have known the amount of such yearly receipts, they have never questioned the right of this organization to receive such sums for the purposes and uses authorized.

Further evidence of the legislative policy of this state concerning bequests, devises and gifts to religious, charitable and educational organizations is found in the Acts of 1941, Ch. 62, Sec. 1, as found in Burns' (1960 Repl.), Section 25-3242. While this act pertains particularly and only to universities and colleges, it expressly states that if such have acquired property in excess of the amount fixed by the charter of such institution, or by any act the provisions of which have theretofore been accepted by any such institution, that such acquisition is thereby legalized, and the present and continued ownership of such property by such university or college in excess of the amount limited by its charter is authorized and made valid and legal, notwithstanding any such previous limitation.

Next in support of the present legislative policy concerning this issue is the enactment of the Acts of 1943, Ch. 108, as
found in Burns' (1960 Repl.), Section 25-1527 et seq., to which your letter refers. This is an act authorizing the incorporation, organization and reincorporation of churches, religious societies and religious organizations. This act contains no limitation upon the amount of property which churches, religious societies and religious organizations may hold if they are either incorporated or reincorporated pursuant to the provisions of that act. This is unquestionably an enactment intended to operate not only prospectively with respect to organizations incorporated thereunder, but to act in such a manner as to remedy and overcome limitations upon the powers of corporations previously incorporated which choose to become reincorporated under the Acts of 1943, Ch. 108, supra. Unlike the effect of statutes generally, remedial or curative enactments have uniformly received a liberal interpretation in order to carry out the full intent of the Legislature, so as thereby to correct any evils or mischiefs which may have existed. Such statutes operate not only to supply a need for authority prospectively, but also to supply that need with respect to present problems, and have even been construed to have a retroactive effect, so as to cure all defects and remove all doubts with respect to the question of the authority which the remedial or curative statute supplies.

See: Martin v. The Ben Davis Conservancy District (1958), 238 Ind. 502, 153 N. E. (2d) 125;

W. H. Dreves, Inc. v. Oslo School Township of Elkhart County (1940), 217 Ind. 388, 28 N. E. (2d) 252, 128 A. L. R. 1405.

Having reviewed the Indiana law on this general problem, let us now turn to the application thereof to the particular situation at hand. Your letter states that the Indiana Yearly Meeting of Friends was made the beneficiary under the will and also of an inter vivos trust by a resident of the State of Ohio. An examination of the trust instrument, creating the fund for the Indiana Yearly Meeting of Friends, discloses that the settlor apparently did not intend for the fund to pass to the Friends' organization immediately upon her death. In fact, by virtue of Article III, Clauses 2 and 3, the settlor specifically placed the trust property at the disposal of the trustee and the executor for the payment of any expenses in connection with
her estate. Further, Item I of the Will of the testatrix confirms this intention. Also, Item IV of said Will clearly indicates that the residue of the estate passes to the Society after the payment of legacies and expenses of administration. From the information supplied this office, it is my understanding that the settlor died on September 11, 1960, that her estate is still pending, and that tender of the amount of the bequest payable under the will and the trust agreement to the Indiana Yearly Meeting of Friends has not been made. Records in your office indicate that the Indiana Yearly Meeting of Friends was reincorporated in July, 1961 under the Acts of 1943, Ch. 108, supra, under which there is no limitation upon the amount of property which the Yearly Meeting may take by gift, bequest or devise.

The question presented is by reason of the fact that this reincorporation was effected subsequent to the date of the settlor's death. While it is, of course, not the function of the Attorney General of Indiana to construe the statutory law of the State of Ohio and to furnish an opinion on the subject of the right of the heirs to question the capacity of the Indiana Yearly Meeting of Friends to receive these trust funds by contest in the Ohio courts, nevertheless, it can be stated, without any equivocation, that the State of Indiana recognizes the right of the Indiana Yearly Meeting of Friends to receive these trust funds. The liberal construction given to remedial or curative statutes, whereby they are given effect with relation to existing problems and even given retroactive effect, conclusively supports the right of this organization to receive these funds. Its reincorporation under the Acts of 1943, Ch. 108, supra, results, unquestionably, in removing any prior existing incapacity to receive a gift in excess of the purported limitation imposed upon the Indiana Yearly Meeting of Friends by the Acts of 1850, Ch. 269, supra. Further, the fact that Indiana has known of this organization having received amounts in excess of the purported charter limitation for many years, without ever having challenged its right to receive such amounts, is proof that Indiana will not now question the right of the Indiana Yearly Meeting of Friends to receive these funds and use them for the various religious, educational and charitable purposes to which the organization is dedicated.

Therefore, for answer to your question, it is my opinion that
whatever limitation may have been imposed upon the Indiana Yearly Meeting of Friends by the Acts of 1850, Ch. 269, supra, if any, has long since become ineffectual and all doubt has been clearly erased by the reincorporation of this organization pursuant to the Acts of 1943, Ch. 108, supra. Moreover, such reincorporation has the effect of remedying and curing any and all defects which may have existed prior thereto, being effective not only prospectively, but with respect to present problems and retroactively, so as to legalize any and all gifts theretofore received in excess of the purported limitation contained in the original charter statute.

OFFICIAL OPINION NO. 35

May 23, 1962

Mr. Joe A. Harris, Chairman
Indiana Alcoholic Beverage Commission
911 State Office Building
Indianapolis, Indiana

Dear Mr. Harris:

This Official Opinion is based on the four questions submitted in your recent letter, which reads as follows:

"1. Can the Indiana Alcoholic Beverage Commission, in addition to all other requirements prescribed by law, require a receipt or other evidence showing that an applicant has paid all his or her gross income tax in order to qualify for the issuance of any type of alcoholic beverages permit?

"2. If the answer to #1 is in the affirmative, what 'other evidence' would be legally satisfactory to demonstrate gross income tax payment to date?

"3. If the answer to #1 is in the negative, can the Indiana Alcoholic Beverage Commission under its authority to prescribe the form and contents of the application blanks for an alcoholic beverage permit require the applicant to state whether his gross income tax is paid to date?

"4. If the answer to #3 is in the affirmative, can the Indiana Alcoholic Beverage Commission and/or Indi-