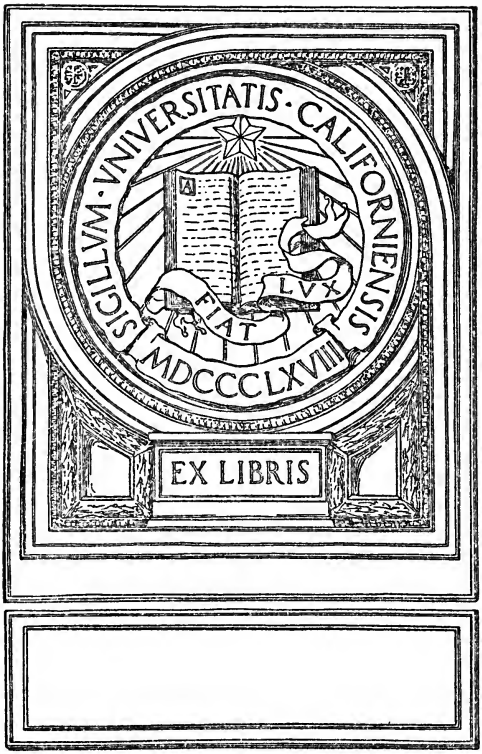
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Indiana. Governor, 1905-1909 (James
" J. Hanly)

MESSAGES *and* DOCUMENTS

OF

J. FRANK HANLY

GOVERNOR OF INDIANA

January 9, 1905—January 11, 1909

INDIANAPOLIS:
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Messages to the General Assembly

REGULAR MESSAGES

INAUGURAL ADDRESS TO THE SIXTY-FOURTH GENERAL ASSEMBLY.

JANUARY 9, 1905.

Gentlemen of the Senate and House of Representatives:

A generously partial and confiding people by a verdict more nearly approaching unanimity than any ever before rendered by them, have confided to our care, for a time, the interests of the State, in so far as government agencies can affect such interests. Such an unexampled and unprecedented expression of trust and confidence by them creates, by the inexorable law of compensation, obligation for us, without example or precedent. Their action rightly and accurately understood is a demand for the strictest possible accounting for our every official act—a call to the "better angels" of our natures, and in no instance is it to be construed into license to follow selfish or personal purposes either of our own or of others. Public reasons should underlie and impel every public act. That much the people demand. Less than that they will not long abide.

The oath of office which I have just taken here in your presence, in the presence of this concourse of our fellow citizens, and in the presence of Almighty God, like unto that so recently taken by each of you in your respective chambers, is a most solemn and binding obligation—one well calculated to impel whoever takes it to high and patriotic service. Cherishing as I do a belief in the existence of a just God, in the teachings of the Christ, and in the immortality of my own soul, the words "so help me God" frame the most sacred pledge my lips can utter or my mind conceive. That oath now lies upon my conscience, and there it shall continue until the commission I have received shall be returned to the people who gave it. If I fail, and in some things I may fail, not one of my countrymen, including all those who have so generously trusted me, will be so deeply grieved as I myself shall be.

I congratulate you upon the happy auspices under which we begin our public service. We are assembled under conditions of

unsurpassed material wealth and prosperity. Field, mine and factory have yielded rich reward to the efforts and industry of the wealth producers of the State. Labor is employed and hopeful. Farmers have witnessed a steady increase in values and in the accumulation of their savings. Merchants have enjoyed a growing and profitable trade. Manufacturers have held old markets and have gained new ones. Transportation companies have closed a year of unequaled profit, and the banking and financial institutions, both state and national, that have to do with the savings and investments of the people, are upon sound and satisfactory footing. There have been few failures within the lines of legitimate business. Mismanagement and speculation in some instances have brought disaster. Some private banking institutions, for the supervision of which there has been in the law no adequate provision, and a few national banks have closed their doors, but none of these have substantially affected general business or financial interests.

KEEPING INSTITUTIONS OUT OF POLITICS.

Usually fortunate in the administration of State affairs, we have been especially so during the last twelve years. In that time there has been no malfeasance in any public office of the State. Governor Matthews set a high standard of executive efficiency and excellence, and the late Governor Mount raised that standard yet higher and inaugurated many wise and improved business methods in the handling and expenditure of the public revenues. Today Governor Durbin goes out of office after four years of executive service unexcelled by either of his immediate predecessors. He carries with him into private life the good-will and kind wishes of our best citizenship, and he may justly feel that he has earned the confidence and the gratitude of his countrymen.

During his administration the public debt has been rapidly decreased and the annual interest charge materially lessened. Honesty and economy have characterized every department of the government. The correctional, penal, benevolent and charitable institutions of the State have received from him considerate care and efficient management. These institutions have been placed upon a plane far above partisan politics, and there this administration intends to keep them. There shall be no backward step. Above all personal and party obligations, however sacred and binding they may be, I hold the good of the State and the welfare of its unfortunate wards. There shall be no removals of persons holding positions in any of such institutions except for the good of the institu-

tions themselves. Upright and efficient service will guarantee continued tenure of position. Negligent and incompetent service will insure immediate removal.

STRICT BUT SANE ECONOMY AT INSTITUTIONS.

The policy of the administration in regard to the institutions of the State shall involve strict but sane economy. Value received shall be required for money expended. Necessary improvements will be insisted upon. Needed repairs will be made. To refuse actual needs is not economy, but extravagance. This applies to the educational institutions with the same force that it does to the other institutions. In the days of hardship and privation our fathers established these schools. Shall we, their children, in our day of ease and plenty, refuse to provide for their needs or let them languish or deteriorate for want of means? Not so. Having established and maintained them until their usefulness has been successfully demonstrated and their fame has spread over the land to such an extent as to fill them to overflowing with an eager and virile student life, we can not abandon them now, and to refuse to recognize or provide for their necessities is a step toward abandonment. I do not believe we intend to take that step. And I therefore urge full and careful consideration of their wants to the end that their capacity, equipment and facilities shall correspond to the growth and development of the State, and shall equal at all times the demands made upon them.

TUBERCULOSIS INSTITUTE COMMISSION ADVISED.

The proposition to establish a State hospital for the scientific treatment of tuberculosis promises so much in the way of the improvement, the cure and the prevention of that dread disease as to deserve serious consideration. Experiments in New York, Rhode Island and Massachusetts have demonstrated the value of such an institution, and have turned the best thought of our own people to the consideration of our duty in that behalf. In 1903 one death out of every four that occurred in the State from preventive causes was due to consumption. Deaths from that cause that year numbered 4,876, and for the year just closed deaths from such cause have not been fewer in number. There is high authority for the statement that scientific treatment under the favorable conditions to be secured in a State hospital will save to useful lives 49 per cent. of the persons treated, and bring improvement to 43 per cent. of the others. Such a work appeals to every humanitarian impulse of

our people. The condition of the finances, however, is such as to preclude an appropriation by you for the immediate establishment of such an institution. But something can be done. An initial step can at least be taken. I recommend that a commission be created composed of five members, one of whom shall be a member of the Senate, two of whom shall be members of the House, and two of whom shall be practicing physicians of the State. Such commission should be invested with authority to investigate the subject and report the results of its investigation, together with such recommendations as it shall deem wise, to the next General Assembly for its consideration.

ADDITIONAL HOSPITAL FOR INSANE ADVOCATED.

The institutions for the insane have become inadequate to house this most unfortunate class of our population. They are daily refused admission to such institutions because of sheer lack of room to receive and care for them, and are, therefore, remanded either to the care of their own friends, or to the poorhouses and jails of the several counties, where they remain without proper care or treatment, a charge upon the county in which they live. Under such conditions the question of cure, or even of improvement, is practically eliminated from the problem. Irremedial and hopeless insanity is often the result, when under humane surroundings and rational scientific treatment, improvement or even recovery might be assured. Left in the poorhouses and the jails, without medical treatment or intelligent care, many of them become permanent charges upon the public, when a short term in a State institution would effect a cure and enable them to return to their families and become self-supporting—an asset to the State instead of a liability. There are said to be 226 of such unfortunates in the State who have been committed upon inquisition to the hospitals for the insane, but who have not been received for lack of room, and 434 more who are proper subjects for inquisition and treatment.

In view of these conditions there can scarcely be dispute or debate as to the duty of the State. Its obligation is plain and imperative. A new hospital should be constructed. The people can act only through you, their chosen representatives. It is for you to say whether this condition shall continue. I can only suggest, but you can act. In behalf of the 660 neglected ones who sit in mental darkness amid unsanitary conditions and unwholesome surroundings, without medical or humane treatment, and without hope in the hearts of the friends who love them, I appeal to you.

And lest you do not hear the appeal, or hearing, you forget, I beg you to remember the words of the great Teacher, for surely He must have thought of such unfortunate, stricken ones as these when He said: "Inasmuch as ye have done it unto one of the least of these, my brethren, ye have done it unto Me."

It has been suggested, and with some reason, that additions to existing hospitals should be built, rather than to enter upon the construction of a new one. The basis for such contention is that it will cost less money to build additions and afford more immediate relief. I am still of the opinion, however, that it will be better to establish a new hospital than to undertake to build such additions. If additions be built to the present institutions it will be necessary, at least in one instance and possibly in two, to enlarge the lighting and heating plants at such institutions. The enlargement of such institutions until they will have sufficient capacity to care for a thousand patients each, will only meet present necessities. The total number that can be provided for in that way is 679. There are practically that many now who ought to be cared for by the State. A new institution will not only answer present demands, but it will provide for future needs and its establishment will cost but little, if any more, than the three proposed additions.

NEED OF AN EPILEPTIC INSTITUTE.

Closely connected with the question of an additional hospital for the insane is another matter of equally grave importance—the establishment of an institution for epileptics. Of these there are said to be 381 who are in the hospitals as insane. There are many others in the jails and poorhouses, and still others at large; in all 920 who ought to be receiving the charity of the State in a properly appointed institution. A number of States have established such institutions. In Ohio, New York, Massachusetts and New Jersey epileptic colonies or villages have been in successful operation for a considerable time, varying from three to fourteen years. In such States the matter is no longer an experiment, but has become a part of the established policy of the State. The history of these institutions is most interesting. Five to 10 per cent. of all patients received are cured, and there is marked improvement in many others.

Epilepsy is hereditary. Competent authorities estimate that one-third of those afflicted with the disease have inherited it and are therefore bearing the "blight of ancestral sins and woes." For

these there is little or no hope of recovery. They are children of the State in the fullest possible meaning of the term. In two-thirds of the cases, however, the disease is said to be due to other causes than heredity, and in most of such cases there is hope of improvement and often of a full return to intellect and strength. The nature of the malady is such that those who are afflicted with it must be denied the usual privileges of schools, entertainments, society and employment, and are compelled to grow up into adult life, ignorant, idle, isolated and neglected. Outdoor life, consistent diet, scientific and skilled treatment, congenial occupation and a sympathetic companionship which lessens the sense of neglect and isolation that weighs so heavily upon them in the world of normal men, are essential to their improvement or recovery. These can best be had in institutional life. A village or farm colony, where its inmates may find opportunity to turn to useful account such faculties as have not yet been destroyed or impaired, and which are capable of development, and where something of home life and its sympathies may be had and enjoyed, affords the best plan for such an institution. The establishment of such an hospital can be justified also on economic grounds.

The insane and the epileptics in the poorhouses and jails of the several counties are already public charges, and unless cared for by the State, are destined to remain so indefinitely. There, they are costing from 40 to 50 cents a day for maintenance. They can be maintained in a State institution at a cost of from 17 to 20 cents a day. If the first cost of such an establishment be eliminated, State care is much more economical, considered from a money standpoint alone, than jail or infirmary custody. It is also more humane and scientific, and it precludes the epileptic from begetting his kind, a thing of incalculable future benefit to the race.

I am persuaded that the time has come in Indiana when we ought to take these worthy and dependent children of the State out of the poorhouses, the jails and asylums, where they are a burden to the public and a horror to themselves, and care for them in a State institution as becomes our wealth and rank among the great States of the Union. The first appropriation need not be large. It is believed that $150,000 will be sufficient to purchase a farm and start the institution. To this, in the beginning, there should be sent only that class of epileptics most calculated to respond to treatment and best qualified to assist in the work of the construction and improvement of the institution.

The law providing for the establishment of an additional hos-

pital for the insane, or of an epileptic institute, should provide for the appointment of a commission of not less than five persons to select and purchase sites for them, under such restrictions as to cost, area and location as, in your judgment, shall seem wise.

FINANCES OF THE STATE.

For twelve years we have been engaged in debt-paying. The record of the late administration in that regard is without precedent in the history of the State. There now remains but $1,207,000 of the bonded foreign debt; $407,000 of that sum is represented by 3 per cent. school fund refunding bonds of the issue of June, 1889. These bonds are payable at the pleasure of the State, but will not be due until June, 1909. The sinking fund tax rate of 3 cents on the $100 will produce this year a fund something more than sufficient to discharge this issue of bonds in full; $300,000 of the bonded foreign debt consists of 3½ per cent. funding bonds of the temporary loan of the issue of April, 1895. These are payable at the pleasure of the State after April, 1910, but will not be due until April, 1915. The remaining $500,000 of such debt consists of 3½ per cent. State House temporary funding bonds of the issue of May, 1895, payable at the option of the State after May, 1910, but not due until May, 1915.

The present sinking fund tax rate of 3 cents on the $100 produces an annual sinking fund income closely approximating $450,000. This tax should be reduced to a rate sufficient only in amount to meet the bonded foreign debt when the same becomes payable in 1910. More than that is not needed and will only accumulate as idle money in the State treasury unless we go into the market and purchase bonds before our option to pay matures, a thing we ought not to do, to the extent which the present rate will make necessary if it be continued. Indeed, the present necessities of the State which can be met only out of the general fund, are such as to justify us in reducing the sinking fund tax rate to 1 cent on the $100. Such a rate will produce something like $750,000 by 1910, or within $50,000 of enough to redeem the entire bonded foreign debt the day the option to pay it matures, and five years before it is actually due. The repeal of the sinking fund tax in its entirety has been suggested, but that ought not to be done. Some provision should be left for the payment of the debt, and it should be sufficient in amount to meet it by the time it becomes payable under the terms of the loan.

DEBT PAYING CAUSES EMBARRASSMENT.

The estimated expenses for the State government for the fiscal year ending October 31, 1905, including specific appropriations now available and the estimated cost of the present session of the General Assembly, are $463,000 in excess of the estimated revenues accruing to the State within such fiscal year. This condition of the finances will become an actual embarrassment to the treasury before the end of the current year. It can be met only by borrowing money outright or by anticipating the revenues for the next fiscal year. It is due to two causes. First, to the large appropriations made by the last General Assembly; second, to a substantial invasion of the general fund for the purpose of making payments on the State debt. The sum of $140,379.45 has been taken out of the general fund during the last two fiscal years, $416,703.25 in three years and $521,091.59 in four years, and applied to the payment of the State's indebtedness not yet due, at a time, too, when the general fund was already overdrawn, and when the revenues accruing to such fund were being anticipated far in advance. Bonds were bought in the market with money from the general fund in the face of the fact that there was sure to be a heavy deficit in that fund at the close of each fiscal year. Debt-paying is commendable, but the present embarrassment could have been saved by conserving the general fund and applying only the sinking fund to the payment of the debt, especially so as such fund would have been ample to meet the entire bonded foreign debt long before it would have become due. The revenues for the present year have been anticipated to the extent of $529,649.03.

The estimated revenues accruing to the general fund for each of the years 1906 and 1907 from the present levy, such estimate being based upon last year's receipts, will be $2,971,157, or $5,942,314 for the two years.

The regular expenditures for the administration of the State government, including the maintenance of the several State institutions, and not including specific appropriations for such institutions, based upon the year just closed, will be $2,364,630 for each of the years 1906 and 1907, or $4,729,260 for the two years. This would leave a balance in the treasury to the credit of the general fund of $1,213,054, from which specific appropriations for the years 1906 and 1907 might be made were it not for the fact that the expenses of the present year will exceed the revenues, as heretofore shown, something like $463,000, which deficit must be supplied either by borrowing money or by anticipating the rev-

enues for 1906. Deducting the deficit of $463,000 from the balance of $1,213,054, left in the treasury after paying the regular estimated expenses of the two years, we have a balance of $750,054 from which specific appropriations can be made, whereas the institutions already established seem to be actually in need of specific appropriations for the two years of $1,174,596, or $424,542 in excess of the money that will be available for that purpose.

In addition to the needs of the present State institutions, there is urgent need, as before suggested, for the construction of an additional hospital for the insane, and for which, if it be established, there will have to be appropriated not less than $500,000 for the two years. There is also a like need for the construction of an epileptic institute, for which not less than $150,000 should be appropriated.

If these two institutions are established and appropriations made as suggested, and we make the provision that the existing State institutions actually require and make good the deficiency for this year, it will necessitate specific appropriations for the two years aggregating $2,287,596, or $1,074,542 in excess of the estimated revenues available for that purpose within the two years.

WOULD USE PART OF SINKING FUND LEVY.

These facts make it apparent that we must either fail in our present responsibility to the institutions already established and refuse to construct either of the new hospitals suggested, or we must provide additional sources of income for the general fund. After much thoughtful consideration I am persuaded that we ought to adopt the last course, rather than the first, and I therefore recommend that the sinking fund tax rate be reduced to 1 cent; that the 2 cents taken off of that rate be transferred to the levy for the general fund and that the tax rate for the general fund be increased by an additional levy of 1½ cents on the $100. The 2-cent levy transferred from the sinking fund to the general fund will produce, approximately, $600,000 in two years, and the additional levy of 1½ cents will bring into the treasury substantially $450,000. These sums, together with the $1,213,054 remaining to the credit of the general fund after the payment of the regular expenses of the two years, will aggregate $2,263,054, or within $24,542 of the total expenses for the two years, with existing institutions properly cared for and with two new and much needed institutions substantially established and the present deficit made good. I make this recommendation with unfeigned reluct-

ance, because of the great expenditures involved and of the increase of the State tax levy which such expenditures make imperative, but I have been able to devise no other way, as satisfactory, to meet the confessed institutional needs of the State. While we have been debt-paying at an unprecedented rate the needs of the State's institutions have been multiplying and can not longer be deferred. It will be better to meet these needs now frankly and boldly than to shirk our responsibility by refusing to recognize them and leaving the helpless and unfortunate wards of the State in poorhouses and in jails, charges upon the respective counties where they live. A rich and prosperous people will respond generously to the one policy, but I am persuaded that they would be slow to forgive the adoption of the other. Nor will the increased burden long continue. The 1½ cents added to the general levy may be removed in two years, and in six years the remaining 1 cent sinking fund levy may also be removed, for at the end of that period there will remain no bonded debt to be provided for or paid.

For these reasons I most earnestly recommend the adoption of the plan herein mentioned, and sincerely hope it will meet with your approval upon full consideration and debate. The deed, if done, will square itself with the years.

PRISON TRADE SCHOOLS AND STATE WORKHOUSES.

An act of the General Assembly, approved March 11, 1903, created a prison commission composed of the warden of the State Prison, the general superintendent of the Indiana Reformatory, the secretary of the Board of State Charities, and of three members to be appointed by the Governor. Under that act the commission has been organized, and its members have given much time to the investigation of the questions referred to them, and after thoughtful consideration they have submitted certain conclusions to you in the form of a report, which I understand has been laid before you. That report should challenge your attention as a whole, but I respectfully urge upon your consideration two recommendations contained therein. The first is the suggestion that a convicted prisoner who is given a jail sentence is the prisoner of the State, and should be under direct State control in some institution of the State where he can be employed at useful labor, instead of being confined in jail and kept in idleness under county control.

A system of workhouses under State control, in which all male prisoners convicted of crime, which under existing law is made punishable by imprisonment in the county jail, shall be confined, is

proposed. I can not now discuss the details of the report of the commission in this behalf, but I am impressed with the belief that the suggestion contains the practical basis of a much needed reform.

The second recommendation involves the abandonment of the contract labor system in the State Reformatory and the employment of the prisoners there in a school of letters, in trade schools and at labor on State account. The existing labor contracts at the Reformatory will expire in July, 1906, and, in my judgment, ought not to be renewed. Some employment for the prisoners of the institution must of necessity be provided, and it should be of a character that will affect in the slightest degree possible the laboring and producing classes of the State. The system of contract labor now in force compels free labor to compete with convict labor and forces manufacturers into competition with prison-made goods, and fixes and establishes prices of such articles in a damaging measure.

The employment of prison labor on such account, that is to say, in the production of articles to be sold by the State or used by the State in its various institutions, or by the political divisions thereof, has been demonstrated to be practical and of all methods least objectionable to free labor and production and most satisfactory to all the people. Such method of employment, together with trade schools and the school of letters recommended by the commission, is in harmony with the humane principles and reformatory methods already adopted and in use by the State in the care and treatment of the prisoners under its control. The labor contracts at the State Prison do not expire until October, 1910. If the method recommended by the commission be adopted for the Reformatory by the present General Assembly its value will have been practically demonstrated before we are called upon to meet the question in the State Prison. The recommendation represents the best thought of those most competent to advise upon this most important subject and deserves your highest consideration.

CONTINUANCE OF CODIFICATION COMMISSION ADVISED.

Pursuant to the provisions of an act of the General Assembly approved March 9, 1903, a commission was appointed in April of that year to prepare a compilation, revision and codification of the laws of the State concerning public, private and other corporations, and statutes relating to highways and drainage, and such other statute laws as such commission should deem proper. The commission has prepared a report which is already before you, together with several bills embodying the results of its labors. Its report

covers a wide field and includes a number of difficult and important subjects, such as cities and towns, drainage, proceedings in the exercise of the power of eminent domain, private corporations, highways, and the criminal code. The report and the bills accompanying it deserve the best thought of each of you. The varied and important subjects treated affect closely many interests of the people and the corporations of the State.

Taken as a whole, the work of the commission, as presented to you, constitutes the most important legislation likely to come before you. While each of the prepared bills should be scrutinized, analyzed and debated with care and critical intelligence, the skill, learning and ability of the members of the commission are so well known and their work has been done with such zeal and intelligence that I commend the results of their labors to you with full confidence that they can, in the main, safely be accepted.

The life of the commission expires by limitation of the law which created it, with the adjournment of the present General Assembly. There are still many important and difficult subjects affecting many vital interests that have not as yet been considered. Revision is greatly needed as to them. In fact, the work of the commission will not be complete, or the purpose of the law creating it obtained, if the labors of the commission are to end with your adjournment. A knowledge of this leads me to the conclusion that the life of the commission should be extended for a period of two years, to end with the adjournment of the next General Assembly.

The whole subject is of such imperative moment that I venture to express the hope that you will not fail to enact the several bills submitted after such amendment and alteration as upon full debate and consideration you may deem wise, and that you will not fail to continue the commission as suggested.

STATE SUPERVISION OF PRIVATE BANKS.

Sound banking institutions are absolutely essential to stable financial, commercial or industrial conditions. This is so true that years are required for a community to recover from the effects of a single bank failure. The losses occasioned by such failures are not confined to savings alone. These, of course, are swept away, but such failures are always attended with a betrayal of trust and of confidence that does far more to injure the business interests of the community and society in general than the direct money loss sustained can possibly accomplish. Men who have known each other for years and who have had full confidence in each other sud-

denly become doubtful and suspicious, with a resultant disturbance of business and commercial affairs and the embarrassment of other perfectly solvent and safe institutions.

The number of private bank failures in this State within the last year constitutes irrefragable proof of the need of legislation which will give the State authority to inspect and supervise every private firm, partnership or institution engaged in any manner in the banking business. In some of the recent failures of private bankers an investigation of their affairs made after assignment has disclosed the most flagrant and criminal disregard of the rights of their depositors. In some instances the savings of patrons of the bank have been checked out by the proprietors within twenty-four hours after they were deposited and by them converted to their own use. In one instance, at least, this was done to an extent of almost $300,000, and the fact of such malfeasance concealed and covered up for years. A trusting and confiding clientele was robbed daily, week after week, month after month and year after year, in the most reckless manner, the possibility of which is a reproach to the State.

The people whose earnings have been embezzled and squandered, together with every man engaged in honest private banking, of whom there are many in the State, rightly demand relief at the hands of their representatives. The question should be taken up with considerate care, having due regard for the interests of both the private banker and the depositor.

No private individual, firm, copartnership or institution of any kind should be permitted to use the word "bank" in connection with its business, or to receive the deposits of the people, or to engage in any manner in the business of banking, without first setting aside a cash sum as capital to be maintained unimpaired so long as such business is conducted. The sum required as capital I submit to your intelligent judgment, but it should be adequate in amount, taking into consideration the character of the community in which such bank is located.

There should also be an inhibition against the loaning of money, either directly or indirectly, to any person, firm, copartnership or corporation, either as principal or surety, beyond a fixed and reasonable sum, taking into consideration the amount of paid-up capital of each institution.

In connection with the above requirements the State should be given full power of inspection and supervision, through an officer to be appointed for that purpose, and such officer should be required

to give bond and should be held liable civilly upon such bond and be subject to criminal prosecution for the neglect of his duty or for malfeasance. While these restrictions will not prevent bank failures, I am persuaded that they will go far, if enacted by you, toward minimizing their number and extent.

URGENT NEED OF STATE RAILROAD COMMISSION.

Railroads are public highways and the business of operating them is a public business. Their existence is due wholly to the fact that they are public utilities. When they cease to serve the public, the reason of their being ceases. Modern conditions make the "transportation tax" a most potential factor in the commerce of the country. It affects every product of the field, shop or mine and levies tribute on both producer and consumer. Up to the limit of fairness the tax can be justified; beyond that it cannot. It is possible for freight rates to determine not only where business shall be done, but who shall do it. In the absence of legislation those who pay the tax have no voice whatever in determining what it shall be. The carrier arbitrarily determines that for itself. Having power to make freight rates, and freight rates being the controlling factor in determining where and by whom business shall be done, the carrier becomes the master, and the people it was created to serve its servants.

That the common law, the courts and their remedies are inadequate to afford any practical relief as between the shipper and the carrier, or even between carriers themselves, is now quite generally conceded.

That the competition of carriers, markets and waterways has ceased to be a sufficient safeguard against the evils that necessarily grow out of and accompany the country's vast transportation business is also a generally accepted truth.

Neither Congress nor the General Assembly of the State has time to investigate and fix transportation rates, and both are precluded by constitutional limitations from conferring legislative functions upon the courts.

Some impartial tribunal to act as arbiter to determine questions as to rates and collateral subjects, rather than the sellers of transportation, is, therefore, a modern necessity.

These considerations led some years since to the creation of a Federal Commission by the Congress of the United States, upon whom both judicial and legislative power was attempted to be conferred—the judicial power to declare an existing rate to be unjust,

and the legislative power to determine what the rate should be thereafter. The purpose of the statute has since been aborted by a decision of the Supreme Court of the United States holding that the act gave no legislative power to the commission to fix rates, but conferred only judicial power to determine that a specific rate was unjust. For instance, under the decision of the court the commission may declare that a 20-cent rate is too high, but it has no power to say what a just rate is. The transportation company is left free to impose a 19-cent rate until it in turn may be declared unjust and set aside, and so on ad infinitum. The effect of the court's decision is to emasculate the statute and leave little of it worth preserving.

The power of Congress to confer upon a commission both judicial power to decide what is unjust and the legislative power to declare what is right, is not open to debate. That has often been judicially determined. And a like power is vested in the General Assembly of this State in regard to commerce within its own borders.

While the Congress of the United States has sole jurisdiction of all transportation questions relating to interstate commerce, the State is sovereign in its jurisdiction of all such questions in so far as they relate to State commerce. The question is a live one, and is of great importance not only to the shippers and the transportation companies of the State carrying on interstate commerce, but to every producer and every consumer in the State.

The question is a difficult one and deserves our most considerate care and intelligent judgment. Its consideration should be entered upon dispassionately and should be continued without prejudice against or a desire to punish the transportation companies of the State. On the other hand, the wealth and power of such companies ought not to be permitted to exclude the people or the needs of the shippers, the producers or the consumers of the State from our consideration. As between the two we should hold an even balance.

Like considerations have led to the establishment of railroad commissions in thirty-one States of the Union, and in twenty of these the commissions are given power to establish rates.

The same considerations that led to the creation of the Interstate Commerce Commission by the Federal Congress and to the establishment of commissions in other States, now make it imperative that a State railroad commission be created by this General Assembly.

POWER TO FIX RATES ESSENTIAL.

Such commission should have power, not only to decide that an existing rate is illegal and unjust, but it should also be given authority to determine what would be a legal and just rate and to declare the same. And the rate, when so fixed by the commission, should stand until reversed by the judgment of some appellate tribunal to which the right of appeal should be provided for.

Without the power to fix rates, the commission would not be effective. If the evils sought to be reformed are to be reached, the power mentioned is essential. The law should also be so framed as to prevent unreasonable and inexcusable delay in the transportation of freight or cars, or unjust discrimination in rates, either by way of rebates or otherwise. It should also prohibit discrimination against localities in furnishing cars and should have some provision relative to the transfer and switching of cars. Bills of lading, releasing or limiting the common law liability of carriers with reference to property covered by such bills while in the custody of such carrier, should be prohibited, and the commission should have power to hear and determine differences affecting any of the matters suggested, whether arising between shippers and carriers, or between the carriers themselves.

The recent and growing desire for national ownership of railroads is due very largely to the unjust rates, rebates, discriminations and arbitrary conduct and management of the great transportation companies in their relations with the public. I am sure such a policy is a mistaken one. And I am equally sure that the enactment of a just and fair law, creating a railroad commission and clothing it with power to correct the abuses that have grown up in connection with the transportation business of the country, ought not to be opposed by the managements of such corporations. Indeed, they ought to consent to the enactment of a law which shall provide for fair and just supervision through a properly constituted commission. By consenting to the correction of such abuses they will do much to stay, and perhaps to avert, the more radical sentiment of the country just now crystallizing in the demand for public ownership.

GROWING RESPECT FOR THE LAW.

There are multiplying signs throughout the country of a growing respect and regard for the sacredness of the law that are reassuring and hopeful, and nowhere is this sentiment more pronounced than in Indiana. While lawless assemblages, riots and

lynchings have decreased within the last year in all the States taken as a whole, there have been none in Indiana. It is my most sincere wish and hope that this condition may continue; that respect for the law may increase, and that the sentiment for its enforcement may intensify throughout the borders of the State until all shall recognize its majesty and give willing obedience to its mandates. The law is freedom's only safeguard; without it there can be no such thing as liberty.

Whoever wilfully disregards or violates it pulls down the pillars of his own house and sins against his country, its institutions and his kind. And this applies with equal force to all men—to the rich and the poor, to the great and the small, to the capitalist and the laborer, to the public official and to the private citizen. Before the law all these must be equal, and they shall be so considered by this administration. The law shall be enforced without fear or favor, in the cities, in the country and everywhere, in so far as the administration can control its enforcement either by precept, example or mandate.

FREE PASS EVIL—A FORM OF BRIBERY.

