From the foregoing, I am of the opinion the proposed policy as outlined in proposal number II of the Division of Special Education of the State Department of Public Instruction would be legal if approved by the Commission on General Education of the State Department of Education, such action being of the nature of an administrative interpretation and application of said clause S-1. At the same time, I am of the opinion it would be the better policy to remove any ambiguity in the application and operation of said regulation S-1, as soon as practicable, by an amendment of the regulation pursuant to statutory requirements.

OFFICIAL OPINION NO. 14
May 14, 1959

Honorable Ruel W. Steele
State Senator
Bedford National Bank Building
Bedford, Indiana

Dear Senator Steele:

Your recent request by letter for an Official Opinion presents the following question:

Should a Prosecuting Attorney's fee be charged where such prosecutor appears in non-contested divorce cases, in view of the fact that mention of such fee was omitted from House Enrolled Act No. 68, same being Acts of 1959, Ch. 277?

The laws of this State provide that whenever a petition for divorce remains undefended, it is the duty of the prosecuting attorney to appear and resist such petition.

Acts of 1873, Ch. 43, Sec. 26, as found in Burns' (1946 Repl.), Section 3-1212.

Acts of 1913, Ch. 641, Sec. 2, as found in Burns' (1946 Repl.), Section 3-1214, provided that the court, upon a motion of the prosecuting attorney, should make an order requesting the person filing such petition to pay the clerk the sum of
$5.00, which sum the clerk paid to the prosecuting attorney as full payment of his attorney's fees for the defense of said petition.

Acts of 1953, Ch. 270, as found in Burns' (1957 Supp.), Sections 49-2601 to 49-2619, provided for the compensation of all prosecuting attorneys in this State. Section 17 of said Act, as found in Burns' (1957 Supp.), Section 49-2617, provided, in part, as follows:

"The compensation herein provided for the various prosecuting attorneys and their deputies shall be in full for all services required by law. The various prosecuting attorneys shall appear in all cases, in all courts, including the court of the justice of the peace, where the law now provides that they shall appear, and the fees as now provided by law in such cases shall be charged and collected except as hereinafter provided; Provided, however, that a prosecuting attorney's fee of eight dollars [$8] shall be allowed and taxed as costs for their appearances in non-contested divorce actions and a prosecuting attorney's fee of eight dollars [$8] shall be allowed and taxed as costs in all criminal actions whether or not the prosecuting attorney or his deputy enters an appearance in such actions, which fees when collected shall be deposited as follows: Five dollars [$5] of each such fee so collected shall be deposited in the general fund of the county and three dollars [$3] of each such fee so collected shall be deposited in the general fund of the state * * * *." (Our emphasis)

In view of the provisions of the above-quoted act and the provisions in Sec. 20 of said act repealing all laws and parts of laws in conflict therewith, it is apparent that Burns' 3-1214, supra, was repealed, and up to the effective date of Acts of 1959, supra, an $8.00 prosecuting attorney's fee was to be collected and taxed as costs for the appearance of a prosecuting attorney in non-contested divorce actions.

Acts of 1959, Ch. 277, is an original act providing for a new compensation schedule for prosecuting attorneys. Acts of 1953, Ch. 270, supra, is specifically repealed. However, Sec. 19 of Ch. 277, supra, re-enacts the provisions of Burns'
49-2617, *supra*, with the exception that the prosecuting attorney's fee taxed as costs in all criminal actions was raised from $8.00 to $10.00 and the provision concerning the prosecuting attorney's fee in non-contested divorce actions, as emphasized in the above-quoted statute, was not included.

However, the repeal of Burns' 49-2617, *supra*, did not operate to revive the provisions of Burns' 3-1214, *supra*, which had provided for a $5.00 fee. Acts of 1877 (Spec. Sess.), Ch. 36, Sec. 1, as found in Burns’ (1946 Repl.), Section 1-307, provides, in part, that "Whenever an act is repealed which repealed a former act, such act shall not thereby be revived, unless it shall be so expressly provided."

See also: Baum *et al.* v. Thoms (1898), 150 Ind. 378, 50 N. E. 357.

There being no present provision in the laws of this state for prosecuting attorney's fees to be taxed as costs in non-contested divorce actions, it is my opinion that, although it remains the duty of the prosecuting attorney to appear in such actions, no fee may be taxed as costs for such services.

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**OFFICIAL OPINION NO. 15**

May 15, 1959

S. T. Ginsberg, M. D.
Commissioner of Mental Health
Division of Mental Health
1315 West Tenth Street
Indianapolis, Indiana

Dear Doctor Ginsberg:

This is in response to your letter of April 13, 1959 wherein you request an Official Opinion on the question of whether Acts of 1957, Ch. 359 supersedes Acts of 1905, Ch. 159. Acts of 1957, Ch. 359, as found in Burns’ (1957 Supp.), Sections 22-4701 to 22-4731, in general, provides a procedure for the commitment and admission of mentally ill persons to state-owned and operated psychiatric hospitals by one of the following means:

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