A custom of giving and receiving free transportation has grown up, on the part of transportation companies on the one side, and of public officials on the other. These favors are not bestowed upon the same men in private life, but are extended to them only upon their elevation to public place. They are given as complimentary, and are bestowed quite generally, with here and there an exception, upon the officers of every department of the government, municipal, county or state. Indeed, it is not unusual for officers whose duties do or may affect the interests of such companies, as against the interests of the public, to accept not only free transportation from the railroad companies, but free telegraph and express franks from telegraph and express companies as well.

It is said in defense of the custom that such favors are mere gratuities or courtesies, the acceptance of which creates no obligation to the donor on the part of the officer receiving them, and that many honest men accept these favors and are not improperly influenced by them. It scarcely can be urged, however, that such favors are either given or accepted from a sense of civic pride or righteousness. The fact that some men receive them without any recognition of the favor implied by such acceptance and are not improperly influenced thereby is an imperfect defense, for it is of itself a confession that some men who accept them are improperly

influenced. There are no more practical business men in the world than the managers of the great railway, telegraph and express corporations of the country, and these men would not annually give away to public officials in Indiana thousands of dollars in value of such favors if the net aggregate results of the custom were not beneficial to them. If the resultant benefits were not worth more to them than the value of the transportation or franks given, none would be issued.

The fact that the custom is continued year after year is strong evidence that it pays to continue it. No lawyer would permit a juror to remain upon a jury where high interests of his client were involved if he knew such juror had received and accepted substantial favors from the adverse party to the suit, and he would most certainly insist upon the discharge of such juror from the panel if he were to receive and accept such favors after he had been sworn as a juror in the cause. If, in any such case, the verdict went against his client, and after verdict he learned the fact of the juror's acceptance of such favors from the hands of the successful party to the suit, there is no lawyer who would hesitate to make such fact the basis of a motion for a new trial, and there is no court that would not grant the motion upon proof of the charge made. The plea on the part of the offending litigant and juror that the favors given and received were mere courtesies and did not influence the verdict would be neither considered nor received as a sufficient answer.

The officials of the various municipalities and counties, and the officials of the State, constitute the jury before whom are brought countless grave and important interests, upon the one side of which are the corporations and upon the other side of which are the people. For this reason such officials have no right to use or accept substantial and continuing favors from the corporations during their terms of service. Where the whole jury accepts them there need be no surprise if the people complain that the jury is packed against their interests. Right or wrong, ill or well-founded, such a feeling is an unwholesome one. The simple truth is that the custom is wrong and indefensible and often leads to abuses little short of scandal. Reduced to their last analysis, such favors are petty bribes. The fact that they sometimes fall short of their purpose is not a sufficient answer. The tendency of the custom is to make men—not all men by any means, but some men—servile to those from whom they are received. An end should be put to the custom. The abuse of free transportation and free franking privileges should stop.

The time to reform is now. In recognition of the plainest principles of right, in common honesty, in answer to the people's just demand and out of protection to themselves, public officials should discontinue the use or acceptance of such favors. I submit for your consideration the enactment of a statute that will prohibit the giving of free transportation or of the franking privilege to any official, municipal, county or state, by any person or corporation, or the acceptance of any such favor by any such officer, either directly or indirectly, under such penalties as shall insure its observance. The inhibition should also include telegraph and express company franks. Such an act will purify and strengthen the public service and, in my judgment, will meet with the hearty approval of the people of the State.

LOBBYISTS NOT SAFE COUNSELORS.

The character of the legislation coming before you for your consideration is such as to bring to your respective chambers the representatives of many great corporations. It is right that they should be heard, but it is wrong that they should exclude from your consideration the varied and important interests of the public or the great masses of the people who, of necessity, cannot have paid agents to voice their interest to you. All lobbyists are not corrupt, and it may be that they sometimes perform useful public service, but the paid agent of any special interest is not, as a rule, a safe counselor. He is wont to look only to the interests of those who employ him, and in his zeal to "make good" with them, to forget the greater and more important interests of the public.

Corporate interests of late have become far too powerful in legislative assemblies. This is true in most of the States, and it has been true in ours. There have been instances in the not far distant past when the paid agents of such corporations invaded the sacred precincts of the General Assembly, and with unseemly and arrogant assumption took their place upon the floor during a session of that body, and on a roll call upon a measure involving matters of the gravest concern to the people, sought to dictate the votes of some of the members upon such measure. And, yet, they were not removed nor denied the privileges of the floor, but continued to enjoy them until the end of the session. It is difficult for the people to believe that such conduct would have been tolerated, much less condoned, by men who owed no favors to the corporations represented by the offending agents. You can end the reign of the lobbyist in Indiana if you will, and I venture to express the hope that you will do so.

NICHOLSON LAW AMENDMENT.

The act of the General Assembly of 1895, commonly known as the "Nicholson law," was enacted in answer to the demands of an aroused and enlightened and righteous public sentiment. In the main it is a good law and ought to be permitted to stand. It provides for, and legalizes the right of petition on the part of the legal voters of any township, or of any ward in any city, against the granting of license to any applicant to retail intoxicating liquors in such township or ward, and that right ought not to be given up or surrendered.

Rules of practice under the present statute and many questions of law relating to its enforcement have been settled by the courts, and are now established and well understood. The several sections of the act have been so frequently interpreted by the courts that the law, taken in connection with the decisions touching its meaning, constitutes a system for the control of the retail liquor traffic of such importance that the friends of law and order ought to stand by it as it is, rather than consent to its repeal, or to the substitution of any new or untried system. An entirely new act would require years of vexatious litigation before a judicial interpretation of it could be had, or its meaning be established or understood.

There is, however, a grave defect in the present statute. It can be remedied by an amendment, which will add greatly to its effectiveness, without impairing its value or destroying the decisions of the courts which have upheld it.

The aroused, enlightened and righteous public sentiment which made essential the enactment of the law ten years ago, now makes imperative its amendment. That sentiment is today stronger, more enlightened and more powerful than ever, and deserves quick and satisfying response at our hands.

The defect to which I direct your attention is found in Section 9 of said act. This section grants to a majority of the legal voters of any township, or of any ward in any city, the right to remonstrate in writing against the granting of a license to any applicant for license to sell in any such township or ward, and provides that after the filing of such remonstrance, it shall be unlawful for the Board of County Commissioners to grant a license to such applicant during a period of two years from the date of the filing of such remonstrance. By this statute the right of remonstrance is vested in the majority of the legal voters of any township, or of any ward

in any city. But the right is limited in its application to a remonstrance against the individual seeking the license and not against the trade, whereas the business of retailing liquors is the evil sought to be excluded or prohibited by the people who remonstrate against an applicant. Their objections are not personal, nor are they directed against the applicant as an individual. They are based upon moral, economic and public grounds, which affect the order, peace and repose of society within such territory, and are against the traffic itself. To the people within such territory the prohibition of the business is everything, and the individual applying for license is nothing.

PRESENT NEED OF REPEATED REMONSTRANCES.

When the statute under consideration was enacted, the boards of commissioners of the several counties in the State could hold regular sessions of their respective boards but once in three months. An application for license could be filed only at a regular session. Thus applications were limited to the four quarterly sessions of such boards held within each year. This brought the question of remonstrance before the people but four times a year. Since the enactment of the "Nicholson law" there has been a change in the statute relative to the time of the regular meetings of boards of commissioners. Such boards are now required to meet in regular session once each month. The effect of this change in the law has been to make it possible for an application from any township, or any ward in any city, to be filed every thirty days. This brings the question of remonstrance before the people twelve times a year. Those who desire to engage in the retail liquor traffic make use of the present provision of the law, to the annoyance and harassment of the people of many townships and city wards. In some of them "eternal vigilance" has ceased to be the price of liberty and has become ineffectual to preserve the rights of the people. A remonstrance carrying the necessary majority to prevent the granting of license is filed today and the license is defeated, but tomorrow some other applicant, in the pay of the wholesale liquor interests, gives notice of his intention to apply at the next session of the board of commissioners, which session is only four weeks away.

If a new remonstrance is filed and the second applicant is defeated, the same performance is enacted by some one else, and so on, month after month and year after year, until, worn out and discouraged by constant effort and expensive litigation that never ends, and from which there is no respite, the people are defeated

and the will of the majority is overborne and trampled upon by the agents of a traffic, the unholiness of which all men, save those engaged in it, confess.

This condition is intolerable, and ought not to continue beyond the day of your adjournment and the publication of your enactments. It destroys the peace and disturbs the order and tranquillity of society, creates constant and unceasing turmoil among the people, subjects them to frequent trials and constant expense, and finally ends in the defeat of their often and solemnly expressed will.

The statute should be so amended that the remonstrance provided for shall be against the granting of license to any and all applicants, and where successful, that it shall be unlawful thereafter for the board of commissioners to grant a license to any applicant therefor during a period of two years from the filing of said remonstrance. Such a remonstrance will strike directly at the traffic, and not at the individual. If successful, it will exclude the business from a township or ward for a period of two years, and give peace, order and repose to the community.

PROPOSED CHANGE WOULD NOT IMPAIR SYSTEM.

It will give the right of petition a practical and an efficient application, and will go far toward satisfying public sentiment upon this most difficult question. Such an amendment will not impair the system created by the Nicholson law for the control of the traffic, nor the judicial interpretation it has received. On the contrary, it will strengthen and give vitality to its provisions. The precedents already established will remain precedents still.

I have given much thought and consideration to this subject, because of its importance, because I have been and am conscious that many of my fellow-citizens, whose judgment and good will I greatly value, have been and are profoundly interested in the question, and have been and are giving it their most sincere attention, and because many members of your respective bodies have been and are considering remedial legislation affecting the existing statute.

Public sentiment relative to such legislation never was as strong nor as purposeful as it is today, and I would, if I could, direct that sentiment along safe and practical lines. I therefore appeal to you, and to the great body of the people of Indiana, without regard to party affiliations, to join in an effort to secure the amendment

suggested. The question is not a party question. It is above and beyond all parties and is as broad as our common citizenship, as deep as our free institutions, and as abiding as righteousness itself.

IN CONCLUSION.

This address has already grown too long, but there are so many important questions upon which I have not touched that I close with reluctance. I do not forget that all my predecessors in the high office to which I am called were capable and efficient executives; that many of them were much more than that, and that one, at least, was supremely great, or that I must in some degree measure up to them. I am conscious that in the discharge of the grave duties that await me I cannot stand alone and I shall not try to do so. I therefore turn to you and to the people of the State for assistance and support. To you and to them I shall often come, and were it not for the confidence I have of your forbearance and of their partiality, I should have little hope of succeeding amid the multiplying and perplexing difficulties of the coming four years.

But your strength shall be my strength, and their will shall be my will. I believe in you, and they, I am sure, will not go far astray nor long remain away from the path of truth. Both you and I can safely trust them. They did not fail either Lincoln or Morton in their day, and they will not fail us in ours if we do but prove worthy and fitly bear their high commission.

Humbled and chastened by the responsibilities of this hour, by those yet to come, and by the memory of the great men who have preceded me; sustained by an abiding faith in my fellow-citizens and by an unfaltering trust in the goodness, the mercy and the guiding care and wisdom of Almighty God, I now assume the office of chief executive of this, to me, the dearest State in the great republic.

J. Frank Hanly.

TO THE SIXTY-FIFTH GENERAL ASSEMBLY.

JANUARY 10, 1907.

Gentlemen of the Senate and House of Representatives:

The people have spoken, and you are here bearing their commission to act. You are convened in an auspicious hour of our history,—the beginning of the last decade of the first century of statehood,—and under circumstances calculated to inspire efficient and high service. Material prosperity outruns comparison. Wealth surpasses precedent. Labor, agriculture, manufacturing, mining and commerce have touched and passed high tide and the ebb is not yet begun. Monetary conditions are at their best. During the last year there was no failure of any financial institution within the State. Taken all in all conditions are indeed unusual. They present to you a problem unlike that which usually confronts legislative assemblies. Where others have been called to consider legislation providing the means and opportunity for the acquirement of wealth, you are compelled to devise enactments requiring the just and wise administration of wealth. Your problem is not how to create new industrial and commercial opportunity, but how to save the industrial and commercial opportunity which already is. It is not how to make possible the further organization of mighty aggregations of capital and powerful corporations equipped to transact great affairs and to conduct gigantic enterprises, but how to direct the purposes and limit the operations of those which the industry and genius of the age have called into being under existing laws, so that their benefits shall be diffused among the people.

The challenge is not, "Can you create?" but, "Can you administer?" It came to the people before it came to you. They heard and understood, and have made heroic answer. They have risen to new ideals, and have caught visions of better things. In them moral conviction is triumphant. Civic duty and public obligation have taken on a new and more sacred meaning. They know again what, for a time, they did not seem to remember,—that their rights —the rights of the masses—are superior to the claims or demands of any special interest, natural or corporate. They are conscious again that this is their government, and they intend that it shall be administered in all its departments in their behalf. Stirred by the rediscovery of old but half-forgotten power, they mean that

whosoever holds their commission shall answer the challenge of the hour even as they have answered it. They will be impatient of delay, and swift to avenge failure.

To serve at such a time and under such conditions is an unusual and an exalted privilege. Of time and circumstance such as these opportunity is born. He who meets it as becomes a man, measuring up to its height and breadth, is to be extolled and honored. He who fails to meet it for lack of capacity is to be pitied and forgiven. But he who possesses the ability and fails from lack of moral worth is to be condemned and despised. For him there is no defense in any form. I congratulate you that such time and circumstance both are yours.

The Constitution imposes upon the executive a share in your deliberations. It devolves upon him the duty of giving you "information touching the conditions of the State," of recommending for your consideration such legislation "as he shall judge" the welfare of the State demands, and of approving or disapproving your every enactment. To this extent he shares your responsibility and becomes a part of the legislative department. It is therefore important that relations of confidence and mutual helpfulness exist between you and him and that he have your counsel and good-will. Impressed with the belief that nothing short of this will enable either you or myself to discharge in full measure our duty to the people whose servants we are, I tender you my confidence and good-will without reserve or qualification, and pledge you the limit of my power in every matter of public concern which may engage your efforts.

FINANCES.

The State's finances are especially satisfactory. The revenues accruing to the general fund for the fiscal year ending October 31, 1905, exclusive of transfer funds, aggregated $3,615,844.38. During the same year the expenditures were $3,465,250.91, leaving an excess of receipts of $150,593.47, and a treasury balance of $283,998.84. In this balance no advanced payments from county treasurers is included.

On the 31st day of October, 1904, the balance in the treasury was $60,601.93, but to obtain this balance advanced payments from county treasurers had been called, and the revenue for 1905 anticipated in the sum of $154,740. But for these advanced payments there would have been no treasury balance, but, instead, a deficit of $94,138.07.

It is gratifying to know that at the close of the fiscal year this deficit was recouped and a clear balance of $283,998.84 left in the treasury, and that this was done without calling a single advanced payment or anticipating the revenue of the next year a single dollar.

For the fiscal year ending October 31, 1906, the revenues of the general fund, exclusive of transfer funds, aggregated $4,200,-164.83. The disbursements were $3,800,037.91, leaving an excess of receipts over disbursements of $400,126.92, and a treasury balance of $507,654.60, in which there were no advanced payments whatever and to obtain which the revenues of the present year were neither impaired nor anticipated.

The revenues accruing to the general fund last year were increased, however, not only from natural causes due to the increase in the value of taxables in the State, but from the transfer of the 3-cent sinking fund levy to the general levy; also from covering back into the treasury several substantial sums which had been theretofore unlawfully withheld therefrom by delinquent officials.

Neither the revenues accruing to the general fund for the present fiscal year, nor for the year 1908 nor 1909, will equal those of last year. Those of this year, however, have been already augmented by the payment of $22,356.40 of insurance taxes by insurance companies which have been due the State since the expiration of the term of James H. Rice as Auditor of State—more than twenty years. A conservative estimate of the revenues of the general fund for each of the three years named, is $3,726,650. Appropriations already made and available for the present fiscal year will leave a treasury balance of $266,309.29 at the end of the year. This sum, therefore, measures the limit of additional appropriations which may be made available for the present fiscal year without necessitating the collection of advanced payments from county treasurers and a consequent impairment of next year's revenues, a result which, in my judgment, should be avoided with scrupulous care.

If the income of the general fund for the fiscal year ending October 31, 1908, meets the estimate made and the regular appropriations for the year are not increased beyond what now seems to be a necessary aggregate for the transaction of the State's business, there will be $1,010,000 available for specific appropriations for said year.

For the fiscal year ending October 31, 1909, there will be substantially a like balance available for specific appropriations, ex-

cept as it may be impaired by the expenses of the Sixty-sixth General Assembly, now estimated at $125,000. It seems, therefore, that, in round numbers, $2,000,000 must be the limit of specific appropriations for the coming biennial period, if we are to keep within the revenues of the State and are to avoid the impairment of the revenues of the next biennial period. To do this it will be necessary to transfer the 3-cent sinking fund levy from the sinking fund to the general fund for the year 1908, as was done for each of the years 1905, 1906 and 1907. Within the last two years we have paid $407,000 on the principal of the State debt, thereby cancelling all of the debt that is now payable. This leaves but $800,000 of foreign bonded indebtedness, none of which will be payable until January, 1910, and none of which will be due until 1915. To meet this debt within the first year after the State's option to pay matures, it would be necessary to restore the 3-cent sinking fund levy to the sinking fund for 1908 and 1909. The fund derived from this levy would be more than sufficient, however, to retire the whole of the debt, as such a levy would by that time produce an annual revenue of something more than $500,000. I have been anxious that the debt should be paid at the earliest possible date and have hoped that it could be done in January, 1910, but necessity compels the completion of the institutions now under contract. The demand that they be completed is so imperative that I have been compelled to yield thereto, and I therefore recommend that the sinking fund levy of 3 cents be retained for the benefit of the general fund for the year 1908, and that it be restored to the sinking fund for 1909 and 1910. This will enable the State to retire $500,000 of the debt within a year after its option to pay matures, and the remaining $300,000 within six months thereafter. The necessities of the State absolutely require the completion of the institutions now under construction within the coming biennial period. The emergency is so great that I cannot urge upon you too strongly the importance of making adequate provision therefor. I know of no way this can be done with as little inconvenience as it can be along the lines suggested. Posterity will certainly have no just cause of complaint of us if we construct and pay for these great public improvements and retire the last dollar of foreign-held indebtedness within nineteen months after the privilege to pay obtains, and three and a half years before the obligations evidencing such debt mature. The step, if taken, will rest upon so many substantial reasons that it will bear analysis and debate with certainty of justification in the end.

CONTINGENT FUNDS.

For the fiscal year ending October 31, 1905, the sum of $10,000 was appropriated for the Governor's Civil and Military Contingent fund. The sum of $619.25 was expended, of which $139.75 were expended by my predecessor in the investigation of the Southern Indiana Hospital for the Insane and in the matter of the claim of Vincennes University. The remainder, or $479.50, was expended by the present Executive. The unexpended balance of the appropriation, amounting to $9,380.75, was covered back into the general fund.

For the fiscal year ending October 31, 1906, $10,000 were appropriated for this fund, $5,453 of which were expended and $4,547 covered back into the treasury. The expenditures were all on account of expense incurred in the investigation of the office of the Auditor of State.

The appropriation for the Governor's Emergency Contingent Fund for the fiscal year ending October 31, 1905, was $30,000, of which $2,206.05 were expended by my predecessor, and the sum of $116.65 by the present Executive on account of expenses of the tuberculosis commission, authorized by the Sixty-fourth General Assembly. The total expenditures were $2,322.70. The unexpended balance, amounting to $27,677.30, was covered back into the general fund.

The appropriation for this fund for the fiscal year ending October 31, 1906, was $30,000, all of which was expended except the sum of $1,123.26, which balance was covered back into the treasury. The total expenditures from this fund were $28,876.74. Of this amount $524.22 were expended to defray the expenses of the tuberculosis commission; $2,385.05 were expended in behalf of the maintenance account of the State Prison, because of the failure of the Sixty-fourth General Assembly to make a per capita appropriation for that institution; $4,000 were also expended in the completion of the dining-room for the State Prison, occasioned by a clerical error in the appropriation act of the Sixty-fourth General Assembly, appropriating $19,500 for a storeroom which cost but $15,500, and appropriating $15,500 for a dining-room which cost $19,500 (the transposition of the amounts was not discovered until after the buildings were nearing completion. The excess of one specific appropriation could not be used to make up the deficiency of the other); $2,892.01 on account of the replacing of a boiler at the School for Feeble-Minded Youth; $241.50 on account

of expenses incurred in the case of the State of Indiana v. David E. Sherrick; $1,200 on account of fees of special counsel in the case of the State of Indiana v. Daniel E. Storms; $7,805.29 on account of expense incurred in the invetigation of the office of the Auditor of State; $100 in connection with the stopping of pool selling at the State fair grounds in the summer of 1905, and $1,175.89 on account of expenses incurred in connection with the closing of the gambling resorts at French Lick and West Baden, of which $119.82 has subsequently been returned to the treasury of the State; $7,025.39 for maintenance at the Girls' Industrial School, because of the failure of the Sixty-fourth General Assembly to make a per capita appropriation for that institution and the great increase in the number of inmates during the past year; $230.55 on account of expense incurred in the case of the State of Indiana v. McCaslin, for the recovery of eighty acres of land belonging to the State; $229.80 on account of expense incurred in the investigation of the State Agency Company, and $1,067.04 on account of expense incurred in the investigation of the State Life Insurance Company.

The total cost of the proceedings for the closing of the gambling resorts at French Lick and West Baden was $1,374.72; the aggregate cost of the tuberculosis commission up to the close of the last fiscal year was $640.87; the investigation of the offices of the Auditor and Secretary of State cost, in the aggregate, $13,-258.29.

DEFALCATION IN STATE OFFICES.

In the latter part of August, 1905, the Executive was advised that the Auditor of State had failed to make the semi-annual settlement with the Treasurer of State due July 1, 1905. Upon investigation it was learned, through the admissions of the Auditor himself, that he was short in his accounts to the extent of $145,000. Settlement was demanded, and later the Auditor's resignation. September 14, 1905, he resigned. Hon. Warren Bigler was immediately appointed to fill the vacancy, and suit was promptly begun upon the official bond of the ex-Auditor.

The amount of the admitted defalcation, the magnitude of the public business passing through the office and the lack and necessity of accurate information touching the condition of the office impelled the Executive to appoint a commission to examine and investigate its affairs. Accordingly, Hon. W. B. Durborow and Hon. James W. Noel, representing the two dominant political par-

ties in the State, were appointed, together with Hon. Warren Bigler, Auditor of State, by executive order, and instructed to "pursue the investigation and make examination of said office and its several departments, uninfluenced by fear, favor or affection, and without any purpose to shield any person or party or to advance the interest of any person or party, to the end that the whole truth touching the affairs of the office for said term may appear in your report, and that the guilty may be exposed and the innocent vindicated."

The members of the committee immediately entered upon the discharge of their duties, under this order of appointment, and after almost a year of substantially continuous labor they filed a report of their investigations, which I have caused to be printed and laid upon your desks, and to which I invite your most careful and earnest consideration. It is a clear, accurate and convincing report, prepared by able, sincere and fearless men in literal compliance with the instructions under which their investigations were conducted, covering both the auditing and insurance department of the Auditor's office.

The facts touching the financial interests of the State, as disclosed by the investigations of the committee, were laid from time to time before the Governor for executive consideration and action. From this report it appears that Mr. Sherrick's defalcation, principal and interest, aggregated on the 14th day of September, 1905, the day of his resignation, $154,896.78. On March 1, 1906, final payment was received, with interest to that date, the total amount returned to the State treasury, principal and interest, being $156,367.31.

In this connection I submit the following paragraph from the committee's report:

"The State has the remarkable record of a shortage of $154,896.78 having been entirely recovered to the State without the loss of a dollar of principal and with the addition thereto of legal interest and with no expense except the sum of $37.00 paid to a shorthand reporter for taking evidence."

The expense referred to refers, of course, to that incurred in the suit upon the Auditor's bond and not to the investigation of the affairs of the office.

A large part of the sum recovered consisted of certain taxes collected by Mr. Sherrick, as Auditor, which he had no right to receive, as the law in plain terms required these taxes to be paid by the insurance companies "into the treasury of the State." A considerable portion of the sum recovered consisted of insurance

fees which were properly collected by the Auditor. Six thousand nine hundred and eighty-seven dollars and seven cents consisted of miscellaneous fees which the Auditor never reported to the State, no part of which he had paid, and which he had treated as his own, appropriating them to his own use and directing his subordinates to make no report of them.

Subsequent to his resignation Mr. Sherrick was indicted, tried and found guilty of embezzlement and sentenced and committed to the State Prison. On the 16th day of November, 1906, the Supreme Court of the State reversed the judgment of the Marion Criminal Court, in which the case was tried, for error of law occurring at the trial. Mr. Sherrick is now at liberty on bond pending a retrial of the charge against him. During his term as Auditor Mr. Sherrick collected $854,798.89 of insurance taxes, which, as I have indicated, he had no right to collect under the law. He misappropriated and embezzled a large portion of these funds.

In its decision the Supreme Court held that these taxes were not the property of the State; that they were collected without warrant of law; that in receiving them Mr. Sherrick acted as the agent of the insurance companies and not as the representative of the State, and that as to these funds he was therefore not guilty of embezzling public funds.

The fact that he embezzled the funds is without dispute. The moral turpitude of the offense is not lessened by the fact that the court has held that the technical title to them was in the insurance companies and not in the State.

It is an unconscionable miscarriage of justice that a public officer charged by the law with the duty of receiving reports showing the amount of taxes due from the insurance companies to the State and of auditing them, and with the further duty of bringing suit to recover from the companies the taxes so reported where they fail to pay them into the treasury, and who issues written notices to the representatives of such companies containing a garbled statement of the law made to read so as to require the payment of the taxes to him, and who, pursuant to such notice, receives such taxes from the companies over the counter of his office, receipting for them as Auditor of State, should go acquit on account of a technical if not fictitious ownership. And that it may never occur again in the State of Indiana, I recommend that you enact a statute the terms of which shall clearly make it embezzlement for any public officer to convert to his own use money received under color of his office, while acting under claim of official authority, no matter in whom the technical legal title thereto may be held to vest.

A portion of the funds embezzled by Mr. Sherrick consisted of fees which he had a legal right to collect. It is upon this charge that he is now awaiting retrial.

In its investigation the committee found inaccuracies, in the way of overdrafts, in the accounts of the Adjutant-General, John R. Ward, running from May 19, 1903, to January 6, 1905, and aggregating $976.75. The overdrafts were due to incorrect footings in the column containing a summary of the totals of the pay rolls of the several National Guard companies appearing on the last page of the voucher prepared for the approval of the Governor and for presentation to the Auditor. The company totals in each instance were made up from the bills filed with the voucher, and were correct. They were also properly entered on the last sheet in the summary column. The footings or totals in this last column were found to be excessive in sixteen instances. Upon receipt of the evidence in the case I demanded the immediate resignation of Mr. Ward and the payment of the sum of the overdrafts. The demand for his resignation was promptly complied with, and the overdrafts were paid within a few days thereafter. General Oran Perry was appointed to the vacancy occasioned by the resignation of General Ward. Acting under executive direction he made a careful examination of the accounts and books of the Adjutant-General's office, with the result that an additional shortage was discovered aggregating $533.69. This also has been repaid and returned to the proper funds in the hands of the Adjutant-General. The sum of money returned to the State by General Ward is $1,510.44.

Inaccuracies in the reports made to the Auditor of State by Secretary of State Daniel E. Storms, discovered by the committee, led subsequently to the disclosure of the fact that the Secretary had sequestered fees due to the State and misapplied certain funds appropriated to the office of Secretary of State for public purposes, by converting them to his own use. The committee was immediately directed to examine the books and accounts of the office of Secretary of State, but upon appearing at the office to take up the work they were refused permission to examine or see any of the books or accounts of the office. The Executive then addressed to the Secretary a demand in writing for full information touching the condition of the affairs of the office of the Secretary of State. This the Secretary declined to give. Thereupon the Attorney-General, assisted by eminent counsel employed by the Governor for that purpose, brought suit in the Superior Court of Marion County to

remove the Secretary from office, charging him, under the oath of the Executive, with the embezzlement of public funds and malfeasance in office.

The statute under which the proceeding was brought was held invalid by the court. Having failed in the courts to secure the removal of the Secretary, the Executive was about to convene the Sixty-fourth General Assembly in special session, for the purpose of asking his impeachment, when he resigned. The committee immediately took possession of the books and accounts in the office and made a careful examination of the same for the period of Mr. Storms' incumbency. The report of the committee shows in detail the condition found.

The misappropriation of funds, conversion of fees and appropriations made by the General Assembly amounted to $4,583.50, interest upon which at the time of the retirement of Mr. Storms amounted to $3,556.35, a total, principal and interest, of $8,139.85. The sum was paid in full to the Treasurer of State April 1, 1906, the date of the Secretary's retirement.

Errors in computing the tax statements of certain foreign insurance companies occurring during the administration of Mr. Sherrick were discovered, amounting to $689.79. Upon demand this sum was paid into the treasury by the companies owing the same.

Conditions discovered in the Auditor's office led the Executive to instruct the committee to examine the accounts and books of the office back to 1872. The results of the investigation are set forth in the committee's report and are such as to abundantly justify the executive direction under which they acted.

A discrepancy in the accounts of General M. D. Manson as Auditor of State was discovered, amounting to $347.50, which was evidently due to errors inadvertently made.

James H. Rice, while Auditor of State, collected and retained insurance taxes in the sum of $11,418.50 and reciprocal fees due the State in the sum of $36,650.24. These sums, together with interest thereon to April 1, 1906, amount to $108,877.74. This sum represents the claim of the State against Mr. Rice, exclusive of statutory penalties. The ex-Auditor is dead. I am advised that his estate is insolvent. The statute of limitations bars a suit upon his bond. So far as he, his estate or his bondsmen are concerned, this entire sum is lost to the State.

The law, however, required foreign insurance companies doing business in the State of Indiana to pay into the treasury of the

State the taxes they erroneously paid Mr. Rice, amounting, principal and interest, to $26,091.27. Payment to him in defiance of the provisions of the law was not payment to the State. Proceeding upon this theory, investigation was made and the names of the companies making the erroneous payments and the amount due from each were ascertained and notice served upon them that payment must be made by the 10th day of November, 1906, together with 6 per cent. interest thereon, or their license to do business in the State would be revoked and suit instituted to collect the amounts due. On November 11, 1906, settlement was made by all but two or three of the companies. The amount paid into the State treasury was, principal, $9,755.78; interest, $12,997.24, total, $22,753.02. This leaves a balance of $3,338.25. Some of the companies owing this balance ceased years ago to do business in the State and others are insolvent.

It appears from the report of the committee that Bruce Carr, while Auditor of the State of Indiana, unlawfully retained $34,259 of regular fees and $40,040 of reciprocal fees which lawfully belonged to the State, a total of $74,569. Interest thereon to April 1, 1906, at 6 per cent., aggregates $75,998.24, making the total claim of the State $151,470.92. None of the funds misappropriated by Mr. Carr were insurance taxes. Mr. Carr is dead. His estate, as I am advised, is insolvent, and the statute of limitations bars suit upon his bond. This sum is, therefore, lost to the State.

J. O. Henderson, as Auditor of the State of Indiana, collected and retained insurance taxes, regular fees and reciprocal insurance fees aggregating $49,616.45. Interest thereon to March 1, 1906, aggregates $42,345.96, which, with the penalty of 10 per cent. imposed by the statute, equals $101,158.65. This, in the judgment of the Executive, constitutes a valid claim against Mr. Henderson. Acting upon that assumption the Attorney-General has brought suit in the Superior Court of Marion County to recover the same.

The report also shows that A. C. Daily, as Auditor of the State of Indiana, collected and retained insurance taxes amounting to $13,511.57. Interest thereon to March 6, 1906, aggregates $8,054.33. Mr. Daily also failed to pay into the treasury of the State other moneys due the State at the time specified by the law. Interest upon such deferred payments to March 6, 1906, aggregates $2,101.84. These sums, together with the penalty of 10 per cent. imposed by law, amount to $26,034.51. Believing this

sum claimed against Mr. Daily to be a valid claim in favor of the State, the Executive instructed the Attorney-General to proceed to collect it. He accordingly brought suit in the Boone Circuit Court and recovered therein a judgment in the sum of $25,435.50. Mr. Daily appealed from this judgment, and the case is now pending in the Appellate Court.

The aggregate collections already made from delinquent officers and insurance companies is shown in the following statement:

David E. Sherrick, Auditor of State	$156,367 31
Daniel E. Storms, Secretary of State	8,139 85
John R. Ward, Adjutant-General	1,510 44
Insurance companies	689 79
Insurance companies	22,753 02
Total	$189,460 41

Valid claims still pending:

A. C. Daily, Auditor of State (judgment)	$25,135 50
J. O. Henderson, Auditor of State	101,158 65
Total	$126,594 15

The entire cost of the investigation, including the insurance department, was $13,258.29.

From a money standpoint alone no better expenditure of public funds, viewed from the amount actually recovered and returned to the treasury, has been made in Indiana for many years. But the commission's work did not stop with the recovery of these funds. The moral effect of the investigation it made and of the facts which have become public will continue to be of value for years to come.

There is now, and there has been for years, a lack of check upon, supervision of and examination into the accounts and the affairs of the administrative offices of the State without parallel or precedent in private business of like magnitude. The lack of this has made it possible for men in high offices to abuse their trust, to sequester and appropriate to their own use fees belonging to the public, without the facts thereof coming to the knowledge of the public. This was true for months in the case of the Auditor and Secretary who were removed, and with a single exception it has been long true in the administration of the office of Auditor of State. Through the commission the administration has uncovered the system, exposed its weakness and laid bare its corrupting and ruinous effects.

The law requires an official making a demand for compensation

for services rendered to point to some statute which clearly authorizes both the service and the compensation claimed. Under the system so long in vogue this just and wholesome rule of law has been reversed. Every doubt has been solved against the State and in favor of the official, and in some instances fees have been sequestered and appropriated to private use in violation of the positive letter of the statute. Both the system and the corrupting practices under it have been nonpartisan from the beginning. With a single exception, change of administration from one party to the other did not interrupt either the system or its abuses. Honest officials of either party were not harmed, but weak men of both parties fell before the temptations to private gain which the system presented and dishonest ones reveled in the opportunities it offered for peculation and plunder. The effect has been as nonpartisan as the system. Thousands of dollars of public revenue have gone into the pockets of officials, republican and democratic, and the people have paid without regard to party affiliation. Some of these misappropriations of public revenues were permitted to sleep for years without exposure.

The facts I bring to your attention have convinced me of the necessity of a law authorizing the Governor to appoint an executive accountant, whose duty it shall be to make frequent examinations of the accounts and books of the several administrative offices of the State and of the several State institutions under executive direction. The salary ought to be such as to command the services of a competent accountant. Such a law would have saved to the State many thousands of dollars in the past and will save to it many thousands of dollars in the future. It is not enough to expose the system and lay bare its evils. We must put an end to it absolutely.

The general statute covering the several administrative offices of the State requires some of them to make annual and some semiannual settlements with the Auditor and to pay into the treasury the moneys in their hands belonging to the State. For a number of years each appropriation act passed by successive General Assemblies has provided for quarterly settlements with the Auditor and the payment of the money in the hands of the several officers due the State, into the treasury, and that the salary of no officer who failed to comply with such provision should be paid until settlement with the Auditor and payment to the treasury of the moneys in his hands. This requirement of the law had been ignored by all the officers until the present Executive required compliance therewith.

Since October, 1905, all such settlements and payments have been made quarterly.

The recommendations of the committee relating to the auditing department of the office of Auditor of State and the general fiscal affairs of the State contain many thoughtful and timely suggestions which I commend to your consideration with the hope that legislation may be enacted to meet the needs suggested.

SEPARATE DEPARTMENT FOR INSURANCE.

The need of a separate department for the supervision of insurance is so apparent and of such urgent character as to preclude debate or delay. The department, as now organized, is no more than a neglected adjunct of the Auditor's office. This office is overwhelmed by the multitude of duties and demands, infinite in nature and variety, devolved upon it. The Legislature and not the Auditor, however, is to be criticised. With the means now provided the Auditor cannot make it other than it is—a neglected adjunct. With a beggarly allowance of $5,920 for the entire department, he is expected to administer a department having supervision of 18 legal reserve life insurance companies, 16 assessment life insurance companies, 9 fraternal life insurance companies, 7 fire insurance companies and 3 casualty companies, a total of 53, organized under the laws of and domiciled in Indiana and carrying hundreds of millions of dollars of insurance. To the supervision of these is to be added the supervision of 49 legal reserve life insurance companies, 125 fire insurance companies, 41 casualty companies, 37 fraternal insurance companies and 19 assessment companies, a total of 271, organized under the laws of other States and doing business in the State of Indiana—a grand total of 324.

These 324 companies last year collected in premiums from the people of Indiana the sum of $23,073,815.41. The securities entrusted to the care of the department, under the law, have a face value of $8,963,000. They are subject to frequent change and substitution. Their acceptance and care require skill and legal knowledge and unqualified integrity as well.

The fees collected by this department for the year 1905 aggregated $66,553.21, and for this year $72,660. The insurance taxes collected for the year 1905 aggregated $303,786.16.

It is simply impossible to secure effective administration of such a department with the allowance made. The department is entitled to stand, and, if properly organized, will stand as a barrier between the people of the Commonwealth and the horde of graveyard insur-

ance companies, funeral benefit societies and various wild, visionary concerns and criminal speculative organizations that are continuously organizing and storming the department for the privilege of duping the citizens of the State and preying upon credulity, sorrows and misfortune.

In this connection, I cannot do better than to quote from the report of the investigating committee relative to the insurance department, heretofore adverted to:

"The intricate character of insurance business demands that a strong department should stand between the companies and the insuring public. The agent goes to the prospective insurer with a contract which has been carefully worked out by experts, and in which the rates and guaranteed values have been prepared by educated actuaries, looking alone to the value and safety of the contract to the company. The proposition in its simplest form involves many matters with which the average policy holder cannot become familiar. He is at a serious disadvantage. He appreciates the need and importance of insurance, but cannot work out its intricate details. There should be a strong department to stand between him and the company so as to insure the public that any contracts offered by companies doing business in the State of Indiana are honest and fair. The policy holder should know that he is protected by the State against deception, subterfuge and trickery when he appropriates his money to this sacred sort of use. The policy holder should be able to feel that any contract offered him by an agent licensed by the State of Indiana will afford him and his beneficiaries a square deal.

The rapidity of the growth of the business of insurance companies * * * in the State of Indiana within the last ten years is so remarkable in volume and in income to the State that it warrants preparation on the part of the State for its careful regulation in order that far-reaching disasters may be averted as fully as can be done by governmental regulation. It means protection to the family and fireside in nearly as important a sense as do police and fire protection or the regulation of banking by the State or national governments."

Speaking in relation to the insurance revenues accruing to the State, the committee well says:

"The people of the State are entitled to have an efficient department maintained out of this money that is raised especially for the purpose of supervising the business of insurance. There is no reason that so large a proportion should be diverted to the general fund of the State, and at the same time permit the work for which such fund is provided to go undone or poorly done. The companies themselves have a right to demand that the moneys paid for supervision of the department shall be applied in large part to that purpose, and not diverted at the expense of good management of the department. They have a right to require that such supervision should be given to the business of insurance as to exclude illegal or fraudulent competition in the field of their business, and to know that an efficient department is protecting the insuring public from deception and fraudulent devices and representations which permit wild-catting concerns to secure business that would legitimately go to companies who would treat their patrons fairly and honestly."

In this connection, I quote further from the committee's report:

"It is needless to say that the office force above indicated is inadequate to such a degree as to warrant our saying that the business of the office cannot be performed in a safe and creditable manner. The supervision of the business of insurance involves a high degree of expert knowledge, and in addition calls for the most careful mathematical work and voluminous records which should be kept with great detail. The department is called upon to keep itself informed of the solvency and methods of business, not only of the 53 companies operating under Indiana laws, but of the 271 foreign companies doing business of insurance in this State."

Continuing, the report declares:

"We find the Department of Insurance without an appropriation of a single dollar, outside of salaries, except as it shares in the small appropriation for office expense. There is not a dollar available for the examination or investigation of companies which may be doing business without assets with which to pay the expense of such investigation. Nor is there any provision for the examination of companies which, after such examination, may retire from the State and refuse to pay the expense of an investigation which, at the same time, inures to the benefit of the State. There is absolutely no provision for any additional clerical help in times of great emergency or of unusual work. The statutes fail to require certain classes of Indiana insurance companies to pay the expenses of examinations, except when such examinations are made upon the motion of the company itself. The department would have been unable to have made its examination of The State Life Insurance Company, The State Agency Company, and other such associations, and would have been utterly unable to have engaged in this investigation, except that the Governor provided for the expense thereof out of his emergency contingent fund. Neither could the Auditor have made examination of such voluntary associations as The French Lick and West Baden Hotel Companies without the aid of the Governor's fund. Such neglect of the department has gone far toward making it impotent and helpless.

"We would here call attention to the fact that the actuary of the department is paid the very small salary of $2,000 per annum. No competent actuary will give his exclusive service for any such compensation, and the actuary of this department admits, and it is publicly known, that he has been frequently in the employment of companies doing business in Indiana, as consulting actuary, a relation which no official should be permitted to maintain with the companies whose business he is expected to examine critically and to reform if necessary. It is our belief that Actuary Buttolph is a gentleman of fine integrity and much ability, but we believe that the continuance of such relations with the companies by the actuary of the department is absolutely inconsistent with his official duties, and while no wrong may have been committed, the relation itself is subject to severe criticism.

"We are reliably informed that the actuaries appointed by the departments of some other States engage in outside business as consulting actuary, and are often employed by the companies whose business they are required to inspect in the course of their official duties. The fact that the relation exists elsewhere cannot justify it here. The State of Indiana can afford to maintain an independent department. A competent actuary cannot give his exclusive

services to the State for the salary that is now paid. The State, if it continues the present appropriation for the payment of an actuary, must be satisfied with an incompetent actuary or permit him to engage in employment which is calculated to mitigate his alertness and zeal when engaged in the critical inspection of the business reported to the department by companies who, at other times, consult him in the relation of client.

"As a result of the inadequate care of this department the growing Indiana companies have not received the restraint of a well-organized insurance department which would have undoubtedly prevented some of the abuses which have grown up in their business and which, while not destroying them, have encumbered some of the companies with assets of a character which will many times embarrass them in the future, and a class of liabilities which for many years will be an illegitimate drain on the expense fund of the company. * * *

"The lack of inspection of the mortgage loans on deposit was apparent from the fact that in many cases hereafter described no abstracts were present, insurance policies were often missing in cases which required their presence, abstracts often showed prior mortgages and liens, and in many other respects the mortgage papers were deficient in matters which would have been discovered by the most careless inspection. There was no attempt on the part of the department to keep informed as to whether interest on mortgage loans was being met or whether the same was in default.

"The care of what are known as policy loans has, of necessity, been negligent in the extreme. These so-called securities have been kept in files accessible to anybody and everybody, and it has come under the observation of the committee that messengers from the insurance companies have gone to the files of these securities and made such changes as they pleased, removing or replacing instruments and perhaps doing no more than to leave a memorandum on the desk of the clerk. A mischievous person could remove enough of such securities in his coat pocket to seriously embarrass the department and work injury to the company. The displacement of a handful of policy cards or loan cards would change the showing of assets and liabilities of a company by many thousands of dollars. The clerk has neither the data nor the knowledge from which to test the validity of the loans and, consequently, the companies offer for deposit many loans which lack the legal requirements, as evidenced by the fact that this committee caused to be rejected nearly $125,000 of securities for which the companies were given credit without the securities having had such inspection as would determine their right to be deposited. The fact that the securities on deposit with the Auditor are found in as good condition as the committee found them is due to the fact that the companies have shown unusual fairness in dealing with the office, and not to the fact that there has been any kind of efficient inspection. The organization of the office has been such as to render it impossible."

Consideration of these facts lead inevitably to the conclusion that a law should be enacted separating the insurance department from the Auditor's office and creating an independent department to take over the supervision of the business of insurance.

The department should be known as "The Department of Insurance" and its head as "The Commissioner of Insurance." He

should be appointed by the Governor for a term of four years. The supervision of such a department calls for a high order of executive ability. He should be a man of large experience, possessed of courage and moral fibre. His salary should be substantial, not less than $5,000 nor more than $7,500 per annum. He should be given a competent actuary, whose salary should be not less than $4,000 per annum, and who should be precluded by law from taking outside employment. There should also be a clerk, having charge of the business of collecting fees and issuing licenses. There should be provided a special examiner, whose business it should be to examine the financial statements made by the insurance companies. He should be a man of sagacity and experience, capable of detecting questionable items in the statements filed, wrong classifications of business, or subterfuge of any kind. This is absolutely essential if the public is not to be imposed upon. The salary should be not less than $3,000. There should be, also, a clerk possessed of legal training, whose business it should be to take charge of the securities on deposit with the Auditor, to keep the records of the same, to examine each and every security as to its value, correctness of form and compliance with legal requirements. He should be acquainted with the ordinary requisites of mortgages and municipal bonds and should have legal capacity to pass upon the validity of securities known as policy loans. The commissioner should be given a stenographer, and a special appropriation should be made for the making of examinations in cases in which the expense thereof cannot be collected from the company.

The report of the committee investigating the affairs of the insurance department of the Auditor's office has been prepared with rare skill and great ability, and I commend it to your most thoughtful consideration in connection with this subject.

The new department is absolutely essential to the public welfare, and I sincerely trust this recommendation will receive your early approval. The form of other insurance legislation will necessarily depend to some extent upon the creation of this department, and for that reason whatever legislation you enact providing for its establishment should be among your first enactments.

FRENCH LICK AND WEST BADEN.

For a number of years an incorporated company known as the French Lick Hotel Company, and a similar company known as the West Baden Hotel Company, have, respectively, owned and operated large hotels at French Lick and West Baden. In connection

with the hotels, buildings have been erected and devoted to use as casinos. These casinos have been equipped with many elaborate and expensive gambling devices. Gambling has been carried on therein to such an extent as to constitute them veritable Monte Carlos. This has been done directly by the companies, or, under lease from them, with their knowledge and connivance. Conditions became such as to shame the State. Many of its citizens were despoiled in purse and debauched in habit. Public officials holding high positions and having the custody of public funds gambled them away. Women and children were nightly attendants. Local authorities were corrupted until they would not interfere. It seemed to me the condition warranted executive action. The Attorney-General, in connection with the prosecuting attorney of the local judicial circuit, were directed to raid the casinos and seize the gambling paraphernalia, and to institute suit against the hotel companies to enjoin the further operation of the casinos. These instructions were carried out with vigor and ability. The casinos were raided and thousands of dollars of gambling paraphernalia seized and a suit instituted for injunctive relief. The Circuit Court of Orange County held that the State had no authority to intervene in the premises and sustained a demurrer to its complaint. Appeal has been taken from the decision of the court, and the case is now pending in the Supreme Court of the State. If, in the decision of this case, the Supreme Court sustains the action of the lower court, the welfare of the State will require such legislation at your hands as will clothe the State with effective powers in such cases.

Under the present statute the gambling paraphernalia seized by the State cannot be destroyed until there is a conviction of the persons in whose possession it was found. Criminal proceedings have been instituted and are still pending in the local courts of Orange County, but, so far, the State has been unable to bring these cases to trial. The statute ought to be amended so as to authorize the destruction by fire of all such paraphernalia wherever found, summarily and without trial.

REMOVAL OF PUBLIC OFFICERS.

The French Lick and West Baden cases, and the experience of the State in its effort to remove the late Secretary of State, disclose the need of a well-considered and effective statute for the removal of public officials who wilfully fail in the performance of the duties of their office, or who are guilty of misfeasance or malfeasance therein. The present statute is believed to be invalid.

The Governor of the State is charged by the Constitution with the faithful enforcement of the laws of the State. Under the law he cannot act effectively except through local officials. He has no authority to direct the action of any county sheriff or prosecuting attorney in any case. It is not clear that the Attorney-General has authority to proceed in any such case as that presented at French Lick and West Baden without the approval and assistance of the prosecuting attorney. It is unjust as it is idle to charge the Executive with the enforcement of the law, and then leave him without effective means to discharge the duty imposed.

RAILROAD COMMISSION.

The act of the Sixty-fourth General Assembly creating a State Railroad Commission has more than justified its enactment. Some of its provisions are imperfect and others almost wholly inefficient, but the commission has been able to render signal service to the people in many cases, notwithstanding the weakness of the law under which it has worked. In some instances of flagrant wrong, it has had no power to enforce its findings, but it has been able, even in such cases, to do something. It has exposed the abuse to the public eye, fixed the responsibility and laid bare the need of a more effective statute. If the present act is upheld by the courts changes in the law should be made by amendment and not by new and independent legislation.

The law should be strengthened in many particulars, giving the commission additional powers in cases of railroad and interurban crossings, interlocking switches, physical defects of ways and means, the requirement of safety appliances in intra-state traffic, the removal of blockades upon proper notice by orders concerning rates, routes of shipment and the movement of traffic.

The provisions of the law authorizing an appeal from the finding of the commission to the Appellate Court, should be amended by substituting a provision for the bringing of suit in some *nisi prius* court by any person aggrieved by the action of the commission, with the right of appeal from the decision of such court. Provision should also be made for the institution by the commission of suits in its own name for the enforcement of the law whenever the public welfare shall require.

That defects, such as have been pointed out by the commission, in the ways of some of the railroads of the State, should be continued by the companies operating such roads, in defiance of the commission and in brutal disregard of the lives of its employes, is an intolerable offense against society and the State.

My attention has been called by the commission to an instance where a bridge constructed by a railroad company over its tracks is in such condition as to constantly imperil the lives of its brakemen, and at which no less than twenty trainmen have been injured or killed. This structure is still being maintained, although it could be readily made safe, if the management of the company was disposed to do it. Such conduct is little short of criminal. Power should be given the commission in all such cases to intervene and compel the removal of the defects.

The coal blockade now existing in this State is of such magnitude and has been of such duration as to seriously affect many industries, discommode many manufacturers and entail financial loss and physical suffering upon many people. Thousands of loaded cars are permitted to stand unmoved for weeks. Producers and consumers alike are helpless. The commission is impotent, and the State itself is powerless to act. The situation, taken in its entirety, is so disastrous and so overwhelming in its results as to call for immedate and effective action upon your part.

While care should be exercised that the rights of the railroad companies doing business in Indiana shall not be impaired, too much time ought not to be given, in the presence of such an emergency as that now presented to you, to the hearing of the special interests which are so deeply injuring the welfare of the State.

The particulars of the commission's work, the weaknesses of the present law, and the need of remedial legislation are so ably and so cogently set forth in the report of the commission, filed with the Executive, copies of which I have caused to be transmitted to you, that I bespeak for the report your most careful consideration. So far as I am advised I am in entire sympathy with the recommendations made by the commission, and stand ready to give them instant executive sanction upon receipt of measures from you in which they are embodied.

STATE BOARD OF TAX COMMISSIONERS.

The work coming before the State Board of Tax Commissioners has grown so rapidly and has been added to so greatly that the amendment of the law relating thereto has become an imperative necessity. Last year this board considered and assessed property of the aggregate value of $224,377,446. This property is scattered throughout the State, and consists of the most difficult class of property to value and assess known to the law, such as railroads, express companies, telegraph companies, telephone companies, transportation companies, pipe line companies, etc. The board

also has jurisdiction over appeals from local boards of review and of appeals from its own original assessments, and once in four years the responsibility of equalizing real estate values throughout the State is devolved upon it. Under the present law it has but forty-five days in which to perform its work. I earnestly recommend an amendment of the statute, requiring the board to begin its first session on the first Monday of April of each year and providing that it continue in session for a period of forty days, if the business before it shall so warrant. This session should be for the purpose of making all original or first instance assessments within the jurisdiction of the board. The second session should begin the second Monday in July and continue for a period of fifteen days. This session should be limited to the hearing of appeals from the assessments made by the board at its first session. The third session should begin on the Thursday following the close of the second session, and should continue for a period of twenty days, if the business before the board shall warrant. This session should be devoted to the hearing of appeals from local boards of review and to the equalization of the values of real estate.

The work of the tax commissioners, apart from that of the board, has become of so much importance and has resulted in so much benefit to the State, in the way of improved assessments, and their pay is so meager, that I believe it my duty to recommend the appointment of a third commissioner and that the salaries of the commissioners be substantially increased. The increase in taxables, of $350,000,000, in eight years, is very largely due to the efforts of the commissioners. In my judgment it would not be unfair to say that $150,000,000 of the increase is due alone to the improved methods of valuation and the discovery of sequestered property made possible by them. Their services have been equally valuable in bringing about uniformity of valuation. With three commissioners the work could be divided in such manner as to place a section of the State under the supervision of each commissioner, and the work, if properly done, would require all the time of each.

While I am personally willing to continue to serve the State as a member of this board, my judgment is that the Governor ought to be relieved from membership on the board. In the event of the appointment of a third commissioner, the board will consist of the Secretary of State, the Auditor of State and three commissioners. There is no more important function of the State government than that devolved upon this board, and it is quite impossible

for the Governor, in the midst of the ever-increasing executive duties imposed upon him, to perform the character of service as a member of the board to which the State is entitled.

ASSESSMENT OF BANKS.

Equality of valuation for purposes of assessment is essential to just taxation. Without equality of valuation the burden of taxation falls unequally upon those upon whose property the tax is levied. This is unjust and in clear contravention of the intent of the Constitution.

Under the present law the valuation of banks, state and national, and of trust companies is made by local authorities. From wide observation and information I am prepared to say to you that there is no other class of property in the State so unequally valued. In some counties these institutions are assessed as low as 60 per cent. of the amount of their capital, surplus or undivided profits. Having in view the equality of valuation as a fundamental principle of just taxation, I recommend that all banks, state, national and private, and all trust companies be required to file their reports for taxation with the Auditor of State and that the State Board of Tax Commissioners be authorized to make the valuation of all such institutions. Assessment by this board would give uniformity of assessment of this class of property wherever situate.

The act of February 28, 1905, providing for the taxation of the stock of banks organized under the laws of the United States (Acts 1905, page 104), provides a method for determining the value of the stock of national banks different from the method provided for determining the value of the stock of state banks, and for that reason it is probably invalid. It should be repealed. The present law providing for the assessment of private banks is also believed to be unconstitutional. It, too, should be repealed. Private banks are now required by law to have a fixed and definite capital invested in the business. There should be legislation providing that the capital invested in any private bank shall be divided into shares of $100 each, and that such shares be returned for valuation and assessment in the same manner the shares of stock of incorporated banks are returned for valuation and assessment. An act providing for the valuation and assessment of the shares of capital or capital stock of all banks, private, state and national, and of all trust companies, should receive your early consideration. Such legislation should provide a method of ascertaining the actual value of the shares of capital invested, or of the shares of capital

stock, by taking into consideration the market value thereof, as disclosed by the usual selling price at private sale in the place where the institution is located; the dividends paid, if any; the surplus or individual or undivided profits, if any; the same as is done with respect to other moneyed capital in the hands of individual citizens of the State. If this is done, all banking institutions will be valued and assessed by the same method and all doubt as to the validity of the law applying to their assessment will be removed.

Section 27 of an act concerning taxation, approved March 6, 1891, being Section 8437, Burns' R. S. 1901, has become subject to great abuse and should be repealed. It provides for the taxation of personal property, mortgaged or pledged, as the property of the person who has the same in possession. The intent of the law is entirely proper, but in practice it results in the sequestration of substantially all notes, bonds, stocks and other securities mortgaged to or placed as collateral with the banks and trust companies of the State. Securities so mortgaged or placed are not taxable under the statute to the equitable owner thereof; they are only taxable to the bank or trust company holding them. But banks and trust companies are assessed only upon their capital stock, surplus or undivided profits. Collateral held by them is never reported, and therefore never assessed. The abuse can be ended by the simple repeal of this section, the effect of which will be to leave such property to be assessed to its equitable owner.

The law relating to mortgage exemptions in the assessment of mortgaged real estate has also become the subject of no inconsiderable abuse. Mortgages, fictitious and fraudulent, are made the basis of claims for exemption in many instances. Local boards of review now have no authority to examine into or pass upon these claims. The mere filing of the affidavit with the Auditor, setting forth the claim, is sufficient to secure the exemption. The law should be amended so as to require the reference of all such affidavits filed with the Auditor to the county assessor, who should be required to examine the same and to refer them, with such recommendation as he may think their merits warrant, to the county board of review, which board should be given full authority to pass upon them and to allow or disallow the claims made by them according as their merits or the good faith of the instruments in question shall require. This can be done by the amendment of Section 2 of the act providing for mortgage exemptions.

The schedule of personal property provided in the present tax law should be so amended as to require every person owning or

holding taxable notes, mortgages, bonds, or other securities to write into his return an itemized statement, giving each note, mortgage, bond or other security, with the amount of the claim it evidences and the name of the obligor. Each citizen should also be required to particularly specify in his return all stock he holds in any foreign corporation, giving the amount of each certificate. A large portion of this class of wealth is regularly escaping taxation. Under the form of the present schedule the citizen is simply required to give the gross valuation of all such securities. His statement is usually accepted. If he were required to give the items, with the face value and character of each, the assessing officer would be in a position to intelligently declare their value. Such property represents a form of wealth which has reached enormous proportions, and in fairness and common honesty it should be compelled to bear its share of the cost of administering the government that protects it.

STATE BOARD OF PARDONS.

The clemency power of the State is vested by the Constitution in the Executive. While it adds greatly to the burden of the incumbent of the executive office, I believe the power is wisely lodged. By an act of the Sixty-third General Assembly a "State Board of Pardons" was created, composed of three members, with an annual salary of $300.00, providing for clerk hire and other expenses. This law makes it the duty of the members of this board "to examine thoroughly and carefully into the merits of all petitions which may be presented to the Governor for the pardon of any persons convicted by any court of the State of Indiana, * * * and to report to the Governor in writing their conclusions and recommendations in each case." Immediately after this act became effective my predecessor appointed the members of this board, two of whom are still members of the board. One of these two members is now holding under reappointment made by the present Executive. The object of the law evidently was to lighten the executive burden in matters relating to clemency. If so, its object has not been attained. It is absolutely impracticable to refer all petitions coming before the Executive to the board for consideration, and if this were done it would be equally impracticable for the Executive to await the board's recommendations. The salary of $300.00 per annum precludes the members of the board giving their whole time to the duties of this position. It cannot be expected and evidently was not intended that they should.

Under the Constitution the board has no power to do more than recommend. The Executive cannot conscientiously follow blindly the recommendation of the board. Its findings are only advisory. The responsibility of the exercise of the clemency power rests, in the last analysis, upon the Executive alone. The deed when done is his act, and his only. This fact compels him to examine each case for himself and this leads to the performance of the same labor that would have devolved upon him if the case had never been considered by the board at all. In fully 50 per cent. of the cases in which clemency is recommended, the present Executive has been compelled by what seemed to him to be his imperative duty, to overrule the board's recommendation. The board is not and has never been an expensive board. On the contrary, the closest economy has characterized its administration from the beginning. The total cost of the board last year was $2,057.00. Of this sum $862.00 was paid for clerk hire, $975 was paid in salaries to members, and the expense incurred aggregated but $220.00. The clerk of the board is an efficient stenographer and when not employed in the active service of the board, she has assisted the clerks in the Executive office, taking charge of the clemency cases and the correspondence relating thereto. While the expense of the board is not great, it is needless. Its work is so nearly nominal and of so little assistance to the Executive, or of value to the State, that it may be dispensed with without injury to the public interests. During the entire year of 1906 but 26 cases were considered by the board. These cases were disposed of as follows: Recommendations of clemency, 9; clemency rejected, 7; cases in which the boards of parole acted while they were pending before the Board of Pardons, 5; cases still pending, 5. Actual decision was rendered in but 16 cases. Of the 9 cases in which clemency was recommended, 4 were approved by the Executive, 2 are still under advisement, and 3 were overruled.

I do not mean to reflect in any way upon the character, ability or work of the gentlemen constituting this board. They have my confidence and my respect. They are my personal friends. Our relations have been and are of the most friendly character, but I am thoroughly convinced that the law creating the board ought to be repealed in its entirety. The facts to which I have called your attention seem to me to abundantly justify its repeal. If you will provide the Executive with a pardon clerk at $900.00 per year, the same salary that is now being paid the clerk of the board, the work can be done by the Executive without other expense, at a

saving of more than $1,100.00 a year, and with as much certainty of just decision, and less embarrassment, than under the provisions of the present law. While the board has examined and decided but 16 cases within the last year, the Executive in two years has examined and made personal investigation of and has decided 258 petitions, an average of 1 every 3 days since the beginning of his term. Two hundred and twenty of the cases receiving executive investigation have been rejected. Clemency has been extended in 38. Every application for clemency presents a difficult and delicate problem. Where and when to extend it, and when and where to withhold it, are questions which can rarely be satisfactorily answered, even when the greatest care is exercised. Fear that the power might be abused through sympathy, pity or favoritism, or through yielding to the entreaties of influential and powerful friends in some instances, or in response to what has seemed to be popular demand in others, has led me to exercise the power with the utmost care and caution.

In one respect I have departed from the custom of the office. I have heard the case of the unfortunate inmate of jail or workhouse as patiently and willingly and examined into it with the same care that I have that of the inmate of the State Reformatory or the State Prison. I have acted favorably in 18 jail or workhouse cases within the last two years, and yet the total number of cases in which clemency has been extended within that time is much less than the number in which clemency was extended during the last two years of my predecessor. For the years 1903 and 1904 favorable action was taken in 62 cases, none of which were jail or workhouse cases. In the two years 1905 and 1906, only a total of 38 cases have been favorably acted upon, and of these 18 were jail or workhouse cases, 9 were State Prison, 8 were State Reformatory, and 2 Women's Prison cases. One of the 38 cases involved only the remission of the forfeiture of a recognizance bond in a case where the defendant had been acquitted upon trial and was therefore not in any institution. These 38 cases of clemency consisted of 10 paroles, 2 paroles with the remission of fines, 6 remissions of fines, 18 pardons and 1 commutation of death penalty to life imprisonment. In one instance pardon was granted that a prisoner might be tried for murder, the commission of which he had confessed. Full details of each of these cases will be found in an addenda attached to and filed herewith. In all cases where the law imposes a minimum and a maximum sentence, its decree should stand until at least the minimum sentence has been served. The

lightest punishment the law imposes for the commission of a crime is the minimum sentence it names, and until that is served executive clemency should be withheld, except where some special and unusual reason obtains. I have adhered closely to the rule as here stated, seeking to exercise the pardon power in such manner as to interfere in the smallest degree possible with the certainty of punishment the law provides.

PUBLIC PRINTING.

The law relating to the public printing of the State should be revised. The importance of the subject is made apparent by the statement of the annual cost of the public printing account. For the fiscal year 1905 the institutional printing cost $27,110.64, that for the several departments and the State generally $79,735.62, an aggregate of $106,846.26. For the fiscal year 1906 the institutional printing cost $27,002.29, that for the several departments and the State generally $59,994.80, an aggregate of $86,997.09.

The minimum and the maximum number of reports from the several departments required to be printed should be fixed by statute and the number actually printed left to the discretion of the Printing Board within the maximum and minimum number named. The statute should clearly state what reports are to be published annually and what biennially. All reports required to be published should be filed with the Governor within thirty days from the close of the period for which such report is made, unless for cause shown the Printing Board shall grant additional time.

The printing of the documentary journal should be discontinued, as it is nothing more than a compilation of the several reports published in other forms in which they are easily obtainable. It is therefore an extravagant and useless duplication.

Under the present law the number of ballots required to be printed by the State Board of Election Commissioners is greatly in excess of the number used or needed. The number printed may be greatly reduced without endangering the public interests, and a substantial saving thereby made to the State.

The portion of the Auditor's report relating to the question of insurance should be eliminated from the report and printed as a separate report. The demand for this phase of the report is so great as to compel the printing of a larger number of the Auditor's report than otherwise would be necessary. The report as now printed contains much expensive matter for which persons who desire only the insurance report have no practical use. The cost

of printing the report could be materially lessened in this way without injury to the report. If a separate department of insurance is created, the insurance report, of course, would necessarily be separate from that of the Auditor.

All printing and supplies should be required to be delivered to the clerk of the Printing Board, inspected and receipted for by him and delivered to the various departments and institutions, under the supervision and direction of the board. No officer, head of department or institution nor any subordinate in any office or of any department or institution should be permitted to negotiate with the State printer for either printing or supplies. All printing and all supplies should be ordered by requisition through the board. This will work no hardship anywhere and will be inducive to economy in all departments. Provision should be made for an assistant to the clerk of the board. Close supervision of supplies and of the public printing will enable the State to get what it buys, and is clearly in the interest of economy.

The law should also provide for an increase in the number of Supreme Court reports originally printed to 1,800 and the number of Appellate reports to 1,600. This number printed in the first instance will obviate early reprints of the different volumes of these reports and will be cheaper in the end. The number of reprints of any volume should be left to the decision of the board, not to exceed 250.

The classifying of the public printing for the purpose of accepting bids and letting the contract therefor, should be changed. It is a matter of more than passing importance that this be done. Under the present classification it is quite impossible to obtain the competition in letting the contract to which the State is entitled. The person bidding for general supplies and stationery must bid for and be equipped to do the important and difficult legislative printing. As a result there is little or no competition in bidding for general supplies and stationery because of the inability of many persons to do the printing with which such supplies and stationery are included. The statute should provide at least six classes, each of which may be bid for and awarded separately. The following classification is suggested as an advantageous one for the State:

The first class should comprise the printing and binding of the laws, journals, reports of officers and public institutions, and all book and pamphlet work to be printed on book or pamphlet paper, except the reports of the Appellate and Supreme Courts;

The second class should comprise the folding, stitching, covering and binding, and all work belonging to the binding business not included in the first class;

The third class should comprise all legislative bills;

The fourth class should comprise all commissions, letter-heads, circulars, blanks and other work usually executed on writing paper;

The fifth class should include all office supplies and articles of stationery;

And the sixth class should include the printing and binding of the Appellate and Supreme Court reports.

This classification will result in the saving annually of large sums. The revision of the law along the line suggested is therefore most earnestly urged upon your consideration.

STATE LIBRARY.

An act approved March 11, 1895, constituting the State Board of Education, a State Library Board, and vesting in such library board the management and control of the State Library, and an act approved February 24, 1899, creating a Public Library Commission, to be composed of three members appointed by the Governor, to have the control and management of the traveling libraries provided for therein, should both be repealed, and a new statute enacted creating a State Library Commission, to be composed of the Superintendent of Public Instruction, ex officio, and four members to be appointed by the Governor, vesting in such commission the management and control of the State Library and such other duties as are now devolved upon the State Library Board, together with all the duties now devolved upon the Public Library Commission. Such an act will unite the library interests of the State, place them under the control and management of a single board, and make greatly for efficiency of service in both departments.

The State Board of Education is composed of able and efficient men, but their time is greatly taken by duties devolved upon the State Board of Education. They are men of busy lives, and it is not possible for them to give to the library interests of the State such service as these interests require.

Under the acts named the library interests are controlled by dual and independent authority. The unity of purpose essential to effective administration and progressive work is impossible. By this recommendation I mean no reflection upon the personnel of either of these boards. My criticism is of the separate, independent

and conflicting departments created by the two acts in question and not of the persons who are administering them.

The members of the new board should serve without pay, other than their actual traveling expenses. No attempt should be made to amend either of the present statutes, but a new and independent act should be passed devolving upon the board created full control of both departments.

CHANGE IN FISCAL YEAR.

The present law provides that the fiscal year shall begin on the 1st day of November and end on the 31st day of October of each year, and that all official salaries shall be paid quarterly, beginning with the 31st day of January.

For some reason the provision of the law as to the time of payment of official salaries has been disregarded for many years. On the 31st day of January last, it was thought best to return to the time of payment fixed by the law. This occasioned the payment of salaries for thirteen months in the last fiscal year, while the appropriations therefor were for but twelve months. The return to the time of payment required by the law necessitated the payments made. Payments for the additional month should be legalized.

I recommend, also, a change in the beginning and the end of the fiscal year. The year should begin on the 1st day of October and end with the 30th day of September of each year. All annual and biennial reports required of the several departments and officers of the State relate to fiscal years. The law provides that these reports be printed and filed with the members of the General Assembly for their information. These reports cannot be made up until the close of the fiscal year they cover. This gives but sixty days in which to prepare the reports and to secure their publication. As a result many of the reports are not filed with the Governor until the eve of the assembling of the General Assembly and are not printed until after the adjournment thereof. By closing the fiscal year on the 30th of September, an additional month will be given and it will become possible to secure the publication of the reports in time for distribution at the beginning of the session. This change will also cause the fiscal quarter to correspond to and end with the calendar quarter. If the change is made, a clause should be inserted in the law providing for the use of but eleven-twelfths of the general appropriation made for the fiscal year of 1907.

CLAIM OF ONE HUNDRED SIXTY-FIRST REGIMENT.

The officers and men of the 161st Regiment of Indiana Volunteer Infantry and Companies A and B, Colored Infantry, held at the time they were mustered out of service what was believed to be a valid claim against the United States Government for back pay due them on account of services rendered the government during the Spanish-American War. These claims, while large in the aggregate, were small in individual amount, so small in fact that no member of the organizations could afford to incur the expense of prosecuting his claim. This led my predecessor to make a contract as Governor, on behalf of the officers and men of said organizations, with Honorable A. W. Wishard and others, for the prosecution of all such claims. The compensation was fixed at a sum equal to 25 per cent. of any recovery which might be made, and provided that the claim should be prosecuted at the expense of counsel and that no compensation should be paid in the event of the failure of recovery.

Claims were made aggregating $82,883.95 and prosecuted with such vigor and success that $46,698.47 was finally allowed upon appeal, by the Comptroller of the Treasury. The claims were prosecuted in the name of the Governor of the State for the use and benefit of the officers and men named. The allowance was made in the name of the present Executive. The compensation of counsel provided by the contract, $11,674.61, was paid them, and the balance amounting to $35,023.86 was placed in the bank in the name of the Governor, for distribution to the members of said organizations. This distribution is being made through the office of the Adjutant-General of the State, as rapidly as the claimants can be located and proof of their claims obtained. On the 31st day of December, 1906, the disbursements aggregated $23,669.32. Having rendered the service, the members of these organizations ought to be paid in full. I believe it to be the duty of the State to reimburse them for the expense incurred in the prosecution of their claims, and I therefore recommend that the sum of $11,674.61 be appropriated for that purpose, to be drawn by the Governor upon his voucher and distributed through the office of the Adjutant-General, in the same manner and upon the same basis that the present fund is being disbursed.

A number of claimants have died since their discharge from the service, and payment can be made now only to their administrators. In many instances the expense of letters of administration would

exceed the amount of the claim. For this reason I recommend the passage of a special act authorizing the Governor to pay the sums thus involved to the next of kin of all deceased claimants upon proof of kinship, without additional formality or expense.

BAKER BRIBERY CASE.

The last General Assembly appropriated $5,000 for executive use for the apprehension, return and prosecution of one Oscar A. Baker, charged with the bribery of a member of that body. At the time the appropriation was made Mr. Baker was a fugutive from justice, having fled the State and gone to the Dominion of Canada, according to the best information the Executive could obtain. Upon inquiry of the State Department of the Federal Government I was advised that the crime of bribery was not extraditable under the existing treaty between the United States and Great Britain, and that Mr. Baker could not be compelled to depart from Canada even though apprehended. Believing that his return and apprehension under such circumstances would be more probable if no public reward was offered for his arrest, I contracted with different sheriffs and officials and detectives for his apprehension and return, agreeing to pay therefor $2,000, reserving the right to terminate such employment at any time when in the judgment of the Executive, public reward should be offered. None of these persons was able to apprehend Mr. Baker. Later I cancelled all such agreements and offered a public reward of $3,000 for his capture and return to the custody of the sheriff of Marion County. Nothing, however, has come of the offer, further than the receipt of information through the late sheriff of Marion County that Mr. Baker is still in the Dominion of Canada and refuses to return to Indiana.

The offense with which he is charged is a grave one. It involves the integrity of the Sixty-fourth General Assembly. I therefore ask that the appropriation heretofore made be renewed.

STATE INSTITUTIONS.

The State institutions, taken as a whole, never were in better condition than they have been during the past biennial period. Political considerations never affected them as little. Their management has been characterized by economy and efficiency. In a number of instances the cost of maintenance per capita has been reduced, notwithstanding the increase in the cost of supplies.

There is, however, still room for improvement in the administration of these institutions. I suggest for your consideration the propriety of revising the laws relating to all such institutions other

than the institutions for higher education, that uniformity may be had in their administration. At the present time the number of members of the several boards differs. Some of them are not required by law to be nonpartisan and are so now from executive choice alone. The salaries of members of these boards vary from $300 to $500 per year and necessary traveling expenses. In some institutions the boards choose not only the superintendent but the subordinates as well. Qualifications are specified for membership on some of the boards which greatly hamper the Executive in the selection of such members. Reports are to be made at different times and in different forms. Better service can be had if these boards are composed of four members, not more than two of whom shall be of the same political party. There should be at least one woman on the board of every institution in which women are inmates. All salaries should be fixed at $300.00 per annum and necessary traveling expenses not to exceed $125.00 per year. The duty of selecting superintendents should be devolved upon the boards, but their authority in this direction should end there. Each superintendent should have the right to select his own subordinates and be held responsible to the board for their conduct.

STATE REFORMATORY.

Acting under authority of a statute enacted by the Sixty-fourth General Assembly, trade schools and a school of letters have been established and put in operation in the State Reformatory, the particulars of which are set forth with clearness and accuracy in the fifth biennial report of the institution. Their development has been such as to bring results beyond the hope even of those most favorable to the legislation which authorized them.

On the 1st of July, last year, all labor contracts ceased and the industries retained became an integral part of the trade school system of the institution.

I cannot commend too highly the work being done and the progress being made. The report referred to will be laid upon your desks. It will bear inspection and analysis. I trust it will receive the consideration to which the great importance of the subject it covers is entitled.

STATE PRISON.

The labor contracts at the State Prison will expire in 1910. If they are to be discontinued it is of the utmost importance that provision be made prior to that time for the employment of the inmates. I believe this can best be done by finding employment for

them on State account. With this purpose in view, the Board of Control of the Prison, with executive approval, purchased and installed a plant for the manufacture of binder twine, at a cost of $32,174.40. The plant was not ready for operation until March, 1906. From that time to the 31st day of October, 1906, an average of 64 men were employed in the manufacture of twine. Although the season was far advanced when the operation was begun, a ready sale was found for the manufactured product. A careful analysis of the accounts of the plant indicates that the enterprise can be successfully developed with substantial profit to the State. An excellent quality of twine is being manufactured. It can be placed upon the market at a less price than the trust product. I am convinced if the plant is properly developed and carefully managed that it will result in the regular employment of perhaps 100 of the inmates, in a profit to the State, and in a saving to the farmers of the State in the cost of twine used by them. The State account fund provided by the present statute is insufficient. A new statute should be enacted having particular reference to the management and control of this industry, and making provision for a larger revolving fund for its use. The subject is covered by a measure prepared by the late Attorney-General, which will be introduced, and which I hope will have your early consideration.

I am advised by the warden of the Prison that a fund made up of many small items of earnings by certain inmates under the rules of the Prison, who have died, been executed or have violated their paroles, has accumulated under his administration. This fund now aggregates $522.22. Some provision should be made concerning it. It has been suggested to the warden that legislation should be had providing for its transfer to the library fund of the institution.

HOUSE OF CORRECTION FOR WOMEN.

Within the next few months the Industrial School for Girls will be separated from the Women's Prison. The lack of proper separation in our jails, the scandals that have developed in some of them on account of the confinement of women therein and the frequent unsatisfactory treatment there accorded to women, together with the lack of employment for them, lead me to recommend what seems to me a satisfactory solution of the problem of their care and confinement. That is, the ulitization of the vacated parts of the girls' side of the Women's Prison as a workhouse for women. Long term prisoners can be sentenced to the Women's Prison as they now

are. Those sentenced for a short term may be sentenced to the Workhouse for Women. If the change is made no convicted woman should thereafter be confined in any jail or workhouse in the State. The expense of the change will not be great. The two institutions can be operated by the same board, with the same organization, and at a less cost per capita than women are now maintained in the county jails.

INDIANA INDUSTRIAL SCHOOL FOR GIRLS.

The commission having in charge the location and erection of the Indiana Industrial School for Girls has made substantial progress in the work committed to its care. Contracts for the construction of seven cottages, a schoolhouse and a service plant have been executed, and the buildings are now nearing completion. The buildings are modern and substantial. The total appropriation by the Sixty-fourth General Assembly was $235,000. The total cost of constructing the buildings named, including the expenses of the commission incident thereto, will practically equal the appropriation. This will leave the commission without funds to furnish and equip the institution. This should be provided for by an emergency appropriation, to be made immediately available.

The population of the institution has increased to such an extent as to require the construction of at least one new cottage and two if the finances of the State will justify. Provision should also be made for two cottages for male employes and for an administration building. Also for a cow barn, horse barn, storehouse and cold storage building. Appropriations for these buildings need not be included in the emergency appropriation for furnishings and equipment, but should be made available early in the present year. The cost of furnishing nine cottages and equipping the schoolhouse it is estimated will aggregate $25,000. A total of not less than $120,000 is necessary to the completion of the institution, and I therefore recommend the appropriation of that sum.

I believe it important that the furnishing and equipment of the institution and the construction of the new buildings that may be authorized, be referred to the board of trustees to be appointed by the terms of the present statute upon the completion of the institution. The separation of the School from the Women's Prison and the transfer of the inmates to the new institution involves much detail and will require much time and should be made under the immediate supervision of the board of trustees. I therefore urge the passage of a special act authorizing the immediate appointment

of a board of trustees and referring to them the furnishing and equipment of the institution and the removal of the inmates to the new location.

The name of the institution should be changed to the "Indiana Girls' School."

INSTITUTION FOR THE INSTRUCTION OF THE DEAF.

The commission having in charge the construction of the new institution for the instruction of the deaf has selected and purchased a site consisting of 76.93 acres lying immediately north of the State Fair Grounds, fronting 42nd street, and lying east of the right of way of the Chicago, Indianapolis & Louisville Railway, 4½ miles distant from the center of the city of Indianapolis. The purchase price of the land was $32,000. Under the limitation of the law all the commission could pay was $30,771. The difference was contributed by private persons. The site selected and the price paid are both such as to commend the action of the commission to your approval.

On the 31st day of October, the commission had received:

From sales of land made under the late administration	$158,280 56
From sales of products	60 00
From rent	200 00
From interest on bonds	572 18
A total of	$159,112 74
Amount then unpaid on purchase price of land, principal and interest	43,884 00
Interest accrued on deposits in bank	1,200 70
Total from sales of lands account, sale of products, rent and interest	$204,197 44

The total appropriation made by the Sixty-fourth General Assembly was $315,000, which includes the $204,197.44 named above. Of this sum the commission had expended on account of purchase of real estate and expenses incident thereto and to the selection of a site, the sum of $40,771.77, leaving a balance unexpended of $274,228.23.

Plans have been prepared providing for the construction and equipment of a modern institution having a population of 500, upon a modified cottage plan. When completed in accordance with the plans the institution will consist of 22 buildings, as follows: A schoolhouse, dining hall and kitchen bakery, power house, boys'

dormitory (4 buildings), girls' dormitory (4 buildings), hospital, boys' industrial building, girls' industrial building, administration building, residence, laundry, propagating house, cow barn, horse barn, contagion hospital and storehouse.

The appropriation made is wholly inadequate. In fact, no more than sufficient to make a substantial beginning. The matter has been so long delayed that after full consideration it was believed best to proceed with the construction of such buildings as will come within the appropriation in cost of construction. Accordingly a contract was entered into for the construction of the schoolhouse, dining hall and kitchen bakery, and a power house, for the sum of $268,477. In addition to this a provisional contract was entered into for the construction of all the other buildings named, at a cost of $647,737.50, making the total cost of the institution for buildings when completed, $916,214.50. The expenditure is large, but the institution for the instruction of the deaf is not a charitable institution. It is an educational institution and should be built upon a plan in keeping with its purpose. It is estimated that it will require $128,500 for the improvement of the grounds, and for furnishing and equipping the institution, in addition to the cost of the buildings. This covers the cost of the institution completed. The revenues of the State will not permit an appropriation during the next biennial period of a sum sufficient to complete the institution as planned. The provisional contract, however, provides for the construction of each separate building for an agreed price, clearly specified in the contract, and is made subject to the approval and ratification of the General Assembly. It is also provided that if the General Assembly shall ratify the contract for any one of the buildings covered by the provisional contract and make an appropriation for its construction, that the contract to that extent shall become a valid and binding contract. This leaves the General Assembly in a position to judge for itself the extent to which it shall appropriate funds and ratify the provisional contract.

If economy is used and appropriations are made with care and discrimination, I believe the state of the finances will warrant an appropriation of $400,000 for the next biennial period. The act of appropriation, however, should clearly specify the purpose of the appropriation, and the extent to which ratification of the contract is intended to be made.

SOUTHEASTERN HOSPITAL FOR THE INSANE.

An act approved February 21, 1905, authorized the construction of a new hospital for the insane to be known as the Southeastern Hospital for the Insane, and for the appointment of a commission having authority to select a site and construct the necessary buildings. A commission was duly appointed and a site selected near the city of Madison, overlooking the Ohio River. The building site and farm consists of 353.848 acres, for which the sum of $36,829.84 was paid. In addition to the building site and farm, 9.943 acres for right of way and water supply were purchased at a cost of $2,385, making a total acreage of 363.791 acres, and a total cost of $39,214.84. Dr. S. E. Smith, Superintendent of the Eastern Indiana Hospital for the Insane, was selected by the commission as expert medical adviser, and his services have added greatly to the efficiency of the commission. Plans have been obtained for a completed institution on the cottage plan, modern in character, for a population of 1,000, consisting of 22 cottages, one-half to constitute the department for men and the other half the department for women, ranging in capacity from 30 to 60 beds each, for the proper care of nine several and distinct classes of insane persons; an administration building for offices and officers' quarters; a service building for the kitchen; 2 congregate dining-rooms, an assembly hall, employes' quarters and dining-room, a power house, a storeroom, a laundry, an industrial building for a sewing-room, a shoeshop and rooms wherein patients may be safely employed, a workshop for painters and carpenters, a pumping station, a water tower and a stable.

The total appropriation carried by the bill authorizing the construction of the institution was $560,000. The following disbursements had been made at the close of the last fiscal year:

For land	$39,214 84
Wells	2,273 75
Equipment for wells	1,296 13
Architect's fees	5,000 00
Commissioners' expenses	2,962 40
Maintenance of farm and grounds	1,340 36
Incidental expenses	698 42
Total	$52,785 90
Balance available	507,214 10

The appropriation made was found wholly inadequate to complete the institution. The necessities of the State on account of the great number of insane persons whose care is unprovided for were thought to be such as to justify the construction of an institution that shall have capacity for at least 1,000 beds. That there should be no further delay a contract was entered into for the construction of such number of the buildings as could be built within the appropriation. These buildings are as follows: Standpipe, foundation and casing; all tunnels, pumping station, administration building, rear center building, power house, laundry, storehouse, mechanical equipment, including the power equipment, steam heating and ventilation, water supply and iron sewer, the electrical equipment and wiring, plumbing and tile sewer, excepting so much of the heating apparatus, electrical wiring and plumbing as belong to the buildings not enumerated in the contract. The contract price is $493,468.00. A provisional contract was entered into subject to approval and ratification by the General Assembly, for the construction and equipment of all the structures not included in the positive contract, for the sum of $673,005.00. In addition to these contracts the hardware has been contracted for, at a cost of $8,855.19, and a custodis chimney for $5,325.00. An expense has also been incurred on account of changes amounting to $419.30, making a total cost of the institution constructed ready for furnishing, $1,181,072.49. It is estimated that the household equipment and other expense incident to the preparation of the institution for occupancy will amount to $202,500, making the total cost of the institution completed and ready for use, $1,436,358.39. This leaves a balance of construction and equipment cost unprovided for of $876,358. An appropriation of this sum is, in my judgment, greater than the revenues of the State will justify for the next biennial period. The provisional contract, however, is so drawn that the cost of each separate building is clearly set forth. It is also provided that the General Assembly may ratify such provisional contract in whole or in part and that such part of the contract as shall be ratified, shall be valid and binding. It is therefore important that whatever provision is made, shall specify clearly what buildings are intended to be appropriated for and to what extent the contract is ratified.

I believe the revenues of the State will justify an appropriation for this institution of $500,000 for the next biennial period.

EPILEPTIC INSTITUTION.

By an act, approved March 6, 1905, an institution for the care and treatment of epileptics was authorized and provision made for the appointment of a commission to purchase a site therefor. Within the time specified by the statute the commission was appointed and a site selected by it, consisting of 1,228.82 acres, near the city of Newcastle, in Henry County, costing $122,882.00, or an average of $100.00 per acre. The expenses of the commission aggregated $2,697.34, leaving an unexpended balance of $24,420.66. The life of the commission ended with the purchase of the site.

On the 15th day of March, 1906, a board of trustees was appointed, and this board has since been in charge of the institution. It has selected a superintendent, and has erected buildings which will accommodate fifty patients from the unexpended balance of the appropriation. But on account of lack of sufficient funds they cannot be equipped or furnished until an appropriation is made therefor.

Further legislation should be had relative to the opening of the institution and the character of the inmates which shall first be received. The whole matter is something of an experiment and should be developed with care and caution. In view of these facts and the heavy drain to be made upon the public revenues during the coming biennial period, I do not recommend the appropriation of more than $150,000.00 for the construction of new buildings at this institution.

The commission in purchasing the lands constituting the site for the village contracted for the same at $100.00 an acre with a committee of citizens of Henry County, on the supposition that it was acquiring title to 1,228.82 acres, and with the understanding that after the lands were conveyed to the State a careful survey would be made, and that any excess would be paid for at the rate of $100.00 per acre, and any deficiency in the number of acres should work a reduction in the purchase price of $100.00 per acre. Such a survey has been made by a competent engineer and certified to the executive office, showing the aggregate of the several tracts purchased to be 1,244.55 acres, or an excess of 15.73 acres. There should be, therefore, an additional appropriation of $1,573.00, to be paid, upon voucher of the Governor, to said committee in full settlement of the purchase price of said lands.

The purchase of the sites for these three new institutions was made with care, and the State has more than value received in each. Titles to all the lands included in them were examined by the Attorney-General and approved by him before payment was made.

TUBERCULOSIS COMMISSION.

By joint resolution approved March 6, 1905, the Sixty-fourth General Assembly authorized the appointment of a commission of five persons, two of whom were required to be members of the Senate, holding over, two members of the House of Representatives, and one a practicing physician of prominence in the State, to investigate the need of a hospital for the treatment of tuberculosis in this State and the work of such institutions in other States. Pursuant to the authority conferred by this resolution, the Executive appointed Alexander G. Cavins and Carl E. Wood, Senators; Richard N. Elliott and Loren F. Gage, members of the House of Representatives, and Theodore F. Potter, a physician.

These gentlemen have made wide and intelligent investigation of the subject and have filed a report of their proceedings and their conclusions, copies of which will be furnished you and which I commend to your consideration. The subject is one that appeals greatly to all thoughtful persons, and if the finances of the State will permit, steps leading to the establishment of such an institution should be taken by you.

MORTON MONUMENT.

The Sixty-fourth General Assembly appropriated $35,000.00 "for the purpose of erecting an heroic statue of enduring material to perpetuate the name and services of Oliver Perry Morton," and providing for the appointment of five commissioners to erect such statue.

The commission was duly appointed, consisting of Messrs. Warren King, E. B. Martindale, Joseph I. Irwin, Henry C. Adams and Daniel R. Lucas. Shortly thereafter Dr. Lucas resigned to become the secretary of the commission, and Mr. I. H. C. Royse was appointed to the vacancy occasioned by his resignation.

A site for the statue was selected immediately in front of the east entrance to the Capitol. A design prepared by Mr. Rudolph Schwarz of an heroic bronze statue was selected and a contract entered into with Mr. Schwarz for the same.

The commission will be able to erect a monument and statue in compliance with the law providing therefor, and which will fit-

tingly commemorate the memory and services of Governor Morton, within the appropriation named, and hopes to be able to unveil the same before your adjournment.

LAWTON STATUE.

The people of Indiana, through private subscription, have provided the means for a statue to the memory of General Henry W. Lawton.

A commission was selected with authority to select and erect what in their judgment should be a fitting memorial. A design—the joint work of Daniel Chester French and Andrew O'Connor—was accepted and a contract entered into with them therefor. This statue has been completed and is now in the possession of the commission. A site has been selected upon the Washington-street side of the public square in the city of Indianapolis. The date of the unveiling of the statue has been set for Memorial day of this year. The occasion will be worthy of State recognition. It will mark the first opportunity for formal recognition on the part of the people of Indiana of the services and devotion of a great soldier. The President of the United States has been invited to participate in the ceremony of unveiling and is expected to be present. Up to the present time the State has contributed nothing whatever toward the consummation of this patriotic purpose.

I recommend that you appropriate the sum of $500.00, to be used by the commission in defraying the expenses of the unveiling ceremonies as it may think best.

NANCY HANKS LINCOLN GRAVE.

Nancy Hanks Lincoln, mother of Abraham Lincoln, is buried near Lincoln City, in Spencer County, Indiana. The site of the grave is marked by a suitable monument contributed by Mr. J. S. Culver, of Springfield, Illinois, and unveiled two or three years ago with appropriate ceremonies.

The title to the land where her grave is located is vested in the Nancy Hanks Memorial Association. The association is incorporated under the laws of the State, but has no income out of which to pay the expense of caring for the grave or maintaining the grounds it owns. It now has on hands a fund of $925.37. Both the grave and the grounds are sadly neglected, their condition being such as to cause much unfavorable but just criticism. The association desires to convey the grounds to the State of In-

diana, and is willing to turn over to the State the money now in its treasury if the State will accept the gift and assume the responsibility of caring for the grave.

I recommend the passage of a law authorizing the acceptance of both the land and the money, the appointment of a commission, the members of which shall serve without compensation other than necessary traveling expenses, and an appropriation of a sufficient sum to erect a fence about the grounds and give them proper care.

ANDERSONVILLE MONUMENT.

Among the Union soldiers who died in Andersonville prison during the Civil War were 750 from Indiana. But five States in the Union contributed more men to the death roll of that prison than the State of Indiana. All of these States, with others, have erected monuments to commemorate the valor of their soldier citizens who died amid the horrors of a prison life unparalleled in human history. These monuments have ranged in cost from $6,000.00 by the State of Rhode Island to $35,000.00 by the State of New York.

I recommend an appropriation of $10,000.00 for a monument to be erected on the prison site to the memory of the 750 heroic dead who are buried there, and that an act be passed creating a commission, to be appointed by the Governor, of five survivors of the prison, to erect such monument, said commissioners to serve without pay other than their actual and necessary traveling expenses.

ANTI-LOBBY LAW.

Special interests, individual and corporate, are wont to exercise undue influence upon all legislation relating to any matter of concern them. They fill the legislative chambers and the approaches thereto with paid agents who recognize no public interest which conflicts with that of their employers. They voice no thought or wish beyond the "interest" they represent. Their attitude is described with exactness in the couplet,

Whose bread I eat,
His song I sing.

Such persons are not safe counsellors. They are the enemies of the people's interests. Their very presence is inimical to the public welfare. Human rights—the rights of the individual citizen, or the rights of the body of the people—are not safe where legislation can be procured or defeated or government administered

through the corrupt and demoralizing influence of the paid agents of organized wealth and greed. Self-respect, the good name of the State, and your duty to the great public, whose representatives you are and which commissioned you to speak and act for it, should impel you to banish them by affirmative action from these halls. There are many measures of unusual public import coming before you which profoundly concern the people and to which many of these interests will be opposed. Indeed, I am advised that a number of professional lobbyists retained to represent them are already here.

An act should be passed, under suspension of the rules, carrying an emergency clause, which shall provide that every person retained or employed for compensation as counsel or agent by any person, firm, corporation or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house, or to promote or oppose executive approval of such bills or resolutions, shall forthwith file in the office of the Secretary of State a written statement subscribed by himself, under oath, setting out the names of the person or persons, firm or firms, corporation or corporations, association or associations by whom or on whose behalf he is retained or employed, together with a brief description of the legislation in which such service is to be rendered. It should also provide that the Secretary of State shall keep an appearance docket, wherein the names of all such persons, counsel or agents shall be recorded, together with the information contained in the verified statement filed by them, which record shall be open to public inspection. Upon the termination of such employment the fact of such termination, with the date thereof, should be entered, by direction of such counsel, agent or employe. It should also provide that no person, firm, corporation or association shall retain or employ any person to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any measure or measures, and that no person shall for compensation engage in promoting or opposing legislation except upon such appearance duly entered, and that no person shall accept any such employment or render any such service for compensation contingent upon the passage or defeat of any legislative measure or measures, and that every person, firm, corporation or association, within sixty days after the adjournment of the General Assembly, shall file in the office of the Secretary of State an itemized statement, verified by the oath of such person, or in case of a firm a member thereof, or in case of a domestic corporation or association an officer thereof, or

in case of a foreign association an officer or agent thereof, showing in detail all expenses paid, incurred or promised, directly or indirectly, in connection with the legislation pending at the last previous session, together with the names of the payees and the amount paid each, including all disbursements of every kind or character paid, incurred or promised to counsel or agents and specifying the nature of said legislation and the interests of the person, firm, corporation or association therein.

The act should also make the violation of any of its provisions a crime and provide severe penalties as punishment therefor. Duly accredited counsel or agents for counties, cities, towns, villages, public boards and public institutions should be excepted; also persons rendering professional services in drafting bills or in advising clients, and in rendering advice as to the construction or effect of such pending legislation, where such professional service is in no otherwise connected with legislation.

This recommendation is substantially in accordance with the New York law upon this subject. I believe it will be an effective measure, and I urge its passage at the earliest possible moment. The repetition of the scenes of former years in and about these chambers can be prevented if you desire to prevent them. You have the power. The responsibility is yours.

RAILROAD PASSES.

Two years ago I urged upon the General Assembly the necessity of anti-pass and anti-frank legislation. None was enacted. Since then we have made great progress toward the elimination of the evil. Public sentiment has been stirred. In the forum of public thought decision has been reached. The administrative offices of the State have ceased to be brokers' offices for the distribution of such favors. State officers have quite generally declined to use or receive them, and the National Congress has by law prohibited their use by public officials in interstate travel. The practice as to intrastate travel can be reached only through the action of the General Assembly of the State. Railways, telegraph, telephone and express companies are one and all public service corporations. Every citizen is entitled to use a public service corporation under like circumstances upon the same terms as to cost and accommodation. Anything else is discrimination, and should be inhibited by law. The whole practice is corrupting and demoralizing. I therefore repeat the recommendation I made in this behalf to the Sixty-fourth General Assembly.

EMPLOYERS' LIABILITY LAW.

The classification contained in the employers' liability law as respects corporations other than railroads is too narrow, so narrow in fact as to make doubtful the validity of the statute. The purpose of the law is the amelioration of the common law co-servant rule. This act is of such importance as to entitle it to a place in the law of the State. The present statute has been often construed by the courts. It is now well understood. Its defects can be reached by amendment. It should not, therefore, be repealed.

The classification mentioned in Section 1 should be broadened so as to include all persons, natural and artificial, except municipal corporations. Changes in the title of the act and in other sections will be necessary that they may conform to the change made in the first section.

In this connection I desire also to commend to your consideration the enactment of a statute that shall establish the principle of comparative negligence in all personal injury cases. The rule of comparative negligence is a just and humane one. However grossly negligent the employer may be, the employe is now precluded from recovering damages in any case where his own negligence has contributed, however slight the degree, to his own injury. This is a harsh and an unjust rule. It should be modified to the extent suggested.

TWO-CENT FARE.

With free transportation eliminated there is no just reason why the maximum passenger rate of steam railways in Indiana for intrastate travel should not be fixed by law at 2 cents per mile. There should be a provision that the minimum price of a ticket should not be less than 5 cents. It will also be but just to the railway companies that provision be made permitting them to charge a cash fare on trains, of not to exceed 2½ cents per mile where the passenger has been given opportunity by the company to purchase a ticket at a regular ticket office before entering the cars. Such legislation will be of substantial benefit to the traveling public. The wealth and the population of the State amply justify it. Its operation will not injure the railroad companies. Their passenger receipts will not be diminished. The reduction of fare will be offset by the increased travel resulting therefrom. This has been the effect of similar legislation in other States, and there is no reason why the effect should be different here. I take it you will enact a law in this behalf since most of you come with instructions from your constituents to do so.

PRIVATE BANKS.

The Sixty-fourth General Assembly enacted a private banking law which has been construed by the Supreme Court and held valid. The law, though defective in many particulars, is a step in the right direction. Its greatest defect is the lack of State supervision and examination.

I recommend that the law be amended by providing for State supervision and examination of all such banks. In fact, the whole law relating to the examination of banks should be revised. Bank examiners should be appointed by the Auditor by and with the advice and consent of the Governor. They should be provided with fixed salaries of not less than $2,500.00 a year. Fees for examination should be graded substantially as they now are, according to the capital of the bank, and when collected they should be covered into the treasury. The law should require at least two examinations a year of each bank, state or private, and at such other times as in the judgment of the Auditor an examination shall be necessary. State examination of banking institutions is of no value unless it results in actual examination. This is not obtained under the present system. All fees collected are now the property of the bank examiners. This presents constant temptation to the examiner to make hurried examinations. The system is wrong and should be changed.

INHERITANCE TAX.

I am thoroughly convinced of the necessity and the justness of a law which shall provide for the taxation of the devolution or succession of property by device or inheritance. The additional revenue it will bring into the treasury is needed in the construction of the institutions now under contract, and a little later, if the revenues of the State exceed its needs, the tax levy for the general fund can be lowered and the burden of taxation levied upon the property of the citizens in general, lightened. Such a tax is levied but once, and that at the time of the succession or devolution of property inherited or bequeathed. It is levied at a time when it can be paid without hardship. It is an eminently just form of taxation. It can be administered with small expense and collected with little friction. In the apt words of another "it is collected with ease and paid with contentment." It in no way disturbs commercial activities. It levies tribute upon no business or industry. It enables the State to reach much intangible property which has been long sequestered. It is a tax which the beneficiary of the inheritance can not shift from his shoulders to the backs of others. In-

deed, the tax is paid before he receives the inheritance. The right to inherit property or to dispose of it by device exists only by grace of the State. It is wholly an artificial right, resting solely upon the authority and consent of the State. In collecting it the State simply stops the inheritance in transmission long enough to take from it a fair and just contribution in exchange for value already had and received by him who accumulated it, and then passes it on to the beneficiary. Indeed, its validity and fairness are quite generally admitted. No great fortune is the sole product of the man who organizes and directs its accumulation. It is to some extent the product of a social process to which many persons contribute. Every honest toiler contributes something to it whatever the field of his labor. The mechanic, the farmer, the teacher, the merchant, the physician, the lawyer, the minister and the statesman or the administrator of public affairs, whose work makes for the progress of society or for the maintenance of the peace and order of the State, has some share in its production. The State itself is but society organized, and when the owner of a great estate dies, and in the transmission of his fortune the State takes toll out of it, it takes only what is its own. And in the taking of it, it makes for the wider diffusion of wealth and for the unity and solidarity of society. Inheritance tax laws have a place in the revenue laws of most modern states. They are found in the law of Great Britain, Germany, France, Switzerland, Holland, Belgium, Norway, Italy, Russia, Australia and Canada. They are imposed by the laws of 32 States of the Federal Union. The rate should be progressive, increasing with the value of the inheritance, and as to collateral heirs, it should run from 5 to 25 per cent. In the following States the rate is progressive and is as indicated: California 1½ to 5 per cent., Colorado 3 to 6 per cent., Illinois 2 to 6 per cent., Iowa 5 to 20 per cent., Nebraska 2 to 6 per cent., North Carolina 1½ to 15 per cent., South Dakota 2 to 4 per cent., Washington 3 to 12 per cent., West Virginia 2½ to 7½ per cent., Wisconsin 1½ to 5 per cent. In the following States the rate is 5 per cent. or more: Arkansas, Delaware, Iowa, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New York, Pennsylvania, Tennessee, Utah, Vermont, Virginia and Wyoming. In Louisiana it is 10 per cent. Seventeen States include inheritance to direct heirs at a rate running from 1 to 5 per cent., exempting inheritances varying in value from $2,000.00 to $25,000.00. In the States heretofore named exemptions of inheritances to collateral heirs are made only where the inheritance is of nominal value. In six

States the value is less than $500.00, in 9 it is $500.00, and in 8 no exemption is made at all as to inheritances to collateral heirs. In case of inheritances by direct heirs $20,000.00 is, in my judgment, a reasonable exemption, and in case of inheritance by collateral heirs the exemption should not be more than $1,000.00. Thirteen of the American States have enacted revenue laws containing the principle of the collateral inheritance tax within the last six years. France derives $40,000,000.00 a year from this source, or 6 per cent. of its entire national revenue. Great Britain receives from this source $70,000,000.00, or 10 per cent. of its revenues. In 11 months of the year just past Louisiana received $86,655.00 from this tax, Vermont $40,581.00, Colorado $51,236.00, Maine $70,000.00, Iowa $190,748.00, Minnesota $159,455.00, Missouri $212,814.00, Wisconsin $103,917.00, Massachusetts $712,720.00, Illinois in the two years last past $1,376,264.00, Pennsylvania in 1895, $1,677,185.00.

The income from an inheritance tax is necessarily irregular in volume, but $150,000.00 to $200,000.00 is a conservative estimate of the annual revenue such a law as that here recommended, will bring into the treasury of this State. Indiana has been slow to avail herself of this form of taxation. But the time has come when the necessities of the State require its early enactment. If enacted it will meet the approval of the people and will abundantly justify the wisdom and the foresight of those who support it. It should be drawn with care. It should not be imposed upon property inherited either real or personal, but upon the succession or devolution thereof. Such a tax levied upon the transmission of the share a person receives from an estate, though progressive in character, has been uniformly upheld by the courts, the Supreme Court of the United States saying in a recent case (Magoun v. Illinois Trust and Savings Bank, 170 U. S. 283):

"The right to take property by devise or descent is a creature of the law and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it."

UNITED STATES SENATORS.

I believe a great majority of the people of the State are in favor of an amendment to the Federal Constitution which shall provide for the election of United States Senators by the direct vote of the people. A convention was recently called by the Governor of the State of Iowa under provision made by the late General Assembly of that State, for the purpose of considering how such

an amendment could be secured. The convention was held in the city of Des Moines. Upon invitation from the Executive of Iowa, I appointed five members of the present General Assembly as delegates to represent the State of Indiana at such convention, all of whom attended and bore honorable part in its deliberations. It is hoped the convention may be the means of securing such uniformity of action on the part of the General Assemblies of a sufficient number of the States either to secure the adoption of such an amendment by Congress and its submission to the States for ratification, or to require the calling of a constitutional convention for the consideration of amendments to the Constitution, which, when ratified by three-fourths of the States, shall become a part thereof.

I commend the subject to your consideration in the hope that you will take favorable action thereon before the present session shall close.

PRIMARY ELECTIONS.

I commend to your consideration the enactment of a primary election law which shall be simple in the method it provides and which shall require the nomination of all candidates for city and county offices, of every political party, and the selection of all delegates to any convention held by any political party for the purpose of nominating candidates for any public office, to be made by direct primaries.

TRUSTS.

There is need of legislation conferring upon the Attorney-General authority to proceed against unlawful combinations of capital and against corporations chartered by the State in all cases where they abuse the power conferred upon them by the State.

The Attorney-General has prepared a comprehensive act upon this subject which I believe is essential to the enforcement either of the common law or of any legislation relating to trusts which you may enact. I commend it to your consideration.

In addition to the act referred to, there should be legislation relating directly to the subject of trusts or combinations of capital having for their purpose the elimination of competition or the control of prices. This legislation should be along the lines of the Federal statutes upon this subject, in so far as they are applicable to conditions in this State. These laws have been construed by the Federal courts, and have been found to be effective wherever those charged with the duty of enforcing them have in good faith sought their enforcement.

PUBLIC DEPOSITORIES.

The events of the last two years have emphasized the necessity of reform in the methods of handling and caring for public funds. Sums of money, varying in the aggregate from $13,000,000 to $35,000,000, are constantly in the hands of public officials of Indiana—state, county, city, town and township.

At the present time these funds are not and for years past have not been in the vaults of the several public treasuries, but are and have been either on deposit in the banking and financial institutions of the State or loaned to individuals or corporations by the officers having their care and custody, for their personal profit. The system has led to many abuses, some of which have been criminal in character. The funds are often deposited in banks insolvent and tottering to their fall, or are loaned to persons unable to repay them when needed, or invested in speculative enterprises, the result of which is often personal loss to the officials and their bondsmen and not infrequently to the public as well. In many instances such officers have speculated with the public funds entrusted to them until they have drifted beyond return, and have been compelled to stand before their respective communities as embezzlers and criminals, and sometimes in the end to expiate their fault by a term in the State Prison. The presence of large sums of money, for which there is no immediate public demand or necessity of accounting, is a temptation which many well-meaning but weak officials find themselves unable to resist.

Opportunity to secure the control of these funds is equally tempting to many banking officials. To obtain their control they dominate conventions and elections through corrupt and demoralizing methods which strike at the very heart and center of the civic integrity of their communities. Some of the most demoralizing spectacles in Indiana political history have been due to the campaigns between rival financial institutions whose ultimate object has been the control of the public funds. Their candidate once nominated and elected, he becomes a chattel in their hands.

Interest accruing upon the funds loaned or deposited has been considered to be and treated as the money of the official—a part of the legitimate perquisites of the office. The whole system, from beginning to end, is so demoralizing and ruinous that the public conscience has become thoroughly aroused and the people, without regard to party affiliation, expect you to enact legislation that will destroy it.

In recommending remedial legislation in this behalf, I can not

go into details; but I submit what seem to me to be the essential features of any legislation upon this subject.

Daily settlements and payments of all moneys received by any officer into the proper treasury is the first essential step. The selection of depositories for the funds is the second. Requirement that all public moneys in the hands of treasury officials shall be daily deposited in the depositories selected is the third. Provision that all interest accruing shall belong to the public and be paid into the public treasuries is the fourth.

In the creation of the new system there are certain controlling fundamental purposes which should be kept in mind: First, the end of personal favoritism and of political banking; second, the saving of public officials from the opportunity and the temptation to misuse the funds entrusted to their care; third, the safety of the funds; fourth, the saving to the public of the interest accruing thereon.

These purposes can be effected best by providing for the creation of finance boards or boards of control for state, county and city, with power to select depositories from the banks and trust companies of the State, under such restrictions as will eliminate favoritism and political consideration; by providing a minimum and maximum rate of interest of not less than 2 nor more than 3½ per cent., or by establishing a level rate of 2½ per cent. for all active funds and of 3 per cent. on all dormant or permanent funds; by providing that collateral securities, such as United States, state, county or city bonds shall be accepted as security for the repayment of deposits, together with such other securities of fixed and permanent value as may be obtainable; or, in lieu thereof, a surety or trust company bond.

The volume of the public funds is so great that state, county and city bonds cannot be had in sufficient amount to enable the banks to qualify, if they are made the sole receivable securities.

I believe these provisions to be fundamental requirements. The details must be thought out with intelligent care, keeping in mind the essential purposes of the legislation and the fact that the plan adopted shall be as simple as the nature of the subject will permit.

INSURANCE LEGISLATION.

The establishment of a strong, well-equipped insurance department is essential, but no fair-minded man can read the report of the committee investigating insurance conditions in this State and believe that the establishment of such a department will be of

itself sufficient to correct the abuses which have characterized and still are characterizing the management of certain Indiana companies. Something more than that is necessary. There must be remedial legislation of a character to reach the root of the abuses and put an end thereto. The suggestion that such legislation be enacted has met with some criticism, but it has come in the main from or been instigated by those who are mismanaging the companies in question. They have industriously sought to persuade the public that such suggestions are attacks upon the companies, made for the purpose of injuring them. It is important to understand in the beginning that the remedial legislation recommended means no such thing. It is not an attack upon the companies, but upon the abuses in their management and upon the individual officials who are guilty of mismanagement. It does not mean the injury of the companies. It means their preservation. The work of the investigating committee was not undertaken in nor conducted with malice toward any domestic company nor for the purpose of working harm to any such company. It was undertaken and conducted to ascertain actual conditions touching life insurance and in the hope that abuses, if found, could be ended and the companies saved to the people of the State. You will search in vain for a sentence or a word in all the report of the committee indicating either a malicious purpose or revengeful spirit. Facts have been ascertained and given to the people of the State. The truth has been learned and plainly but kindly told. The good and the bad in the management of the companies have been set forth with equal care and accuracy. The good has been approved and the bad condemned, and thoughtful, well considered recommendations made looking to its elimination. The mistake the gentlemen who are opposing these recommendations have made and are still making is in thinking themselves the companies. They are not. They are simply trustees. The policy holders constitute the companies.

The desire of the committee and of the Executive is that the $23,000,000.00 annually paid for insurance by the people of Indiana may so far as possible be paid to domestic companies and kept at home to meet the industrial and commercial demands of our own people.

The motive which prompted the committee in its work is well expressed in its own language:

"We believe that it is the duty of the State to so regulate and foster the business of Indiana companies as to command the retention in Indiana of a large portion of this great volume of money. There is no reason why the in-

surance business cannot be as well conducted in Indiana as in New York, Philadelphia or Hartford. The presence of these accumulations of money in the communities means large local investments of it in business, and the consequent development of the financial and industrial institutions of the State.

"Money will, however, seek its best investment, and State pride will not divert this golden stream unless investors in insurance feel that Indiana companies offer as good returns for the cost as are offered by like institutions elsewhere. The Indiana companies, to command their share of the business of the country, must have such regulation from the State and such management within their home office, as will insure their integrity to the public. An Indiana institution found to be guilty of dishonest methods, extravagant expenditures and reckless 'wild-catting,' should be put out of business for the credit of the State and the security of her citizens. An Indiana institution which adopts correct methods, is economical in expenditures, and honest with the public, should receive such support from the entire State as would insure its success and usefulness."

We have realized what seems to us to be so apparent that all must see it, that to retain any considerable portion of the vast sum of money paid for insurance each year by Indiana people, there must be built up in Indiana insurance companies founded upon sound principles and correct actuarial bases and that to these must be added careful, economical and honest management in administration. In so far as these conditions obtain Indiana companies will command the confidence of Indiana people, but in so far as they are omitted they will only abuse the confidence of their policy holders, and if persisted in, will, in the end, entail shame and loss upon the people of the whole State. It is insisted by those who have been and are profiting by mismanaging some of the domestic companies that solvency of the companies is sufficient. It is contended if, notwithstanding mismanagement, extravagant expenditures in the way of salaries, rebates, special contracts and agency company commissions, and the misappropriations of funds, the companies are still solvent, that the policy holders should be satisfied, and that no remedial legislation should be enacted.

Solvency is, of course, the first consideration, but there are two other considerations, second in importance only to that of solvency, viz.:—honest and economical administration of the companies' affairs and equitable treatment of all policy holders. Every policy holder is concerned not only in the solvency of the companies, but in the economy and integrity of their administration and in the profit distributed to him. Remedial legislation means an end to extravagant salaries and excessive commissions, to rebates and to discriminating dividends on special contracts. It means annual distribution of the surplus of the several companies and fidelity of service on the part of the company officials.

The directors and officers of an insurance company occupy a clear and unequivocal position. Their relation is purely fiduciary. They are the trustees of the policy holders. The trust committed to them is a sacred one, calling for scrupulous integrity, great ability and high purpose. Neither directors nor officers have any moral right to vote salaries to themselves beyond the point of fair compensation for services rendered or to incur expenses in any department except for the benefit of the policy holder. It is impossible to reconcile the conduct of the managers of some of our domestic companies with this statement of their duties. They have been keenly alive to their own selfish interests, but oblivious to their duty to the policy holder whose trustees they are. They have seemed unwilling to consider the interest of the policy holder a single point beyond that involved in the solvency of the company.

One of these companies during the year 1905 expended $42.27 out of every $100.00 of premium income it received, to defray the cost of administration. The money so expended was 46 per cent. of its entire cash premium income, 42 per cent. of its entire cash income, and 66 per cent. of its entire cash disbursements. Another expended $51.10 out of each $100.00 of premium income it received, to defray the cost of administration, or 88 per cent. of its entire cash premium income, 85 per cent. of its entire cash income, and 85 per cent. of its entire cash disbursements.

Other competing Indiana companies organized and doing business under like conditions were able the same year to administer their affairs for $20.00, $20.10, $21.30, and $21.97 out of every $100.00 of premium income they received. The two companies first referred to have averaged for the past five years an expenditure of $41.20 and $33.40, respectively, out of each $100.00 of premiums paid them, for administrative purposes alone. During the same period other companies have been able to administer their affairs for $20.60, $20.20, $19.70, $18.90, $18.70, $18.60, $18.20, $18.10, $16.60, $14.40 and $13.70, respectively, out of every $100.00 of premiums paid them. The average expenditure for one of these companies for five years is exceeded only by those of one other company in all the United States. The margin disclosed by these figures between the expenditures for administrative purposes by these two companies and the expenditures for such purposes by other companies is so great as to lead inevitably to the conclusion that there has been extravagance and mismanagement in their administration. We are not, however, confined to inference in the case of these two companies. There is ample fact and figure.

During the year 1905 the president of one of these companies received a salary of $10,000.00, the second vice-president a salary of $6,000.00, the general manager a salary of $7,200.00, the secretary $4,200, the vice-president $4,200.00 and the superintendent of agencies $4,000.00. The expenses for salaries at the home office alone aggregated $59,793.00. Under the pressure of publicity these salaries have been reduced, the president's to $4,000, the vice-president's and superintendent of agencies' to $3,000.00, the secretary and treasurer's to $2,100.00, and a number of offices abolished. The total expenses of salaries at the home office for the year 1906 were $22,120.00, a reduction in salaries in a single year of $37,673.00. This, it seems to me, is conclusive proof of past extravagance and mismanagement. In the year 1905 the other company paid its president a salary of $20,000.00, its secretary $20,000.00, its vice-president and superintendent of agents, $20,000.00; its general counsel and director a salary of $9,000.00 and other allowances aggregating $11,000.00, making $20,000.00 in all, counsel for its loan department and director a salary of $1,500.00 and other allowances of $6,500.00, making a total of $8,000.00, and its medical director a salary of $4,375.00—total home office expense in wages and salaries of $150,846.37. The same company is now paying its president a salary of $16,000.00, its secretary and actuary $16,000.00, its vice-president and manager of agents $16,000.00, its vice-president and general counsel, $16,000, and counsel for its loan department, $7,000.00. It is important that the officers of these companies receive adequate compensation for services rendered, but the salaries paid are extortionate and in some instances more than double the value of their services. It is impossible to reconcile the voting of such salaries to themselves by persons holding the relation these officials hold to the policy holders, with their duty as such officials. In the light of the following formal resolution, adopted by the board of directors of this company on January 28, 1904, the act becomes easy of explanation, especially when we remember that the executive officers to whom these salaries were voted were themselves the board of directors:

"Resolved, That under the direction of the Board of Directors, the proxies of policy holders be secured, authorizing Mr. Samuel Quinn to vote for the same policy holders at all meetings of members; and in case of his death or absence, said proxies to be voted by Mr. Andrew M. Sweeney.

"It is the purpose and spirit of this resolution that said proxies be used for the perpetuation of the present members of the board of directors as long as they live and desire membership on the board."

This company has greatly added to the cost of administration by issuing a large number of special contracts providing for the payment of discriminative dividends for services that were never rendered and never intended to be rendered.

These contracts cost the company in 1905 $136,523.84, and a yet greater sum in 1906. The company was organized September 24, 1894. In a little less than 12 years its special contracts cost it $632,459.93. In July, 1906, $37,515,000 of its outstanding insurance, or 46.8 per cent. of the entire volume of insurance carried on its books, was of this character. Another company, organized April 1, 1899, has $14,909,250 of insurance covered by similar contracts, or 74.5 per cent. of the entire volume of insurance carried upon its books. Up to July, 1906, these contracts cost it $63,916.24, $20,544.95 of which were paid out in the year 1905. Another company, organized in March, 1897, is carrying $11,683,400 of special contract insurance, being 88 per cent. of all the insurance upon its books. These contracts up to September, 1906, had cost it $39,028.07. Another has 89.9 per cent. of its entire volume of business written under special contracts; another, 98.7 per cent.; another, 100 per cent., and yet another, 100 per cent.

These contracts, almost without exception, require the insured to render certain services in the way of securing business, answering inquiries and making investigations or inspections for the company. On their face they import a consideration in the way of service, which, if actually rendered as required, would make them valid contracts, but, as a matter of fact, the services specified are rarely, if ever, rendered. Most of the companies frankly admit that the services are not required or requested. The simple truth is, that it was never the intention, either of the managers of the company, or of the persons insured, that any services whatever should be rendered. The contracts were offered prospective policy holders as a special inducement to take insurance, and the companies have not attempted to put or keep them in operation as service contracts.

In the language of the committee:

"The contracts, almost without exception, recite certain services in the way of securing business, answering inquiries, and making investigations or inspections for the company writing the contracts which the holder is required to render. The dividends or commissions are to be paid, with very few exceptions, from a fund derived by levying a tax of so much per thousand annually on all insurance in force which was written during certain specified periods. The aggregate fund derived from a certain levy upon insurance written in a

certain time is divided pro rata among a limited number of policy holders who have special contracts, and is remitted to them by deducting from the annual renewal premiums upon their policies. About one-half the 'Special Contracts' have a tontine feature providing that upon death or lapse of each member of the class, his portion shall go to the survivors. The holders of the 'Special Contracts' are given such names as Advisory Agents, Trustees, Charter Members, Counselors, Executive Agents, Trustee Counselors, District Reporters, Local Inspectors," etc. * * *

"Nearly all of the companies have issued more than one series of such contracts. The policy holder who secures a 'Special Contract' is delivered an instrument with all the trimmings of a government or municipal bond and which states that the membership in his particular class is limited to 300 or 500, or such number as may have been decided upon, and he is led to believe that he is one of a favored class whose renewal premiums shall be annually reduced by taxation of the premiums of his fellow mutual policy holders. If he hesitates at the agreement to render such large services as are stated in the 'Special Contract,' he is often told that the services will not be actually required of him, but that this is a method of the company which it must use in order to give him the particular advantage. In most cases he is also shown an 'estimate' which indicates that his premiums will be reduced annually until at a certain time, varying with the judgment and scruples of the company printing the 'estimate,' his premiums will be entirely overcome by the dividends on his 'Special Contract,' and from that time on he will receive cash payments from the company instead of being required to pay his annual premiums to maintain his insurance, as his brethren in the mutual company are required to do. In a very few forms of contract it is provided that such excess shall be paid to him in additional insurance. The increase in annual dividends is expected to be produced in cases possessing the tontine or survivorship feature from two sources: First, a decrease in the class of beneficiaries, and second, an increase in the volume of business to be taxed for production of the fund. In case of contracts possessing no tontine feature, its increase must come from increased volume alone; many of these non-tontine contracts are written so as to carry the idea that the survivors take the whole fund produced, although this is technically not true. The estimates exhibited to purchasers, however, convey the impression that tontine or increasing profits will be received whether or not the actual language of the contract is of a tontine character. The viciousness of the contract always present is that it offers the highest compensation at times when the least service is likely to be rendered, viz., in the later years of the life of the contract. The holder of the contract is led to believe that he is securing a very great advantage over his fellow policy holders, and the investment as presented is very attractive.

"It is well known that the 'estimates' made by the companies at the time of the issue of these 'Special Contracts' have fallen far short in realization."

As to the expense of these contracts, the committee well says:

"The cost to the company of the dividends to 'Special Contract' holders is reported by all the companies to have been charged to expense fund, and it so appears in all of their annual reports, although usually not separate so as to be identified. The cost to the companies who have had 'Special Contracts'

outstanding for a number of years, however, has grown to such proportions that it is making a dangerous inroad upon the portion of the current premiums which can be legitimately devoted to expense, and strenuous efforts are being made to secure cancellation of many of the most expensive contracts, and the substitution therefor of some different form of insurance contract. The annual cost to the companies has varied from a few hundred dollars, in case of the companies having 'Special Contracts' outstanding for no more than one year, to over $136,000 in 1905 in case of the State Life Insurance Company, which wrote a great many 'Special Contracts' early in its history.

"The annual tax assessed upon premiums accruing from the class of contracts subjected to the levy varies from 25 cents per thousand to $1.50 per thousand in force during that period, and within the geographical limits determined upon, and the levy is to be continued for from ten to thirty years, depending upon the terms of the particular contract."

The effect of these contracts is clearly set forth by the committee in the following extract from its report:

"We think it is apparent from the foregoing data and detailed description that the Indiana companies have, in their anxiety to secure business, issued a large number of contracts carrying extraordinary obligations which will, as time goes on, make a more and more embarrassing draft upon the fund which the companies could otherwise legitimately save to surplus. It is apparent that the cost of these contracts increases as the amount of business written within the specified time accumulates and as the issue of special contracts are written to their full limit. That some of the companies appreciate the great draft which is to be made upon their resources by this class of business is shown by the strenuous efforts being made to substitute different contracts for them at any reasonable cost. It is evident that the companies in their early anxiety to make a large showing of business failed to anticipate the inevitable mathematical results of these contracts. They may apologize for and explain them as they will, but the fact remains that the estimates upon which they were sold were absolutely impossible of fulfillment to the policy holder, thereby bringing to him year by year disappointing results, while on the other hand the unfair advantage actually secured to the holders of special contracts will accumulate to such amounts as will, from year to year, embarrass and discredit the business and methods of the companies. It is only the proverbial 'reaping of the whirlwind.'"

As to the legality of these contracts, I submit the following statement from the report of the committee:

"The legality of these contracts is defended by the companies upon the authority of Muller v. State Life Insurance Company, 27 Ind. App. 45, in which the Appellate Court of our State decides that such a contract is not void. It does not appear from a reading of that decision that any facts were presented to the court going to the performance of the contract. A single contract was presented to the court for its inspection. The court decided that the contract imported a valid consideration, and that therefore it was a valid contract. We do not believe, however, that if it had been shown to the court by the record that a large number of special contracts had been issued, which

contracts were written so as to import a consideration that it was intended should never be required or delivered, that the court would have held that the holders of the special contracts could be lawfully paid their annual dividends where the consideration of the class of contracts actually failed. We are inclined to believe that if it were made to appear to a court having under consideration such a contract, that the contract was issued in the course of a practice engaged in by a large number of companies whereby they issued not a few but thousands of such contracts purporting on their face to be service contracts, but as a matter of fact they were only special inducements offered to a favored class of individuals in order to secure a larger volume of insurance at an actual expense to the unfavored policy holders, and if it should appear to the court that the issue of a series of such contracts was in itself a subterfuge and an indirect means of making a palpable discrimination among members of a mutual concern, the court would treat the contracts as void. We have no criticism to make of the decision rendered by the court in Muller v. State Life Insurance Company, 27 Ind. App. 45, because that decision was made on the facts as they appeared in the record. We believe, however, that if the actual facts and circumstances as they existed in connection with the issue of what are known as special contracts, excepting in a limited number of instances, had come before the court, the language used by the Appellate Court in the case of Robison v. Wolf, 27 Ind. App. 683, would probably have been applied. In that case it was decided that a 'combination contract' whereby a mutual accident insurance company in consideration of the payment of one full annual premium selects insured as one of 500 policy holders to be insured for a like amount to participate in a special renewal dividend on all insurance written in the State for a period of ten years, such dividend to be applied toward the payment of the year's premium, was void. The special contract in that case provided for no duties to be performed by the favored member which were not required by the by-laws of all members. The court there held that since the special dividends were promised to the favored policy holders without any consideration, that the contract was in itself void and unenforceable, that it was not only forbidden by statute, but was contrary to public policy."

Fewer special contracts are being issued by two or three of the larger Indiana companies than formerly, but on the whole the number being issued in the State is on the increase, notwithstanding recent publicity showing the impropriety of such contracts. Two companies organized within the last year have issued a special contract with every policy written. The methods of one of these companies is forcefully set forth in the committee's report:

"In selling what is known as the 'Inspector's Contract,' this company used a printed 'estimate' indicating that a 20-payment life policy for $5,000.00, age 35, annual premium $189.85, when sold with an 'Inspectors' Contract,' would on the tenth year cost the holder only $3.89 and on the eleventh year the dividends on the contract would not only pay all of his premiums, but he would receive in cash a check for $20.06, such annual cash payments to him increasing gradually until in the twentieth year he would receive $289.13 cash. Similar estimates were used in the sale of the other series of contracts. How

such results would be possible when all policy holders own similar contracts this committee cannot understand, since the only source of revenue is from the payment of premiums by holders of special contracts."

These contracts are as clear offers of "something for nothing" as were ever made. If the estimates cannot be matured by the company then every person who has purchased a special contract has been deceived. If the estimates can be matured every dollar of money paid upon the contracts in the way of dividends will be an extravagant waste of the company's funds and an annual drain upon its resources for which no consideration whatever will be received. The proposition is a fraud upon somebody in either case.

Rebates and excessive commissions have long been and still are a source of great expense to most Indiana companies and will continue to be until inhibited by law.

A new and fruitful field of extravagance and fraud has recently been discovered and exploited by the managers of a number of domestic life insurance companies. This has been done and is still being done through the guise of corporations known as "agency companies." These companies are used as "go-betweens" in the transaction of the company's business with its soliciting agents. Every moral and prudential reason requires that the insurance company should retain direct control of its own agents. There should be direct responsibility of the agency force to the insurance company itself, and the company should be in a position to exercise the closest supervision over the work of its agents. These companies have all been organized for the purpose of taking over contracts afterwards made to them by the insurance companies for the exclusive right to solicit insurance. The agency force then becomes responsible to the agency company alone. It is made the particular business of the agency company to take over all of the underwriting for a certain territory and in this way relieve the officers of the insurance company from the work of getting business. The contracts they have obtained from the companies have provided for extravagant commissions and bonuses, and some of them have been so liberal in character that they have been sold and resold at an advance of hundreds of thousands of dollars.

The officers of the insurance companies have been responsible without exception, either directly or indirectly, for the incorporation of every such company.

The pioneer of these companies in Indiana was the State Agency Company, organized by the officers of the State Life Insurance Company. At the time this company was organized it was

given a contract for the exclusive agency for the States of Indiana and Illinois and such other territory as might be agreed upon from time to time. It provided for the payment of commissions of from 25 per cent. of the first premium paid on ten-year endowment annual dividend policies up to 80 per cent. of the first premium on continuous premium life policies with ten, fifteen or twenty-year distribution periods. It also provided for the payment of 7½ per cent. of all second year and subsequent renewal premiums collected by the agency company on the insurance written by such company and for a like per cent. on all renewal premiums on the business then in force in the territory covered by the contract. The contract also contained the remarkable stipulation for the payment by the agency company of $1,000,000 in installments running for fifteen years to the State Life Insurance Company as a consideration for the contract. The authorized capital of this company was $2,000,000. The sole and exclusive business of the company was to sell life insurance. Beyond the funds necessary to furnish its office and organize its agency force, it had no need of assets, yet the officers and solicitors of the company, supported and abetted by the officers and directors of the State Life Insurance Company, sold to the people of Indiana capital stock of the face value of $359,550.00 at a premium of $249,540.00, or an aggregate of $609,090.00. One O. L. Van Laningham was one of the directors of the company and its first president. Mr. Van Laningham had been for years identified with the agency department of the State Life Insurance Company. Samuel Quinn, vice-president and superintendent of agents of the State Life Insurance Company, at the time receiving a salary of $16,000.00 a year from said company, and Charles F. Coffin, director and general counsel of the State Life Insurance Company, at the time in receipt of a salary of $16,000.00 from said company, and Andrew M. Sweeney, president of the State Life Insurance Company, at the time in receipt of a like salary, were active in the promotion of the company and in recommending its stock as a profitable investment. These gentlemen seemed to be absolutely oblivious of the fact that as such officers of the State Life Insurance Company they stood in the relation of trustees of its policy holders and that it was their highest duty to conserve the interests of such policy holders. The contract to pay the agency company 7½ per cent. for the collection of renewal premiums on business written prior to the incorporation of the company and the execution of the contract was a fraud upon every policy holder within the territory

named in the contract at the time it was executed. It was represented by the solicitors for State Agency stock and by printed literature circulated by them, that the renewal commissions on existing Indiana and Illinois business would amount to over $28,000.00 a year to the Agency Company. How officers standing in fiduciary relation to the policy holders of the State Life Insurance Company, whose rights were so materially and adversely affected by this contract, could have executed it in behalf of the company if they believed the statements they made as to the extraordinary perspective profits of the agency company, is beyond explanation upon any honest theory.

As an evidence of the part taken and the activity displayed by the President of the State Life Insurance Company in the promotion of the State Agency Company, and in the sale of its stock, I submit the following extract from a letter written by him to a friend under date of May 2, 1906:

"The State Life is putting upon the market the best financial investment it has ever offered in this State. My brother and son are going to Covington to present the matter to my friends there, and I could not afford to let so good a thing pass around without giving you a chance at it. The stock has been grabbed up here very rapidly and we could sell the whole $2,000,000 here, but I insist that some should be sold in each county seat."

Also the following extract from a letter to the same friend, dated May 5, 1906:

"A friend of mine in town yesterday took sixty at $50.00 a share. The President of the Agency Company notified his men yesterday that stock would be selling on May 10th for $60.00, so, in ten days, your $500.00 will be worth $600.00. I think it will go to $100.00 before the summer."

In this connection it is important to remember that the State Agency Company possessed no asset other than agency contracts with the State Life Insurance Company. If these contracts were so liberal in character and so certain in profit to the State Agency Company as to make its stock the best financial investment ever offered, what became of the fiduciary relation of Mr. Sweeney as a director and the president of the State Life Insurance Company, is a question which, in my judgment, has but one answer, and that answer is that the relation had been abused and betrayed.

Not content with the contract already referred to, the officers of the State Life Insurance Company, on the 19th day of May, 1906, entered into a contract with the said O. L. Van Laningham, then President of the State Agency Company, for the territory of Kansas, Nebraska, Texas, Oklahoma and Indian Territory, upon

terms of such liberal and extravagant character as to permit Van Laningham to agree to pay the State Life Insurance Company, as a consideration therefor, $250,000.00 at stipulated dates in the future. On the 6th day of June next thereafter, and within sixteen days from the time of receiving this contract, Van Laningham resigned from the presidency and directorship of the State Agency Company. On the 9th day of June Van Laningham assigned the contract to the State Agency Company for a consideration of $250,000, $150,000 of which was paid in cash, and the balance of which was to be paid in thirty and sixty days from date. Drafts for the sum of $150,000, payable to the order of the State Agency Company, were endorsed and delivered to Mr. Van Laningham, who immediately left the State. It is important to note that the payment of the drafts was stopped only by injunction proceedings in the Marion Superior Court. It is also important to note that the officers of the State Life Insurance Company hereinbefore named, still receiving a salary from said company of $16,000 a year, each, promoted, sanctioned and encouraged these transactions. How they could give their assent to the execution of a contract in behalf of the State Life Insurance Company so liberal and extravagant in character as to enable the man to whom it was issued to sell it within less than twenty days at an advance of $250,000 and reconcile their act with the position they held as trustees for the policy holders of the State Life Insurance Company, is beyond the comprehension of any honest man. Subsequent to these transactions a receiver was placed in charge of the State Agency Company by the order of the Superior Court of Marion County, and the contracts held by the State Agency Company have been sold under the order of that court. They were purchased by Van Laningham, who gave his notes for deferred payments aggregating $160,000. These notes were endorsed by the five directors of the State Life Insurance Company as individuals. That the situation contains rare possibilities for dishonest or negligent officers is too clear for debate. It is well stated in the committee's report:

"They are the directors of the company with which Mr. Van Laningham and his agency companies do all their business. The continuance of this relation is an intolerable one which should be scrutinized and watched, not only by the policy holders but by the department. Both the policy holders and the department should take all possible precautions to require that the legitimate profits in the underwriting of the business of the State Life Insurance Company should be protected and conserved to the policy holders by the officers whose sworn duty it is to act with an eye single to the interests of the policy holders. * * * The legislature should confer upon the insurance de-

partment the power, upon a showing of such reckless manipulation as characterized the State Agency scandal, to secure the appointment of a temporary receiver of the Life Insurance Company until the company could be reorganized in the interests of its policy holders. The officers primarily to blame for such diversion in the company's business should be deprived of their offices and should be replaced by men of honest intentions and good business judgment."

The State Agency Company manipulations and the contracts it holds are but examples of the possibilities of the Agency Company system. Some of the contracts of these companies give the companies a commission as high as 11 per cent. on all renewal premiums paid upon business written by them. The extravagance of this provision is apparent when we remember that many companies collect their renewal premiums in Indiana at a cost not exceeding 1¼ per cent.

Preliminary term insurance is insurance for the term of one year. It is a contract which ends with the year and in which there is no element of investment either provided by the policy holder or required of the company. The purpose of preliminary term insurance is to permit the company to use a greater portion of the premium for expense than would be possible if the companies were charged a full valuation upon the policies. The theory of a preliminary term is that the insurance shall be for a preliminary term of one year, and that at the end of the year it shall be considered as having entered upon an additional term of a fixed number of years or as having become a whole life policy. Up to the present time all Indiana companies have operated according to the preliminary term plan. No matter how considerable a percentage of the amount, the annual premium charged for a policy may be, or how considerable, and how rapidly increasing, the computed premium reserve of the policy may be, the first premium has been stipulated by the terms of the contract to be preliminary or term insurance, creating or providing for no reserve at the end of that year, and confining the generation of such reserve as the other terms of the policy may demand exclusively to the subsequent years of its term. This supplies a very large portion of the first premium due by the terms of any policy for immediate use for expenses; and has helped more than any other single cause to make the companies lavish or extravagant in permitting agency expense. It is the main cause of the high record of percentage of management expenses which it has been the painful duty of the Executive to emphasize in this message; percentages which are fully twice those of

the more economical among the older and larger American companies, and quite three times the percentages of the British life companies generally. The plan inevitably leads to extravagant and reckless administration.

This conclusion is fully warranted by a comparison of the ratio of expense to income incurred by companies operating under preliminary term valuation with that of the companies which set aside a full reserve out of the first premiums. This comparison discloses that the average ratio of expense to income for five years ending January 1, 1906, in eight preliminary term companies has been 40.45 per cent., while the average ratio of expense to income for the same five years of eight of the best full reserve companies has been but 16.53 per cent., a difference of more than 100 per cent.

It is evident that this state of things cannot be allowed to continue. The credit of the State and of the companies and the welfare of the thousands of policy holders preclude that it should continue.

I have given this matter the most careful study and have made much investigation and research concerning it. I have sought and obtained at no inconsiderable personal expense the advice and counsel of disinterested experts of admitted ability and integrity, and I am thoroughly convinced that the preliminary term plan is accountable in large measure for the waste and extravagance that characterize the companies operating under it.

The avowed purpose of the plan is to require each new applicant for insurance to pay out of his first premium the putative cost of inducing him to become a policy holder, or in other words to pay the agent's first commission, even if he applies directly to the office for his insurance and no agent has seen or introduced him. But even more is expected of him as the plan is actually operated. It is expected that he shall contribute toward expenses the entire excess of his first premium over the net or actual cost of insuring him for that year, after allowing for any share of surplus, if any is assigned to him, for that year. This is a tax which is crudely inversely proportional to the value to the company, technically known as the "insurance value" of the policy which he may apply for; and from another point of view makes him advance money to the company for expense purposes, as if he were to contribute so much to a guaranty or promotion fund, regardless of the simple value to him of his insurance for the first year, and without warrant for the ultimate return of the advance, or any promise of interest for affording the accommodation. The vice of the plan

lies in the excess rate charged for the preliminary term and the inducement it affords to extravagant and reckless administration. Speaking to this point the committee aptly says:

"If the policy holder knows that his first premium secures him preliminary term insurance, and understands what preliminary insurance means, and that at the end of the first year his policy is valueless, in so far as any reserve remaining to his credit, and if said policy holder pays for such first premium a correct amount, the contract is above criticism on both legal and equitable grounds. If, however, the policy holder is charged a level premium from which, if he were treated equitably, a full reserve should be set aside to him, then in principle such preliminary term contracts and preliminary valuation thereof is wrong, and we believe that few policy holders would make such contracts knowingly. In other words, we do not believe that a preliminary term contract and preliminary term valuation is wrong if the policy holder is charged an appropriate price for it. If he is charged a price which should secure him a better contract and better valuation, then it is wrong and inequitable. If he understands what he is getting for his money, then, of course, he cannot complain. We do not believe that the general public understands the real import of the preliminary term feature for which level premiums are paid.

"It must be remembered that insurance for a term of one year, commonly denoted a preliminary term, is a contract which ends with the year, and in which there has been no element of investment either provided by the policy holder or required of the company. Sufficient reserve must be set aside at the beginning of the year which, with the mortality charge collected in the premium, will mature the policy to the end of the year. This reserve gradually decreases until the end of the year, when no reserve remains. * * * If the policy holder pays no more than a fair proportion of the expense for the first year, his premium should be very much lower for the one-year preliminary term than the level premium which he pays for the 20-payment whole life policy. If he pays a level premium he is paying an amount which entitles him, if equitably applied, to a reserve to his credit very much larger than the small reserve set aside to him in the preliminary term valuation.

"From the standpoint of the permanent welfare of the insurance company, we are convinced that the preliminary term feature is not scientific, and is of no possible advantage to the company, except that if it can induce policy holders to pay a level premium, the amount which may be used for expense is greatly increased. * * *

"An examination of the percentages of first premium allowed to agents, as shown by the agency company contracts executed by several of the companies, indicate that there are very much larger profits to the agency companies than good faith on the part of the management of the insurance companies would permit. In other words, the management has been too expensive and the commissions have been too high. The large commissions paid on the first premiums, and the large renewal commissions provided in some of the agency contracts of these companies, make it impossible for the companies to live without impairing the net premiums based upon full valuation."

Another evil that has developed with the growth of life insurance is the accumulation and hoarding of unecessary and useless

funds denominated "surplus." The term means the amount held by the company over and above that which is necessary to mature all its contracts and to pay all its liabilities. The Equitable Life Insurance Company of New York has a fund of this character exceeding $61,000,000, and the New York Life Insurance Company a similar fund of more than $52,000,000. According to the sworn report of one of the Indiana companies it has accumulated a surplus in eleven years of $605,316.69, notwithstanding the illegitimate drain of discriminating dividends paid to the policy holders of special contracts in that time aggregating more than $605,000.00. These great funds have been accumulated notwithstanding the extravagance and misuse which has characterized the administration of the affairs of these companies. The only legitimate purpose such a fund can serve is to meet any deficiency which may arise under extraordinary circumstances in the other funds of the company. While every dollar of it has been contributed by policy holders, all claim upon it is forfeited whenever they cease to be policy holders. A great surplus is a standing temptation to those who are charged with its management, to extravagant, speculative and corrupt transactions concerning it. It should be distributed annually to the people to whom it belongs—the policy holders from whose contributions it has arisen.

The investigation made by the committee led it to the conclusion that the rates charged for insurance are excessive. The investigation made by the Executive has led him to a like conclusion, and I believe the facts when known and considered, will inevitably lead any fair minded man to the same conclusion. The rates are so high that extortionate salaries can be paid, rebates and excessive commissions allowed, discriminative dividends under special contracts paid, misappropriation of funds committed, and the companies remain solvent and at the same time accumulate large surplus funds.

It is your solemn duty to so legislate as to put an end to maladministration of domestic life insurance companies. You should enact a law which will limit the salaries of every executive officer or director of any company. The business of no Indiana company is such as to justify the payment of a salary of more than $10,000.00 to any executive officer. Limitation should be placed upon the power of boards of directors to vote salaries. Publicity should be required by the filing on the first day of each year a sworn statement of the salaries and compensation paid to all such officers, with the insurance commissioner. Every such salary list should

have the approval of the insurance commissioner before it becomes effective.

There should also be legislation inhibiting any company or the agent thereof from paying, allowing or offering as an inducement to any person to take insurance, any rebate or premium or any special favor or advantage whatever in the dividends to accrue thereon, or any inducement whatever not specified in the policy.

Special contracts should also be inhibited. I can not do better than to commend to your consideration the recommendation of the committee in this behalf:

"We recommend that a statute be enacted prohibiting life insurance companies doing business in this State from making any discrimination in favor of individuals of the same class, either in the amount of premium charged, or in any return of premium, dividends, special contracts, predated policies, or any other advantages.

"The statute should further prohibit the companies from paying dividends upon any existing special contracts, excepting in cases where the services performed under said special contracts are so vouchered to the company as to show the specific service and the amount of compensation therefor; and the statute should prohibit any credit or payment being made by the company to any present or future policy holder, on account of dividends, commissions, or other provision of said special contracts, unless the amounts are so vouchered. And the insurance department of the State should annually scrutinize the accounts of the companies and make thorough examination of their vouchers, so as to compel obedience to such provisions of the statute, and to put an end to such discrimination.

"The companies should be required to file with their annual statements made to the department, a schedule showing the amount paid to each policy holder under existing special contracts, if any, and for what service the same was paid."

The gain and loss statements of the various companies of the country disclose that a company will as an average earn or accumulate surplus amounting to about 2½ per cent. of its entire assets in the course of a year. No considerable sum of unapportioned surplus in addition to the amount of the computed provision for policy liabilities, together with the amount of outstanding death claims, and other liabilities, needs to be held. For these reasons it is sufficient to permit companies to accumulate and hold an unapportioned surplus fund of 5 per cent., or two full years' accumulation. I therefore unqualifiedly recommend the suggestion of the committee that

"The statute should provide that in the case of every policy issued on or after January 1, 1908, the proportion of the surplus accruing upon each policy shall be annually ascertained and annually distributed, and not other-

wise. Said annual dividends should be either paid in cash, or credited to the policy holder, as a fixed liability from the company to him, and no annual distribution of surplus should be treated as contingent liability on said policy.

"The statute should further provide that in case of all deferred dividend policies written before January 1, 1908, the company should annually apportion the surplus accruing to said policies, and make annual report of the same to the department.

"The annual distribution to participating insurance should exhaust the surplus to 5 per cent. of the assets, leaving, however, 5 per cent. surplus, exclusive of guaranty funds, capital stock and any excess of market values over book values of securities owned by the companies.

"The statute should provide that where mutual companies engage in writing participating insurance, such companies should cease to write non-participating insurance, but that all insurance written after January 1, 1908, should share in the surplus in its due proportion and without discrimination.

"In case of stock companies the law should provide that in addition to said 5 per cent. of surplus remaining, the directors may set aside sufficient surplus to pay a dividend not exceeding 10 per cent. on capital stock, before apportioning surplus to the policies, after which all available surplus over the 5 per cent. above stated, shall be apportioned to policies."

I also recommend that the law be so amended as to require the management of every company to be strictly confined to the company officers, acting solely in their capacity as company officers without the use or intervention of any allied or subsidiary companies, and that the companies shall be required to deal directly with their agency force, without the intervention of agency companies. All such "go-betweens" as the present agency companies should be inhibited.

The following provisions relative to preliminary term valuations should also be enacted:

"On and after January 1, 1908, the premium for all policies issued by companies organized and doing business under this act must be so computed as to provide for insurance expense in equal proportion to the yearly net or death costs of insurance thereunder, except that when any such policy stipulates that insurance for the first year thereunder shall be term or pure insurance, an extra allowance for expense may be made for that year, which shall be proportional to all the future yearly costs of insurance, including provision for insurance expense, which may accrue under the terms of the said policy."

It is well proved that even with a very few millions in amount of policies of insurance outstanding and conservative premiums, a fairly good basis or average is secured, the law of mortality being so regular in its operation; and if contented with a moderate rate of growth, the larger Indiana companies will have no possible occasion for dependence on the preliminary term, and with a suitable guarantee fund covering necessary advance expenses, no newly or-

ganized and small company will have any occasion to depend on such a plan. But for the fact that many of the advocates of the preliminary term plan appear to conscientiously believe it is the only equitable method of life insurance operation, I would recommend the inhibition of the plan altogether. In view of the situation, however, I concur in the recommendation of the committee that legislation shall be had which will insure placing the plan on a correct and equitable basis, to the end that applicants for policies embracing this feature shall not be misled as to the nature of the bargain into which they enter.

There is yet one other matter in connection with the subject of life insurance which is entitled to your consideration. Among the assets of the companies are an excessive number of loans secured by assignment of policies. These are known as policy loans. They are not, however, bona fide loans, as they do not represent cash transactions. They arose out of a practice of dating back policies five to seven years and taking notes for amounts computed to be the value of the reserve upon the policies issued. Of the gross assets of one of these companies 41 per cent. are of this class of securities. In another instance 50 per cent. of the company's assets are of similar character; in another 64 2-3 per cent., another 72.5 per cent., and another 76.4 per cent.

The practice of the companies in this respect is well told in the committee's report:

"These obligations have taken different forms. In one of its most complex forms the policy is predated five or seven years, more often seven years, or if not actually predated, it is stated that it shall be treated as if it had been executed seven years prior to its actual execution. In other words, if the applicant is twenty-eight years of age, he is stated in the policy to be insured as of the age of twenty-one. He gives the company a note for an amount which is computed to be the value of a reserve upon a policy seven years of age. The eighth premium he is required prima facie to pay in cash, and it is stated to him that he is in the same situation as his neighbor of the same age who secured a similar policy seven years prior. The advantages held out to him are in short that he has escaped all expense of the company on account of mortality, operating expense, cost of writing business, etc., for seven years, and that he is paying for those seven years only the amount of the legal reserve. This amount he has not paid in cash but has paid with a note which is stated to be a lien upon the policy issued to him. The note ordinarily provides for the payment of interest at 5 per cent. per annum, which in most cases is annually to be added to the principal of the note, thus compounding it. Instead of paying twenty full premiums on a twenty-payment policy, he pays but thirteen full premiums, his first seven premiums being paid only to the extent of the reserve, and that portion being paid not in cash but by a note which he is led to believe is very likely to be paid by

the accumulations which, during thirteen years, shall accrue to his policy. In a number of cases it is provided that in case he dies within thirteen years, the note shall be cancelled and not collected. In all cases it is provided that at the time of settlement other than by death, the amount of the policy loan shall be deducted from the sum due him or his beneficiary at settlement. * * *.

"In making their annual statements to the Auditor, the companies have stated their first premiums in gross without indicating what amount was paid in cash and what by premium notes or policy loans. They have given the amount of renewal premiums in the same general terms, and the annual statements published and distributed to their policy holders have failed to distinguish between actual valuable assets and assets which consisted of credits only. For instance, a company which has $2,000,000 of actual commercial assets of the cash value of $2,000,000 is in a very different situation from a company which shows $2,000,000 of assets of which only $500,000 represents valuable commercial assets, and the remaining $1,500,000 represents set-offs against liability carried by the company. The set-off should be balanced against its corresponding amount of liability, and the statement of these companies should be revised so as to show their actual business. The items as represented in the annual statement to the Auditor should, at all times, be so separated as to indicate to the Auditor and to the public, who have the privilege of examining such statements, the exact amount of actual cash business and the amount which consists purely of credits done by the company during the year."

The vice of the practice of making policy loans for commuted premiums in case of predated contracts lies largely in the varied and numerous species of deception to which it is susceptible and the opportunity it affords to disguise the ratio of the operating expense of the company to the actual income, and in the fact that this class of business is not persistent. In time of financial stringency or popular agitation over insurance questions, the policy holder does not have the same attachment for a policy for which he has given his premium note which becomes void upon lapse of the policy, without personal liability against him, that he has for a policy upon which he has paid a similar amount in hard-earned cash. I quite agree with the conclusion of the committee:

"There is no doubt that bona fide policy loans representing cash transactions, if kept within the actual accumulations to the credit of the policy, are a perfectly legitimate, safe and profitable investment for the company. We believe, however, that policy loans written in such large quantities as are now possessed by a number of Indiana companies are a source of danger and embarrassment to the company, and a means, whether used or not, of deception and fraud upon the part of unscrupulous representatives of the company."

The statute should be amended so as to provide that the amount invested in loans upon policies, together with accrued interest

thereon, shall not at any time exceed the reserve against said policy, and that no company shall in any year invest in policy loans an amount in excess of 20 per cent. of its actual cash income for that year. But for the large percentages of the assets of Indiana companies already invested in such loans, I would recommend legislation limiting the amount of policy loans to certain percentages of the gross assets of the companies.

The management of some of the Indiana companies has been of such a character and the companies have become so far removed from the control of the policy holders that an act should be passed cancelling all proxies executed prior to its passage, and providing for the restoration of the companies to the control of the policy holders through the election of entirely new boards of directors.

Taken all in all, the matter of remedial insurance legislation is perhaps the most important subject that will come before you during your deliberations. It deserves painstaking study, thoughtful consideration and dispassionate discussion. You have in the time and circumstances of the present legislative session a rare and unusual opportunity to save Indiana life insurance companies from the weaknesses and follies of those who manage them. You can, if you will, provide opportunity for them to become strong and safe and great. The people expect this legislation at your hands. In the degree you fail to enact it, you will fail in the performance of your duty.

TEMPERANCE LEGISLATION.

The Sixty-fourth General Assembly amended the law relating to the licensing and sale of intoxicating liquors by authorizing the filing of a remonstrance, signed by the majority of the legal voters of a township or ward, against the retail traffic in such township or ward, and making a successful remonstrance effective for two years. This amendment has been sustained by the Supreme Court, and is proving a most effective means of restricting the traffic.

Since its enactment 189 townships and 18 city wards have effectively used its provisions. The legalized traffic is now excluded from the territory within such townships and wards. Within this territory live 421,750 people. By affirmative action these people have driven the business from their midst.

The right of a free people to exclude from their communities a traffic whose every element is an unmixed evil, is fundamental. It is the basic principle of free government. That right these people have exercised, and their decision should be respected by all men.

But the liquor traffic brooks no restraint. It knows no law. It recognizes no right, however fundamental and sacred. In Maine it tramples upon the provisions of the Constitution and demands the substitution of legislative enactment. In Indiana it breaks over every legislative enactment, respecting neither hour, holiday nor Sabbath. It invades townships from which it has been excluded by the solemn act of the inhabitants of such townships, and by every trick and artifice and every secret and corrupt method known to craft and greed seeks to impose itself upon an unwilling people.

That the will of the people lawfully expressed and recorded may be maintained; that communities from which the traffic has been excluded may be saved from invasion; that public sentiment against the business may not be broken down, and that education of the people against it may go on, it is important that illicit sales by unlicensed venders shall cease throughout all territory covered by successful remonstrance.

Under existing conditions it is difficult to obtain sufficient proof to convict persons selling without license in such territory. A law against all such sales, carrying severe penalties, making it an offense to run or operate a place where illicit sales of intoxicants are made, providing that possession of intoxicating liquors by one unlicensed, or the finding of such liquors upon his premises, or the possession of a receipt showing the payment of the United States revenue taxes for the sale of intoxicating liquors, shall constitute prima facie evidence of the guilt of keeping, running and operating such a place, with an effective search and seizure clause authorizing search for and confiscation and destruction of all intoxicating liquors found in or upon the premises where such a place is kept, run or operated, is essential to the peace and happiness of these communities.

I do not desire that it shall be understood that I am opposed to other restrictive measures, because I have recommended this legislation. Such is not my attitude. The business is so utterly indefensible from any standpoint, moral or economic, that I am prepared to give executive approval to any measure looking to the further regulation or restriction of the traffic which I believe to be a valid enactment.

DEATH PENALTY.

The law in Indiana still permits the infliction of the death penalty as punishment for murder. I have been asked twice to intervene in cases where this punishment has been adjudged. In one

case, as already indicated, the sentence was commuted to life imprisonment. The evidence was wholly circumstantial and the prisoner did not seem to have had the defense to which he was entitled. In the other case I refused to interfere, withheld clemency and permitted the decree of the law to be executed. I am opposed to capital punishment in any form. Every fiber of my being, physical and moral, revolts at the taking of human life, even though the deed be done in the name of the law and as a punishment for crime. I did not interfere in the case named, because the evidence of the prisoner's guilt was clear and overwhelming. The details of the crime were substantially admitted. The murder was premeditated and brutal, and there was in the whole case no palliating fact or circumstance. To have modified the decree in such a case would have been to have suspended the law itself, and to have substituted my individual conviction for the solemn judgment of the people as expressed through legislative enactment. This I felt I had no legal right to do. I found myself bound by the law. Being so bound I obeyed its mandate and staid my hand, though in doing so I crucified my own conviction of right. The law requiring such punishment does violence to my every moral sense, and I can not stand acquit at the bar of my own conscience until I have done what I can to put an end to the practice in Indiana. It is out of keeping with the spirit of the age in which we live. It is always and forever in conflict with the teachings of the religion in which Christian men believe. It has no place among the solemn enactments of an enlightened and Christian people. It has but one defense even in the minds of its adherents, that of public necessity. But that defense has never yet been adequately made out. The shedding of human blood does not deter crime—it begets it. The brutality of such a scene leaves every man who looks upon it the worse for having seen it. Even the men who have provided for it in the law of this State confessed as much when they required it to be done in secret behind the bolted doors of the State Prison. Society can be protected from the man who commits murder, by life imprisonment quite as effectually as by taking his life. Life imprisonment is adequate punishment. It is a greater deterrent than the death penalty. It should be the limit of human law.

I have given this matter patient study and much research, and have been unable to find any reliable statistics that justify the belief that legal executions make the crime of murder less frequent. There is not a State in the Union where the death penalty is inhibited which does not have fewer homicides than most of the

States whose laws impose it. This is especially true in Michigan and Maine, where there have been no legal executions for many years. In the Indiana State Prison the death penalty has been executed eleven times within the last five years. It has been imposed in murder cases for more than a half century, yet homicides are more frequent here than in either of the States named.

As I read this message four men await execution in the death cells of the State Prison. The days of execution are fixed, February 8, February 25 and March 29. You have power to prevent these executions by repealing the law that compels them, and authorizing the Excutive to commute the death sentence to life imprisonment. If the sentence is carried out, you must assume the responsibility. As the Executive I appeal to you to save the executive officers of the prison and of the State from the further infliction of such a penalty. If you fail to do so and I can find substantial fact or circumstance in either of the four cases upon which to predicate executive action, I shall commute the sentence; and if you fail, and I can find no such fact or circumstance, I shall find, again, God helping me, somewhere and somehow, the resolution to stay my hand and permit the unholy sentence of the law to be done, but to my dying day I shall be unable to acquit the law which imposes the uncalled for burden upon me. You will be in session here February 8 and February 25. I take it that you will not forget that the lives of four men may depend upon your action.

LAW ENFORCEMENT.

The last two years have witnessed such improvement in the civic thought of the State as to mark an epoch in our history. An awakened public conscience has inspired new conceptions of public obligation and made possible better enforcement of the law throughout the State. For three years lawless assemblages, riots and lynchings have been unknown in Indiana. Impressed with the belief that timely action in such cases is more effective than punishment afterward, I have sent an executive representative to the scene of every such possible breach of the peace whenever I have had notice of occasion for so doing. In several instances violence has been prevented by this timely intervention.

Strict enforcement of the statutes enacted by the General Assembly should bring home to you a higher appreciation of the responsibility involved in making statutes. It is well that you understand that the laws you enact will be enforced. Indeed, the Executive has no choice. His oath is to enforce all the laws all the time,

and the obligation of the citizen is to obey all the laws all the time. Your word creates the law. The law creates the obligation. When you have spoken and the obligation is imposed, executive action must necessarily follow.

There are yet those, however, who look upon the enforcement of even wholesome and beneficent laws as an abridgment of what they are pleased to call personal liberty. There are yet others who insist upon the right to decide for themselves what laws are wise and wholesome and ought to be obeyed and what are unwise and arbitrary and ought to be disregarded. It is important that this false view of public duty and the obligation of citizenship be eliminated from the public mind.

True liberty, of necessity, is compelled to find its limitations in the law. This is the liberty our fathers established—the liberty of civilization—the liberty of the free. Where it is, slavery never is; justice holds her court, and each individual citizen is free because every other citizen is restrained from the invasion of his rights. This must be the rule in a government like ours, of the people and by the people. Here the law is the source of justice; the foundation of liberty. Here all men's rights are defined by the law. Here the law stands between the liberties of all that the liberty of none may be invaded. Here the law lays no restraints upon the freedom of the good; its hand falls upon the bad alone. Here every power the law bestows, either upon the people or upon those who govern them, is circumscribed and limited by the law itself. Here every guard and security essential to the preservation of free institutions is found imbedded in the law of the land, and here the law cannot be long or often departed from without peril to all that is worth saving in State or in Nation. Here there must be obedience to the law so glad and so entire that its restraints shall be unfelt. Here the Nation itself is held together by law. It is the bond that binds the States together and keeps the "Many in One" from falling asunder. Here the people, having the power to make the law and to change or repeal it at will, have no excuse for its violation.

J. Frank Hanly.

ADDENDA.

Pardons, Paroles, Remissions of Fines and Commutations granted by the Governor of Indiana during the years 1905-1906.

April 7, 1905—

Bert Taylor (Marion County workhouse), pardon; in advanced stage of tuberculosis, and pardon recommended by the State Board of Pardons.

Ora Sturgis (State Prison), parole; recommended by State Board of Pardons.

April 10, 1905—

Harry Veach (Marion County workhouse), pardon.

June 2, 1905—

Wm. H. Kimberlin (Marion County workhouse), pardon; in advanced stage of tuberculosis.

June 3, 1905—

Richard Roach (Marion County workhouse), pardon.

June 10, 1905—

Edison Barnhart (Indiana Reformatory), parole; in advanced stage of tuberculosis.

Zebulum Ford (Indiana Reformatory), parole; in advanced stage of tuberculosis.

June 17, 1905—

Thomas Fitzgerald (Marion County workhouse), parole.

June 20, 1905—

Samuel Peters (Benton County jail), parole; (revoked October 22, 1906).

June 24, 1905—

Edward McGeehee, pardon (paroled by Governor Durbin).

July 15, 1905—

Andrew Holt (Indiana Reformatory), pardon (fatally ill).

July 18, 1905—

Edward Donahue, commutation of death sentence to life imprisonment in the Indiana State Prison.

July 26, 1905—

John Perry (Benton County jail), remission of fine.

August 2, 1905—
Charles Poor (State Prison), parole.

August 25, 1905—
Sherman Crouch (Tippecanoe County jail), pardon.

November 14, 1905—
Thomas Hodgin (Hamilton County jail), remission of fine.

December 22, 1905—
James L. Myers (State Prison), pardon; recommended by State Board of Pardons.
John E. Davis (State Prison), pardon; recommended by State Board of Pardons.

January 22, 1906—
Ed. Kennedy (Benton County jail), pardon and remission of fine.
Carl Carlson (Indiana Reformatory), pardon; totally blind.

February 14, 1906—
William Reasoner (State Prison), remission of fine; (paroled by Prison Parole Board and had received final discharge).

March 24, 1906—
Brick Hopwood (Marion County workhouse), remission of fine.
Claude Riddlebarger (Randolph County jail), remission of fine.

April 17, 1906—
Orlie Costin (State Reformatory), parole; recommended by State Board of Pardons.
Otto Doebler (Lake County jail), pardon; fatally ill.

May 18, 1906—
John Moon (Tipton County jail), remission of fine.

May 19, 1906—
William Cook (State Reformatory), pardoned in order that he might be tried for murder under indictment in the St. Joseph Circuit Court.

May 29, 1906—
Matthew Johnson (Marion County workhouse), parole.

August 8, 1906—
Zora Hinckley (Marion County workhouse), pardon; in advanced stage of tuberculosis.

August 15, 1906—

Charlotte Eppes (Women's Prison), pardon; in precarious physical condition.

November 16, 1906—

Alex Adair (Marion County workhouse), pardon; in advanced stage of tuberculosis.

November 28, 1906—

William Wolsiffer (Indiana Reformatory), parole.

December 22, 1906—

Everett Van Auken (State Prison), parole.

Tone Tompkins (Rush County jail), parole and remission of fine.

Scott Crawley (State Reformatory), parole; recommended by State Board of Pardons.

Myra Freeze (Woman's Prison), pardon; recommended by State Board of Pardons.

Granville Costin (State Prison), pardon; recommended by State Board of Pardons.

Fred Vaughn, remission of forfeited recognizance bond.

TO THE SIXTY-FIFTH GENERAL ASSEMBLY.

CONVENED IN SPECIAL SESSION.

SEPTEMBER 18, 1908.

Gentlemen of the Senate and House of Representatives:

You are convened in extraordinary session because the welfare of the State requires it. The matters I submit to you are important, but they will not, I hope, necessitate more than a brief session. Unity of action and singleness of purpose to meet the requirements of the public welfare, will enable you speedily to return to your homes. The Constitution imposes upon the Executive the duty of giving you "information touching the condition of the State" and of recommending for your consideration "such measures as he shall judge to be expedient."

The following specific appropriations were made at the late regular session of the General Assembly for the State institutions named, to wit:

SPECIFIC APPROPRIATIONS.

Purdue University, agricultural experiment station building, $100,000.00. The Indiana Girls' School, one cottage, $25,000.00. The Indiana Village for Epileptics, for buildings and equipment, $75,000.00. The Indiana State Normal School, library, $99,970.00. The Indiana School for the Deaf, dormitories, equipment, etc., $367,272.00. The Indiana Southeastern Hospital for the Insane, eighteen buildings, equipment, etc., $559,377.82. Total, $1,226,619.82. Of this aggregate sum, $410,645.03 have been expended, leaving unexpended balances aggregating $815,974.79.

There was also appropriated at the late regular session the sum of $53,000.00 for the following purposes, to wit:

A statue of General Lew Wallace for the National Capitol, $5,000.00. A monument in honor of the Indiana soldiers who died at Andersonville, Georgia, during the civil war, $10,000.00. Monuments marking the position of the different Indiana military organizations at Vicksburg, Mississippi, $38,000.00.

Substantially all of these several sums are unexpended, making an aggregate unexpended balance of approximately $869,000.00.

Contracts for the construction of the buildings, structures and monuments named have been let and the work of construction is well under way, but no one of them is now completed or can be completed by the 30th instant.

The agricultural experiment station building is under roof, but is otherwise incomplete. Of this appropriation $21,480.00 are unexpended, and under the law will lapse and cease to be available on the 30th instant.

The new cottage at the Girls' School is under roof, but is incomplete; $17,982.75 of the sum appropriated for it is unexpended, and will lapse and cease to be available on the 30th instant.

The new buildings at the Village for Epileptics are enclosed and under roof. One of them, however, is otherwise incomplete. Of this appropriation $17,084.13 are unexpended, and under the law will lapse and cease to be available on the 30th instant.

The new library at the State Normal School is not yet under roof. Only a small portion of the appropriation made for it has been expended, leaving an unexpended balance of $87,096.29. This unexpended balance will lapse and cease to be available on the 30th instant.

The new dormitories at the School for the Deaf are being placed under roof, but are otherwise incomplete. Of the sum appropriated for them $171,395.25 is unexpended, and will lapse and cease to be available on the 30th instant.

The eighteen buildings at the Southeastern Hospital for the Insane are but partially constructed. Some of the buildings covered by the general appropriation of 1905 are under roof, but the buildings covered by the appropriation made at the regular session of the present Assembly are in a condition that requires continuous effort and prompt prosecution of the work to save them from damage and deterioration during the coming winter. Some are ready for roofing; the walls of others are nearly completed. None can be gotten under roof during the present month; $500,936.37 of the sum appropriated for their construction will lapse and cease to be available on the 30th instant. If these buildings are left in their present condition the damage to all of them will be great and to some of them irreparable.

The need of this hospital is imperative. All the existing hospitals for the insane are crowded to their limit. A thousand other insane persons are either being inadequately cared for by friends or are confined in county infirmaries or county jails. Unnecessary delay in the completion and opening of this institution would be little less than criminal.

The appropriations for these buildings were not made available until October 1, 1907,—last year. Section 5 of the act of 1907, defining the fiscal year and providing for the covering of unex-

pended appropriations into the general fund of the treasury, makes it the duty of the Treasurer of State "biennially, at the end of the fiscal year immediately preceding each regular session of the General Assembly, to cover and transfer into the general fund of the treasury the unexpended balances of all specific appropriations except such as shall have been made available beyond said time by the act appropriating the same."

None of the appropriations to which I have called your attention is made available beyond the end of the present fiscal year, the 30th instant, by the act authorizing them. Therefore, all will lapse and cease to be available at that time.

These provisions of the law limit the time in which the several appropriations named are available to a single building season. It has been physically impossible to complete groups of buildings such as those at the School for the Deaf and at the Southeastern Hospital for the Insane within that time.

Provision for the continuance of each of these appropriations should be made. Failure to do so will have the effect to suspend the work of construction on all these buildings on the date named. The Sixty-sixth General Assembly will convene in regular session at a season of the year when construction work cannot be successfully prosecuted. Unless payment to the contractors having their construction in charge is authorized by a continuance of the appropriations heretofore made, the buildings will be left in an incomplete and unfinished condition until the building season opens next year. I therefore submit to you the need of prompt legislation which shall continue each of said several appropriations and make them available for the purposes named until the end of the fiscal year 1909.

The new cottage at the Girls' School cannot be constructed, equipped and made ready for occupancy for the sum appropriated, $25,000.00. The board of trustees has not contracted a liability beyond this sum, but I am advised that direct heating and water connection will necessarily have to be made between the cottage and the power house. The estimated cost of this line and its connections is $10,000; the cost of plumbing, sewerage, electric lighting, cistern and equipment is $4,000.00; furnishings, $3,000.00, making a necessary additional appropriation of $17,000.00. This should be made at the present session, as the building will damage unless heat can be carried to it before winter.

An appropriation of $6,500.00 was made at the late session of the General Assembly for a storehouse and cold storage plant

at the Girls' School. This plant is now nearing completion, but an additional sum of $2,000.00 is required to equip and make the plant ready for use. This item should be included and added to any appropriation you may make for this institution.

The contract for the construction of the buildings at the Southeastern Hospital for the Insane was originally let to E. M. Campfield for the sum of $1,171,798.00.

Mr. Campfield entered upon the work of construction immediately after the execution of his contract, but his work was so unsatisfactory, so deficient in quality of workmanship and of material he sought to use, and was prosecuted with such indifference, delay and lack of good faith, that the commission was compelled, in order to protect the interests of the State, to forfeit his contract in March of the present year. The commission took possession, for the benefit of the State, of all materials on the ground, as provided for by the statute and the terms of the contract with Mr. Campfield. Every effort was made to induce the surety on Mr. Campfield's bond to take up the work and complete it, but without avail. Then the commission advertised for the reletting of the contract by full advertisement as provided by law. Six bids were received, and on May 1, 1908, the work was reawarded and relet to Messrs. Pulse & Porter, the lowest bidders, for the sum of $853,909.35. This sum, taking into account the work done by Mr. Campfield and the sum paid him therefor, is $151,738.11 in excess of Mr. Campfield's contract. Mr. Campfield's bid was $73,193.00 below his nearest competitors, and his contract one that could not be performed without loss.

The commission made a contract with Messrs. Pulse & Porter to the extent of present appropriations, and entered into a provisional contract for the completion of the buildings named therein, subject to the ratification thereof by the General Assembly and the appropriation of a sum sufficient to complete the same. The work at the institution was delayed, because of Mr. Campfield's failure and the consequent forfeiture of his contract, the readvertisement and the reletting of the same, for a period of two months.

The contract between the commission and Messrs. Pulse & Porter is a just one. They are doing their work in a satisfactory manner, both as to quality of material being used and character of workmanship, and are pressing the work in a manner to evidence their good faith. The contract with them should be affirmed and legalized at this session, that there may be no technical defense when suit is brought upon the bond of Mr. Campfield. The sum

of $151,738.11 should be appropriated in addition to the appropriations heretofore made, and should be immediately available, for the completion of the buildings named in such contract, and should continue available until the end of the fiscal year 1910. This is of immediate and pressing importance, and I trust you will not fail to give it early and favorable consideration. The State has ample money to meet all these necessities, there being at the time of writing this message $896,180.76 in the treasury, with half a year's revenues to accrue in December.

I cannot urge these institutional needs too earnestly. Failure will mean substantial loss to the State, embarrassment to contractors, and may lead to many legal complications.

APPROPRIATIONS FOR MAINTENANCE.

By recent legislation the Girls' School and the Women's Prison were separated, the school removed to a site near Clermont and the Women's Prison remodeled and a portion of the building converted into a workhouse for women. The actual separation of the institutions was effected in July, 1907. The cost of administration in the separate institutions has necessarily been greater than the administration of the single institution. The appropriation made for the maintenance of each has been greatly insufficient to meet the new conditions. Both institutions are now being efficiently administered and the improvement in the administration of each has been such as to amply justify the separation of the two institutions.

Up to August 1, 1908, I paid out of the Governor's emergency contingent fund, for the maintenance of the Girls' School, $8,945.45. August and September bills for maintenance are yet to be met. To meet these bills an appropriation of $8,000.00 will be necessary. Up to September 1st I paid out of the Governor's emergency contingent fund, for maintenance of the Woman's Prison, $3,236.58, with September bills for maintenance still to be met. These will require an additional appropriation of $1,000.00. The appropriation made for the Boys' School has also been found insufficient. August and September bills are to be provided for. An additional appropriation of $7,000.00 will be required. The exigencies of the other institutions have from time to time drawn upon the emergency contingent fund during the fiscal year until it is now insufficient to meet these demands. The maintenance appropriation for these institutions which will become available on October 1st, cannot be used to meet the unpaid accounts of such institutions for the present fiscal year. Therefore,

the appropriations suggested are absolutely essential to their administration. The year just closing has been a hard one on all the institutions of the State. Provisions have been high. In most cases unusually so. Gardens upon which the Girls' School and the Boys' School have largely depended for sustenance during the summer have been wholly inadequate to meet their needs because of the long-continued drouth.

NIGHT RIDERS.

In the early spring numerous raids were made in the part of the State bordering upon the Ohio river by so-called "night riders" upon the property of persons engaged in the growing of tobacco, resulting in the destruction of a number of tobacco beds where young plants were being grown preparatory to transplanting in the fields. Many threatening letters were written warning the growers not to plant a tobacco crop for this year, and threatening personal violence and the destruction of property if the crop were planted. I have done what I could under the limited authority conferred upon the Governor by law and with the meager funds in my hands, to apprehend these persons and protect the persons and property of citizens in that section of the State. In a few weeks the tobacco crop will be cut and housed in sheds and barns. Many threatening letters are again being received by the tobacco growers warning them not to cut their crops at peril of the destruction of crops and barns by fire. For a year past one-third of the neighboring State of Kentucky has been, and now is, in a state of anarchy; neither life nor property is secure. Property has been destroyed and a number of persons murdered. Depredations have been committed in Ohio necessitating special legislation and the conferring of special authority upon officers in that State to preserve the property and lives of her citizens.

The protection of property and its peaceful enjoyment and the preservation of the lives of its people are among the primal reasons for the maintenance of any government. I cannot consent that the government of this Commonwealth shall fail in this behalf. Under the present law I have neither authority nor money with which to prevent it.

I therefore recommend the enactment of a statute for the protection of tobacco growers, making the destruction of, or injury to, tobacco, either in the field or after the same shall be severed from the soil, a criminal offense, and fixing a severe penalty therefor. I also recommend legislation authorizing and directing the Governor

to appoint such number of persons as he may deem necessary to act as secret service officers, to detect or apprehend any person or persons engaged in the malicious destruction of tobacco plants or other property of persons engaged in growing, curing and marketing of tobacco; giving to such officers the powers of a sheriff or other police officer to arrest and detain until a legal warrant can be obtained any person or persons found violating any of the laws of this State enacted to prevent the destruction or injury of tobacco, and giving to the Governor authority to fix the compensation of such officers in addition to their actual and necessary expenses, and the making of an appropriation of $15,000.00 for the payment and compensation of such officers and their necessary expenses.

The enactment of such legislation will of itself have a deterring effect upon those engaged in the unlawful practices to which I have adverted and will enable the Executive to meet with greater efficiency the conditions that are likely to arise.

VINCENNES UNIVERSITY CLAIM.

An act was passed at the late regular session of the General Assembly providing for the issuing of $120,548 of bonds of the State to the trustees of Vincennes University. This act creates a State debt, principal and interest, of more than $156,000.00. The bonds were prepared by the Auditor of State and tendered to me for Executive signature. I have not executed them because of a firm conviction that the statute authorizing them is unconstitutional. While the claim of the University against the State is unfounded and wholly without merit, this fact would not have impelled me to withhold my signature. The act was passed over Executive veto, and if it were a valid act it would be my duty to execute the bonds, whatever I might think of the merit of the claim. If, however, as I verily believe, the act is invalid because of its contravention of the plain provisions of the Constitution, I would be violating my oath of office to issue the bonds. My obligation is to support the Constitution of the State. If the act contravenes the Constitution, it is not a law, and I am under neither legal or moral obligation to do any act under it. Indeed, any act taken would in such case be invalid, and a violation of both my legal and moral obligation.

The facts set forth in the veto message of the act in question are such as to convince any unbiased investigator of the claim's utter lack of merit.

I have submitted the question of the constitutionality of the

act to Messrs. Miller, Shirley & Miller, counsel of ability and eminence in their profession, and I am advised by them that in their opinion the act contravenes Section 5 of Article 10 of the Constitution and is void.

I have also submitted the question of the constitutionality of the act, considered in the light of the facts set forth in the veto message, to the Attorney-General, and I am advised by him that upon the facts stated the act is clearly unconstitutional.

I therefore deem it my duty to ask you to examine the opinion of Messrs. Miller, Shirley & Miller, together with that of the Attorney-General, and to re-examine the facts as set forth in my former message. Calm and candid consideration of these I am persuaded will lead you to support the act's repeal. Its repeal will save the State more than $156,000.00, principal and interest, a sum sufficient to several times defray the expense of the present session. No new right has accrued to the University since the passage of the act. The merit of their claim is now precisely what it was before the act was passed. The status of neither party has changed. Their rights will therefore not be affected by the repeal of the statute.

If the claim of the University against the State is not valid in law, the General Assembly has no authority to authorize the issuing of bonds or the creation of a debt to meet it. It cannot make a gift to the University in that way. It cannot incur a debt for that purpose. The issuing of the bonds is an attempt to create a debt. They are obligations of the State to pay the holder of them, principal and interest, $156,000.00. If they are invalid they ought not to be issued to find their way into the hands of innocent investors.

If the State desires to bestow a gratuity upon the University because it is an educational institution which the State wishes to foster, it must bestow the gratuity in money and not in evidences of indebtedness. If it does that, it is entering upon a policy of such far-reaching import as to cause thoughtful men to hesitate before yielding assent thereto. If the State is to give Vincennes University $156,000 in the next ten years, why shall it not give similar amounts to Wabash College, to DePauw University, to Franklin, to Hanover, to Earlham, and to the other colleges and universities of the State, all of which are schools of at least equal merit, doing equally efficient work? Such a policy simply means the taking over for maintenance of all the higher institutions of

learning of the Commonwealth, and involves a departure from the precedents of a hundred years.

Copies of the opinion of Messrs. Miller, Shirley & Miller, of the opinion of the Attorney-General and of the veto message will be supplied you for examination and consideration.

COUNTY LOCAL OPTION.

The welfare of the State, viewed from either a moral or an economical standpoint, requires the enactment of a law giving to the qualified voters of the respective counties of the State the right to vote upon the question of the exclusion of the liquor traffic from any such county. In my judgment it is both expedient and right that this legislation be enacted now.

The traffic in intoxicating liquors is owned and controlled to-day by a few men. It is closely and compactly organized, both for defense and aggression. Its conduct has become such as to challenge the thoughtful consideration of the people of every State in the Union. In this Commonwealth this is especially true.

The independent retail dealer, owner of his place of business and responsible to the community where he does business and in which he lives, is fast becoming a memory. He has almost ceased to be. More than thirty-five per cent. of the places where liquors are sold at retail, to be drunk on the premises where sold, are owned or controlled by brewery corporations, whose directors and officers live out of the vicinity where the business is carried on, and who have no interest or identity with the people of such communities. Many of them live in palatial residences in fashionable quarters in the larger cities of the State, far removed from the scenes of the barrooms they maintain.

These men, acting through the legal fiction called a corporation, buy or rent the buildings where the business is conducted. They own the fixtures. They furnish the liquors. They pay the license fee. Where taxes are paid, they pay them. The law inhibits the issuing of a license to a corporation. To evade this, license is taken in the name of some irresponsible person who owns no property and has no concern and no mission except to sell intoxicants to anybody, at any hour, on any day, in order that his master, the brewer, may gather his daily measure of profit. The brewery corporation, the brewer himself, or some paid agent executes the bond required of the licensee, and he is given to understand that he must conduct the place turned over to him at a profit

to his master, and that he may evade the law without substantial risk. If he is prosecuted, he is defended. If he is fined, his fine is paid. His place is a rendezvous for the idle, the vicious and the criminal—a hot-bed for the breeding of vice and crime. In time of civic excitement or social disorder, arson and murder issue from it like beasts from a lair. This is the experience and this the testimony of every city that has become the victim of the mob or whose laws have been defied by riot.

Those in control of these places are concerned about nothing but profits and increased revenue. To obtain these they multiply saloons, plant them in residential districts, and establish them in communities where saloons otherwise would not go. For years they have stood for and have countenanced anything that would promote the sale and consumption of their products, lawful or unlawful.

The aggression and the intolerance of the traffic, coupled with its utter disregard of law, led the Sixty-fourth General Assembly to enact a law giving to the majority of the legal voters of any township or city ward the power, by remonstrance filed with the board of county commissioners, to exclude the traffic from such territory for a period of two years.

Under the provisions of this law the traffic has been excluded, in three and one-half years, from 880 of the 1,016 townships in the State; from many city wards; from a number of cities, and from 25 entire counties. More than 1,600,000 people now live in territory where there is no licensed saloon. But this territory is constantly invaded by the traffic and a constant warfare against it is necessary for its exclusion. This statute was enacted without submission to the vote of the people, but its effects have been so beneficent and the good accomplished under it has been so great that the people of the State are unwilling to see it repealed, modified or weakened. So strong is the sentiment in its behalf that both the great parties in the State are pledged to maintain it inviolate. And the desire of the people for the further restriction of the traffic is so sincere, so widespread, so manifest and insistent that both parties have promised additional and supplemental legislation.

Two methods are suggested. One, a township and ward election, where the people of the township or ward may vote for or against the traffic. The other, a county election, where the people of each county may vote for or against it. Between these two propositions both the temperance people and the liquor interests of the State have made quick and decisive choice.

The first method would add nothing to the present statute. The unit would be precisely the same as that covered by the present remonstrance law. It would not be a step for the further restriction of the traffic, but a step toward the weakening of the present restraint. In practice, it would greatly impair if not effectually destroy the remonstrance law. Operating over the same territorial unit, conflict would ensue and the remonstrance law would be supplanted. The township or ward covers too small a territory to be an effective unit. No township or city ward can single-handed protect itself from the ravages and evils of the traffic so long as it is permitted in the townships and wards surrounding it. A great majority of the citizens of a county or a city may be opposed to the traffic, but while a single township or city ward favors it, though by a majority of but one legal voter, the county or the city must tolerate it, must suffer in silence without redress, denied a voice or even a hearing concerning it. Thus the will of the people is made ineffectual, their purpose impotent. A city ward or township is not a substantial governmental unit. They have no officers qualified or empowered to enforce the laws of the State relating to the traffic. The expense of criminal prosecutions for crimes committed in the township or ward is not borne by such township or ward alone, but by the county as a whole. The evil effects of the traffic cannot be confined to their boundaries but reach all the people of the county. Township or ward local option by election is a kind of home rule but little better than that which would follow if the unit were a precinct, a city block, a single flat in a city, or the house of a single family. Carried to its last analysis, it localizes the option to the individual conscience of each citizen and takes away all right of society as represented in the majority to have a voice in the matter. It is not government by majority, but government by the minority. It is not the rule of the people, but the rule of the few.

The county is a well recognized and long established unit of government. It has officers and courts and the machinery by which the law of the State can be enforced. The people of this unit all share the cost of criminal prosecutions for crimes committed within it. The traffic's evil effects can more nearly be confined to its borders.

The difference between the two methods is emphasized and accentuated by the character of those who support them. Good men may be back of the township and ward unit, but back of it are also the allied liquor interests of the State, organized as a single unit.

Every brewer, every distiller, every saloon-keeper, the keeper of every brothel and of every unlawful resort, and every allied interest than can be reached, individual or corporate, are supporting it, and they are not half-hearted in their support of it as against county option. They are desperately in earnest. They are here and will be here throughout this session, active, dominant, arrogant, intimidating and corrupting, prepared to defeat county option at any cost or by any means within their power. They seek through you to take over unto themselves the enactment of law. They are reaching for the reins of government, everywhere and in every department, that they may administer it in their own behalf.

On the other side are the great body of our people, the many, the masses, unorganized, without celerity of movement or corrupting power. They are for county local option. They plead their cause in the open. The ministry of the State of all denominations; teachers, lawyers, doctors, manufacturers, farmers; the moral forces of the Commonwealth, represented by the Christian church and religious societies; the great rank and file; the multitude whose government this is, whose commissions you hold, whose representatives you are. Thousands of them are here and will be here to urge their claim upon you.

The brewery, the distillery, the saloon, the brothel, on one side! The church, the school, the home, on the other!

County option is in harmony with the spirit of our institutions. It is in accord with the basic principle of American government. It meets the requirement of the great declaration that "governments shall derive their just powers from the consent of the governed."

How can a man who enjoys the blessings of free popular government and who professes to believe in democratic institutions where the people themselves, by majority, exercise the right to rule, consistently deny to the people of the several counties of this Commonwealth the right to exclude this traffic from their midst, if they so desire? How can a man who values political freedom for himself deny to the three millions of people in Indiana who desire to be heard upon this question the exercise of a right so fundamental? How can a man who believes in the right of the majority to decide questions of tariff schedules and monetary ratios refuse to submit this question to the forum of a free people, or withhold from his fellow-citizens a freeman's right to vote upon it?

I reiterate my belief that it is both expedient and right to enact this legislation now. If it is right to enact it next January, it

is right to enact it in September. Therefore, I recommend to you and urge upon your favorable consideration the enactment of a local option law with the county as a unit, giving to the people the right to vote by counties upon the question, and so drawn as to preserve the present remonstrance law. In this I voice the thought and express the conscience and the purpose of the people whose servants we are. If your enactment shall voice their thought and express their purpose, you may justly claim their approval. You will thereby place the State where the intelligence, the conscience and the character of its citizens entitle it to stand. If you fail, you will have to account to them, for soon or late they will have their way upon this great question. In this neither the majority nor the minority can escape responsibility. As individuals and as representatives of the people, your responsibility is the same, whether you are of the majority or of the minority. Right is right, and he who opposes it cannot long find safe refuge behind the barricades of party.

The General Assembly is now in session. You constitute it. You have the power to legislate. The people know you have the power. They will not be satisfied with postponement or delay. They expect you to act upon this question before you adjourn.

These are the reasons that impelled me to convene you in special session. In presenting them to you I do but discharge the duty imposed upon me by the Constitution. I am conscious that all of you do not agree with all I have submitted, and that some of you may not agree with any part of it. That is your right. And that right I respect. But I bespeak for what I have submitted the careful and candid consideration which its importance entitles it to receive, and which may be justly claimed for the views of an earnest and sincere man, who shares your responsibility and who has thought much and long upon the questions involved.

Permit me, in conclusion, to express the hope that the business of the session may be promptly dispatched, and that your labors may be signalized by loftiness of purpose and patriotic devotion to the public welfare.

J. Frank Hanly.

TO THE SIXTY-SIXTH GENERAL ASSEMBLY.

JANUARY 7, 1909.

Gentlemen of the Senate and House of Representatives:

Upon your assembling it becomes the duty of the Executive to submit to you "information touching the condition of the State, and to recommend such measures as he shall judge to be expedient."

In their majorities your respective bodies are not in political accord. This is a condition that not infrequently effectively prevents much desirable legislation. But the greater part of the business that will come before you will not be partisan in character, and should have consideration quite aside from politics. In every such case it becomes the duty of majority and minority to rise above party differences and meet each other on the higher, broader plane of common citizenship and the public welfare.

This I shall sincerely endeavor to do in what I here present. The information submitted is the result of four years of close touch with the institutions and the affairs of the State and of painstaking effort, and is, I believe, expressed in accurate figures and reliable statements, while the measures recommended are suggested by the experience and observation incident to a full constitutional term in the executive office.

CONDITION OF FINANCES AND SOME SPECIAL FUNDS.

The financial condition of the State is exceptionally good. The revenues for the fiscal year ending September 30, 1907, exclusive of transfer funds and including a balance in the treasury October 31, 1906, of $507,654.60, aggregate $4,599,333.58; the expenditures were $3,701,705.97, leaving a balance in the treasury at the close of the fiscal year ending September 30, 1907, of $897,627.61. The revenues for the fiscal year ending September 30, 1908, exclusive of transfer funds and including the balance in the treasury at the end of the fiscal year 1907, aggregated $5,217,370.85; the expenditures were $4,724,253.85, leaving a balance in the treasury September 30, 1908, of $495,117.00. In this balance there was no advance payment, nor were the revenues for the present year anticipated or impaired.

The revenues for the present fiscal year, exclusive of transfer funds and including the balance in the treasury September 30, 1908, will aggregate $4,637,152.00. Appropriations heretofore

made for this year and liable to be disbursed aggregate $4,189,-121.00, leaving an available balance for specific purposes of $448,-031.00. From this balance, however, must be deducted the probable expense of the present session of the General Assembly, $120,-000.00, leaving a net balance from the regular revenues of $328,-031.00 available for specific purposes for the present fiscal year.

The 3 per cent. sinking fund levy made last year will create a revenue during the present fiscal year, coming into the treasury in June, of $260,000. If this fund be transferred to the general fund the net balance available for specific purposes for the present fiscal year will be $588,031.

ESTIMATED REVENUES.

The revenues, based upon present levies and existing valuations, for the fiscal year, 1910, exclusive of transfer funds, are conservatively estimated at $3,927,888. The regular expenditures for 1910 are estimated at $2,991,326, leaving a balance for the fiscal year ending September 30, 1910, available for specific purposes, of $936,562. The 3 cent sinking fund levy made last year, coming into the treasury in December, 1909, and during the fiscal year 1910, will produce $240,000. If this fund be transferred to the general fund the aggregate sum available for specific purposes for the fiscal year ending September 30, 1910, is conservatively estimated at $1,176,562. The revenues for the fiscal year, 1911, exclusive of transfer funds based on present levies and valuations, are estimated at $3,927,888. The regular expenses for the fiscal year 1911 are estimated at $2,991,326, leaving a balance available for specific purposes for the fiscal year ending September 30, 1911, of $936,562.

These estimates are believed to be conservative and reliable. The total funds, therefore, available for specific purposes, between now and Sptember 30, 1911, if the sinking fund revenue coming into the treasury during the present calendar year is transferred to the general fund, will aggregate $2,701,155. This sum measures the limit of specific appropriations for the term indicated if the revenues for the fiscal year ending September 30, 1912, are not to be impaired.

AVAILABLE FUNDS.

If the sinking fund revenue for the present calendar year is not transferred to the general fund, the funds available for specific purposes between now and September 30, 1911, will aggregate

$2,201,155, and will measure the limit of specific appropriations unless the revenues for the fiscal year ending September 30, 1912, are anticipated and impaired.

On the 31st day of October, 1904, the close of the fiscal year last preceding the present administration, the treasury balance was $60,601.93, but to obtain this balance advance payments from county treasurers had been called and received, and the revenues for 1905 anticipated in the sum of $154,740. But for these advance payments there would have been no treasury balance, but a deficit of $94,138.07. September 30, 1908, after four years of extensive construction of public buildings aggregating $3,362,566.90, this deficit was recouped and an actual balance of $493,117 accumulated without calling a single advance payment from any county treasurer or anticipating the revenues of this year a single dollar, and without increasing the total tax levy on account thereof the fraction of a mill.

To do this, however, the 3 cent sinking fund levy was transferred to the general fund for the years 1905, 1906 and 1907. This was done without impairing our ability to meet the foreign bonded indebtedness of the State within six months after the privilege to pay accrues, and four years and a half before the debt matures.

PAYMENT OF PUBLIC DEBT.

Under the two preceding administrations a remarkable record was made in the payment of the public debt. Under the first $2,216,000.00, under the second $3,008,000.00, an aggregate during the two administrations of $5,224,000.00.

During the present administration $407,000.00 have been paid on the principal of the State debt and the last dollar of the debt now payable canceled. This leaves a total foreign bonded indebtedness of only $800,000, none of which will be payable until January, 1910, and none of which will be due until 1915. This entire debt can be paid within six months from the date the privilege of payment obtains, from the sinking fund, which will come into the treasury during the present calendar year and the first half of next year.

The institutional needs of the State, however, are so imperative and our duty to those whose care we have undertaken out of feelings of humanity and for the public good, is so clear and insistent that I am impressed with the belief that an act should be

passed by you during the present session transferring the sinking fund to be derived from the 3-cent levy for the year 1908 and coming into the treasury in June and December of the present calendar year, to the general fund, that it may become available for specfic purposes. If this is done the sinking fund from the levy of the present year coming into the treasury during the calendar year 1910 will remain intact. This fund will aggregate $510,000 and will enable the incoming administration to pay $510,000 on the principal of the State debt within a year after the same becomes payable, and within six months thereafter the fund derived from the sinking fund levy will be sufficient to retire every dollar of the debt and leave the State absolutely unincumbered, except a nominal sum on account of certain university bonds, which are really due to itself.

TRANSFER OF SINKING FUND LEVY.

In my message to the Sixty-fifth General Assembly I recommended the transfer of the sinking fund levy for the year 1908 to the general fund, foreseeing the present necessity, and the General Assembly passed a bill for that purpose on the eve of adjournment, which I was compelled to veto because of an error in naming the year for which the transfer was made.

The transfer of this fund will enable us to complete the Southeastern Hospital for the Insane and the School for the Deaf, and to make needed improvements and additions at the State Prison, the Reformatory, the Boys' School, the Girls' School, the Epileptic Village and the School for Feeble-Minded Youth, and to provide effectively for the other hospitals for the insane, and begin in a substantial way the institution for the treatment of tuberculosis; also to construct and equip at Purdue University and at the State University additional buildings somewhat commensurate with their present insistent need.

The just consideration of obligations incurred and every dictate of duty assumed demands that these things be done. We are in a position to, and can, if we will, do them all without calling upon posterity to pay any portion of the cost, and we can, at the same time, pay the foreign bonded indebtedness of the State before the expiration of the first two years of the incoming administration.

The transfer of this fund as here suggested will create a general fund somewhat in excess of the specific appropriations im-

peratively needed; if so, the surplus can be applied to the payment of the State debt, as such payment may be lawfully made from the general fund.

These State institutions—educational, benevolent and penal—have been upon my conscience every hour since I took the oath of office as Governor of the State, as few other things have been, and they will continue to be on my conscience long after I have left the executive office.

In this there is no politics, but there is in it an appeal to civic pride and to humanity that can not well be denied by a civilized and Christian people. I am profoundly impressed with the conviction that in the degree you fail in this, you will fail in your obligation to the people you represent.

GOVERNOR'S EMERGENCY FUND.

During the fiscal year ending September 30, 1907, there was expended from the Governor's emergency contingent fund the sum of $27,365.34, less $110.82 returned to the treasury, leaving an unexpended balance of $254.48. The expenditures were for the following purposes and in the following amounts:

Completion and furnishing of two new cottages at the Northern Hospital for the Insane	$6,150 49
Southern Hospital for the Insane	14 01
Maintenance Boys' School	2,256 21
Maintenance Girls' school	3,388 87
Maintenance Women's Prison	6,226 55
Expenses in the case of McCormick vs. State	1,426 65
In the case of Samuel Peters	11 76
Investigation of Elkhart Insurance Company	12 75
Investigation of State Life Insurance Company	1,917 80
Expense of tuberculosis commission	540 15
Expense of committee investigating Auditor's office	145 00
Expense incurred in the closing of the Dearborn Park Casino in Lake county, Indiana	816 57
Expense in French Lick litigation	1 45
Aid to flood sufferers under authorization of special act of Sixty-fifth General Assembly	4,457 08

For the year ending September 30, 1908, there was expended from the emergency contingent fund $26,113.42, less $146.53 returned by committees having in charge the distribution of funds contributed to the flood sufferers, leaving an unexpended balance of $4,033.11. Said expenditures were in the following amounts and for the following purposes, to wit:

Maintenance Boys' School	$2,743 73
Maintenance Girls' School	8,944 95
Maintenance Women's Prison	3,539 22
Electric wiring, Soldiers' Home	2,245 00
Furnishing and equipping two cottages at the Eastern Hospital for the Insane	4,095 84
Expense in the prosecution of the whitecap cases in the Bartholomew Circuit Court	3,223 50
Expense in the disbarment of George Kurtz	10 89
Expense in Dearborn Park Casino case	355 00
Expense in French Lick litigation	365 48
Expense in relation to State lands	43 96
Records for State Finance Board	318 00
Expense incurred in Muncie strike riot	8 50
Expense incurred in litigation by the State vs. J. O. Henderson	219 35

CIVIL AND MILITARY CONTINGENT FUND.

For the year ending September 30, 1907, there was expended from this fund the sum of $1,606.90, leaving an unexpended balance of $7,559.74. These expenditures were in the following sums and for the following purposes:

Expense incurred in prosecution of French Lick litigation	$249 31
Expense in Dearborn Park Casino case	155 00
Expense incurred in the prosecution of the whitecap cases in Bartholomew county	402 23
Expense of National Guard, account Tell City strike	800 36

For the year ending September 30, 1908, there was expended from the civil and military contingent fund the sum of $7,251.87, leaving an unexpended balance of $2,768.13 less $20.00 returned to the treasury. These expenditures were made for the following purposes and in the following sums:

Expense of National Guard, account Tell City strike	$311 83
Expense National Guard account powder-mill explosion at Fontanet, Ind.	1,260 23
Expense of National Guard account of Muncie riot	3,119 73
Expense of investigating "Night Rider" depredations in Dearborn, Switzerland and Ohio counties	680 00
Expense account special election in White, Newton, Starke and Jasper counties	21 21
Expense in French Lick litigation	510 37
Expense in the prosecution of the whitecap cases in Bartholomew county	1,007 75
Legal opinion in Vincennes University bond matter	200 00
Expense of National Guard on account of Avaline Hotel fire at Ft. Wayne	140 75

CLAIM OF ONE HUNDRED SIXTY-FIRST REGIMENT.

By an act of the Sixty-fifth General Assembly $11,674.61 was appropriated to reimburse the members of the One Hundred and Sixty-first Regiment, Indiana Volunteer Infantry, and of Companies A and B, colored infantry, for the sum paid for counsel fees out of the allowance made to them by the Federal government. Of this sum there still remains a balance in the treasury of $2,648.82. Of the original sum, $35,023.86, placed in the hands of the Governor for distribution, there still remains undistributed $5,736.04. Both these funds are being distributed as rapidly as the persons entitled to receive the same can be found and proof of their claims made.

There is no law requiring the Governor to act as custodian of this fund, but I have distributed it, through the Adjutant-General of the State, in so far as distribution has been made, simply as a matter of good-will to the members of these organizations, that the expense of distribution might be saved them. Their individual claims are small, often but a very few dollars. The balance of this fund, $5,736.04, I shall turn over to the succeeding Governor, if he is willing to accept the trust, that the distribution may continue without cost to the claimants.

The original fund has been kept in bank since it came into my hands, as a fund to be checked against as distribution was made. Interest thereon has been paid by the bank at the rate of 3 per cent. per annum, amounting in the aggregate to $812.77.

The appropriation of $11,674.61 made by the General Assembly has made good the whole sum allowed by the general government. Every member of either of the organizations interested has received or will receive the full share of the whole allowance due to him. It has therefore seemed just to me that the interest accruing should be paid into the State treasury to reimburse the State in part for the appropriation so made. The interest does not belong to me. The claims of the members of these organizations are being paid in full through the generosity of the State and the free services of its officers, without cost to them for counsel fee or even of distribution. I have therefor paid the interest accruing, $812.77, into the State treasury for the use of the State.

STATE AVENUE STREET ASSESSMENT.

The purchase price of that portion of the site of the present School for the Deaf, sold to the city of Indianapolis during the preceding administration, has been fully paid and the property transferred by deed of conveyance to the city of Indianapolis.

Prior to such transfer said avenue, from Washington street to English avenue, was improved with a brick roadway and curbing under proceedings begun and had before the Board of Public Works of said city. The property sold to the city abuts upon this improvement and was assessed for its construction in the sum of $2,448.26, which, with interest accrued thereon, now amounts to $2,629.34.

As the State still occupies the property and will, of necessity, continue to occupy it until the new buildings for the School for the Deaf are ready for occupancy, and the improvement was constructed and the assessment levied before the deed of conveyance was executed, it is just that the State should pay the assessment. I therefore recommend the appropriation of a sum sufficient to pay principal and interest, and that the same be made payable to the American Construction Company, the contractor constructing the improvement.

CLAIM OF JOHN R. WARREN.

The contract for the construction of the buildings at the Girls' School was awarded to John R. Warren. Upon the completion of said buildings a claim of more than $12,000 for extras was presented by Mr. Warren to the commission having in charge the construction of said work. This claim the commission refused to allow, but it allowed a claim of $3,190.10 as the fair value of the extras which Mr. Warren had furnished under the direction of the board.

Only the sum of $481.05 remained of the fund available for the payment of the cost of construction of this institution. A balance, therefore, of $2,709.05 still remains unpaid. The debt is a just one, and an appropriation should be made to Mr. Warren, to be immediately available.

GRAVE OF NANCY HANKS LINCOLN.

Under an act of the Sixty-fifth General Assembly title to a small tract of land containing the grave of Nancy Hanks Lincoln, mother of Abraham Lincoln, has been acquired, a commission ap-

pointed and steps taken to beautify the grounds and preserve the grave.

The annual appropriation of $500 made in this behalf should be continued.

MORTON MONUMENT.

An act of the Sixty-fourth General Assembly, approved March 25, 1905, authorized the erection of a monument and statue to the memory of Oliver P. Morton, to be located in a conspicuous place on the State House grounds and appropriated therefor the sum of $35,000. Under this act a commmission was appointed, and the plaza at the east entrance of the State House selected as a site. The monument was erected and the statue placed and dedicated July 23, 1907. The statue is the work of Mr. Adolph Schwartz, of the city of Indianapolis. The whole memorial, monument and statue, was constructed within the appropriation made.

TIPPECANOE BATTLEFIELD MONUMENT.

Under an act of the Sixty-fifth General Assembly, and an act of the Federal Congress, authorizing the construction of a monument on the Tippecanoe battlefield, and appropriating therefor the sum of $12,500 by the State and a like sum by the Federal government, a beautiful monument of granite has been erected on that historic field. It was formally dedicated with appropriate and impressive ceremonies November 7, 1908. Official report of the proceedings of the commission having in charge its construction is now in the hands of the public printer, and will shortly be laid upon your desks. This monument was also constructed within the appropriation made by the two governments.

ANDERSONVILLE MONUMENT.

The late General Assembly, by an act approved March 9, 1907, authorized the construction of a monument at Andersonville, Ga., as a tribute to the soldiers of Indiana, who died in Andersonville prison during the Civil War, and appropriated therefor $10,000. On the 26th of November last the memorial was formally dedicated and turned over to the care and custody of the Federal government. The commission having its construction in charge was peculiarly fortunate in the selection of both design and material. The appropriation was small, but with it a monument has been provided, the most appropriate and beautiful so far erected at Andersonville. The report of this commission is in preparation, and will be published at an early date.

VICKSBURG MONUMENTS.

An act of the Sixty-fifth General Assembly, approved March 10, 1907, authorized the construction of monuments to the twenty-eight military organizations from Indiana which participated in the campaign and siege resulting in the capture of Vicksburg, July 4, 1863, and markers designating the lines occupied by such organizations at the time of such capture, and appropriating $38,000 therefor. Under this act sixteen monuments and fifty-three markers have been constructed and placed in position. The markers are of granite, and are of substantial size. The monuments are of the same material, beautiful in design and distinctive in appearance. These were dedicated on December 29. The dedicatory ceremonies were participated in by the Governor of Mississippi and many of the people of Vicksburg. The report of the proceedings of the commission is in preparation and will soon be submitted.

The reports of the commissions having in charge the construction of monuments at Chickamauga and at Shiloh were published in somewhat extensive form, and it is desirable that the report of this commission be published in like form, giving a brief history of each Indiana organization participating in the campaign. It is estimated that the publication of such report will cost $3,000. The appropriation of this sum is recommended.

STATE MEMORIAL AT VICKSBURG.

In many respects the Vicksburg campaign was the most important campaign of the Civil War. This fact is widely recognized, and many States in addition to regimental monuments and markers have and are appropriating substantial sums for the construction of State memorials. Pennsylvania has constructed a State memorial costing $15,000, New York $12,500, Minnesota $23,000, Mississippi $50,000, Illinois $200,000, and Wisconsin has recently appropriated $100,000. A beautiful and impressive memorial can be constructed and dedicated for $50,000. A site therefor, centrally located and of commanding position, has been reserved by the national commission, and I earnestly recommend that an appropriation of such sum be made by you. But three other States had more organizations in the siege of Vicksburg or in the campaign preceding it than Indiana. Her troops bore the brunt of the most hotly contested battle of the campaign and she should not be behind in the expression of her appreciation and gratitude.

GEN. PLEASANT A. HACKLEMAN.

Gen. Pleasant A. Hackleman was killed in battle at Corinth, Miss., October 3, 1862. He was the only general officer from Indiana to fall in battle during the Civil War. His services to the State and the Nation ought to be perpetuated. His last message, "I am dying, but I am dying for my country," ought to be remembered by our people.

I recommend an appropriation of $35,000 for the construction of a monument and statue to his memory, to be located in University Park in the city of Indianapolis, under the direction of a commission to be created and appointed for that purpose.

PRIVATE BANK ACT.

A step in the direction of State supervision and inspection of private banks was taken by the Sixty-fourth General Assembly. The law as then enacted was crude and ineffective. It was valuable only as a beginning.

But the legislation had during the session of the Sixty-fifth General Assembly was of more value. The result of its operation has been to lessen somewhat the number of private banks in the State and to increase the number of state banks. The number of private banks in the State September 30, 1907, was 213; on September 30, 1908, 188, a decrease of 25. The number of State banks in the State September 30, 1907, was 235; the number September 30, 1908, 256; an increase of 21.

During the fiscal year 1908 there was no state bank failure within the State. During the same time there were seven private bank failures. One of these failed before the operation of the private banking act providing for examinations became effective. The other six were closed by the order of the Auditor of State shortly after the private banking act went into effect, upon examination made under its provisions, showing the banks to be insolvent.

DEPOSITORY LAW.

The act of the late General Assembly providing depositories for public funds has now been in operation one year. In that time it has vindicated in the most remarkable manner the claims made for it by its friends at the time of its enactment.

The interest collected on the general State funds for the calendar year 1908 aggregated $27,201.61; on account of the educational institutional funds, $4,312.86; total, $31,514.47.

During the fiscal year ending September 30, 1908, it cost $12,176.29 to administer the treasury department and $18,002.98 to administer the executive office, a total for the two offices of $30,179.27.

It will be seen that the interest accruing to the State exceeds the cost of administering both the treasury and executive offices by $1,335.20.

The result of the law's operations in the several counties of the State is little less satisfactory than in the State. The salaries of the treasurers of the ninety-two counties of the State aggregate $273,250. Reports from sixty-six of the ninety-two counties indicate that the interest accruing to the several counties will aggregate $204,934, a sum only $68,316 less than the aggregate salaries of the treasurers of all the counties.

Actual data from the sixty-six counties reporting disclose the fact that in the counties of Whitley, Lake, Randolph, Morgan, Carroll, Lawrence, Warren, Decatur, Hamilton, Jay, Clay, Fulton, Sullivan, Adams, Bartholomew, Posey, Starke, Wells and Jasper the interest accruing to the county more than equaled the salary of the treasurer. The salaries of the treasurers of these eighteen counties aggregrate $47,450, the interest collected $59,895.92, an excess of interest in the eighteen counties over treasurers' salaries of $12,445.92.

SAVING OF MORE THAN $440,000.

Reports indicate that interest accruing to the several towns and cities of the State, civil and school, and to the several townships, civil and school, will equal, if not exceed, the interest accruing to the counties, making a total saving to the people of the State of more than $440,000.

In the county of Marion interest on the county fund aggregrated $11,817.11, while the total interest collected by the county for the school city of Indianapolis and from other sources, exclusive of townships, equals $17,352.39, a total collection of $29,169.50.

The financial gain indicated by these figures is not, however, the most valuable result of the operation of this law. It has ended speculation in public funds, secured their honest and safe administration, and saved weak and inefficient custodians of such funds from embezzlement and dishonor.

The principle embodied in the law should be preserved. Experience may have indicated here and there defects in it of minor character, but these do not seriously affect its value. If amenda-

tory legislation is had the greatest care should be exercised to preserve unimpaired every vital feature of the law.

The provision of the law requiring daily settlements on the part of all administrative officers of the State handling public funds, is no less valuable. Its effect has been to revolutionize the administration of these offices, in so far as the same relates to public moneys, and in connection with the work of the executive accountant, to minimize the hazard of their misappropriation or loss.

THE STATE'S INSTITUTIONS AND THEIR GROWING NEEDS.

The State institutions, taken as a whole, have been most efficiently administered. They have been kept out of politics absolutely. Character, ability and fitness alone have determined every appointment made either by the Executive, by the several boards, or by the several superintendents. In the four years no recommendation has gone from the Executive to the members of any board or to the superintendent of any institution for the appointment of any person. The Executive has selected the boards and has charged them with the responsibility of selecting the superintendents and of supervising their respective institutions, and the superintendents have been left free to select their own subordinates. Responsibility for the several boards has devolved upon the Executive, for the superintendent upon the boards, and for the immediate administration of the institutions upon the superintendents. Few changes in the superintendents have occurred during the administration. The State Prison, the Reformatory, the Women's Prison, the Boys' School, the School for Feeble-Minded Youth, the School for the Deaf, the School for the Blind, the Eastern Hospital for the Insane, the Southern Hospital for the Insane, the Central Hospital for the Insane, and the Soldiers' Home have today the same superintendents they had at the beginning of the administration. The selection of the new superintendent for the Girls' School was due to the separation of that institution from the Women's Prison; while the change of superintendents at the Soldiers' and Sailors' Orphans' Home and at the Northern Hospital for the Insane was due to the death of the respective superintendents of those institutions. Both Dr. Rogers and Colonel Graham died within the year. Both were long in the service of the State and each had served it with credit and distinction. Their deaths were distinct losses to the Commonwealth. The highest compliment the present administration can pay to the three preceding administrations has been the fact that

the superintendents of the several institutions appointed by them, have been retained in their respective positions, except in case of removal by death, throughout the life of the present administration, because of exceptional worth and superior ability.

The act of the late General Assembly relative to the government and administration of the penal, correctional and benevolent institutions of the State and providing for bipartisan boards of trustees has confirmed and established their nonpartisan administration. The present system I believe to be the best found in any of the many States which I have visited and whose institutions I have inspected. It ought not to be departed from.

MAINTENANCE OF STATE INSTITUTIONS.

The funds appropriated for the maintenance of the Boys' School, the Girls' School and the Women's Prison have been greatly inadequate for each of the last two fiscal years. For the year ending September 30, 1907, I was compelled to pay out of the Governor's emergency contingent fund for the maintenance of the Boys' School $2,256.21, for the maintenance of the Girls' School $3,388.87, and for the maintenance of the Women's Prison $6,226.55, an aggregate expenditure out of this fund for maintenance of these three institutions of $11,871.63.

For the year ending September 30, 1908, I was compelled to pay out of this fund on account of maintenance of the Boys' School $2,743.73, for the Girls' School $8,944.95 and for the Women's Prison $3,539.22, an expenditure from this fund for the maintenance of these three institutions aggregating $15,227.90. In addition to this, appropriations were made at the special session of the General Assembly in September on account of the maintenance of these same institutions, as follows: Boys' School, $7,000; Girls' School, $8,000, and Women's Prison, $1,000, an aggregate of $16,000.

The deficit in the maintenance fund of the Girls' School for the last fiscal year was, therefore, $16,944.95, in the maintenance fund of the Boys' School $9,743.73 and in the maintenance fund of the Women's Prison $4,539.22, an aggregate deficit in the maintenance fund of the three institutions of $31,227.90.

It is the imperative duty of the State to provide a sufficient maintenance fund for these institutions. Appropriations made therefor should not be so deficient in amount as to compel the Governor to invade the emergency contingent fund for the purpose of their maintenance. The Governor's emergency contingent fund

should be kept intact to meet such emergencies as may be occasioned to the buildings and equipment of the State institutions by fire or other accident, and for other emergency demands that may be made thereon. It is earnestly insisted that you make sufficient provision to feed the wards of the State for the next two fiscal years.

STATE EDUCATIONAL INSTITUTIONS.

Long before any of us became in any degree responsible for policies of state, the people of Indiana, through their chosen representatives, entered upon the policy of higher education for her young men and women, through the establishment of the State Normal School, Purdue University and the State University. For that policy we are not responsible. It comes to us already established, with millions of dollars devoted to its support. We have now reached a point in the development of all three of these institutions where we must decide either to abandon them or to give them such support in equipment and maintenance as will maintain their dignity and efficiency. The first alternative is not to be thought of. We can not abandon them, nor can we reduce arbitrarily the number of students attending them, or close their doors to the multitude of young men and women who are seeking education in them. In 1888 Indiana University had an enrollment of 275, now 2,051. Ten years ago Purdue University had an enrollment of 702, now 1,805. Then she granted 158 degrees, last year 328.

MORE SUPPORT NECESSARY.

This increased enrollment makes absolutely necessary increased room and equipment and increased maintenance. By devotion to right ideals, by sacrifices innumerable and by long and invaluable service they have earned the right to such support and maintenance as will preserve their prestige and insure their further efficiency. The equipment and buildings at the State University are greatly insufficient, and those at Purdue University are pitifully so. Provision for building and equipment for the engineering department at the latter institution is absolutely essential. But greater, if possible, than the lack of buildings and equipment, is the lack of funds to meet their current necessities. Indiana is far behind surrounding States in the per capita expenditure made for such institutions. She is at the bottom of a list which includes Illinois, Iowa, Nebraska, Michigan, Kansas, Wisconsin and Ohio. The maintenance funds of the State University and Purdue University

combined are less than the corresponding funds for Ohio, Michigan, Wisconsin, Illinois or Iowa. The effect of our parsimony has been to deprive both universities of the services of the best and ablest men they have had. We lost these men to Harvard, Cornell, Virginia, Dartmouth, Bryn Mawr, Chicago, Illinois, Wisconsin, Cincinnati, the Naval Academy, California and Stanford.

SHOULD NOT LET GOOD MEN GO.

We ought not to allow any first-rate man to go from either of these universities on account of inability to pay him what his services are worth as valued by the management of the great institutions of other States. To let such men go for lack of compensation is to the discredit of the State and to the great misfortune of our young men and women who turn to these institutions for the higher education to which they are entitled by a policy long established and maintained. The report of the board of trustees for each of these institutions is before the legislative institutional committee. I commend them to your most thoughtful consideration and earnestly recommend that provision be made for buildings and equipment at each of them to the limit of present resources, and that the tax rate for the maintenance fund of all be increased, that of Indiana and Purdue by one-half and that of the State Normal School by one-third. This will add to the maintenance fund of each of the first two institutions $83,000 annually, and to that of the State Normal $41,000. This increase will not then be sufficient to maintain them as similar institutions are maintained in other States.

SOUTHEASTERN HOSPITAL FOR THE INSANE.

The needs of each of the hospitals for the insane are clearly and ably set forth in the several reports made by the trustees of the respective hospitals to the Governor and to the legislative institutional committee, copies of all of which will be referred to you for your examination and consideration. While all of the demands made can not be met, many of the most essential and urgent ones can and ought to be provided for.

The crowded condition of the Central Hospital for the Insane, and the fact that there are more than 1,100 insane persons in the State now without hospital care in county jails and poorhouses, or dependent upon the ineffective care of friends, makes the completion of the new Southeastern Hospital for the Insane at the earliest possible moment an absolute and imperative necessity. This

need is so fairly and forcefully presented in the report of the superintendent of the Central Hospital to his board of trustees, and in the report of the Southeastern Hospital commission, prepared by the superintendent of the Eastern Hospital, that little can be added thereto. I desire to commend especially both these reports to your most sincere and kindly consideration.

CENTRAL HOSPITAL CROWDED.

The Central Hospital, with a normal capacity of 1,605 beds and a forced capacity of 1,748, has 2,009 patients enrolled, and an actual attendance of 1,850. This you will note is 245 in excess of the normal capacity and 102 in excess of the forced capacity of the institution. In addition to this there are in the Central Hospital district 410 insane persons not enrolled, making an insane population in the district, in and out of the institution, of 814 in excess of the Central Hospital's normal capacity. While this condition continues, the proper classification and treatment of the patients is impossible; discipline will be impaired, and the individual care and treatment to whch the patients are entitled will be precluded. The only relief that can be obtained is the completion of the Southeastern Hospital to its full capacity.

An appropriation of $151,738.15, made immediately available, is necessary to complete the buildings now under contract. These will afford a normal capacity of 750 beds. The appropriation suggested will also provide for completing mechanical equipment and tunnels for eleven other buildings not now under contract, for lack of funds to build and equip them, eight of which are cottages for patients. In the words of Dr. Smith:

"These are a necessary part of the scheme of classification of patients worked out with the greatest care, and which gives this new hospital one of its chief claims to distinction among all similar institutions of its class in this country."

NEED APTLY PRESENTED.

The need of this institution is so aptly and ably presented in this report, that I can not refrain from further quotation:

"No one feature of the plan of such institution is, in the judgment and experience of the specialist in the care of the insane, so essential and influential in the results of treatment as the classification of the patients. Usually, and scarcely without exception in similar undertaking, this element has received secondary consideration and, resulted, by haphazard after-additions, in fatally impairing the classification, and thereby hampering the methods of treatment, to say nothing of the damage to the architectural symmetry and beauty of the institution, but here, under expert advice and direction, a scientific scheme

of classification has reached its highest degree of development and has formed the central idea from which the entire institution has been evolved. These additional structures are component parts of it. If built now, they perfect it; if omitted, they mar it forever.

REASONS OF ECONOMY.

"Moreover, the tunnels and mechanical equipment necessary for these omitted structures have already been provided for and built at considerable outlay. Contrary to custom, but profiting by experience, which leads to the conviction that it is far more economical, this mechanical equipment was planned to have sufficient capacity and efficiency to meet the highest requirements of a complete institution as originally planned. Thereby it was the aim to avoid the frequent additions to it, which too often and unavoidably increase the cost of maintenance. Inasmuch as this equipment will soon be in place and ready for service, some loss will be entailed by increasing the cost of maintenance for operation far below capacity, as well as by deterioration from idleness and neglect in such parts of the apparatus as may be wholly or in part out of service.

"Again, these additional structures can never again be constructed in complete conformity with those now under way at such small cost as now. The prices for building materials and labor are reasonable, and with a contractor's organization on the premises, the actual cost will be less than if built by different contractors from time to time, to say nothing of the probable inability to secure uniform materials.

"The additional structures will complete the hospital and afford it a normal capacity of 1,100 beds and a maximum capacity of 1,275 beds, at a cost of approximately $1,331 a bed at its normal capacity, and $1,144 a bed at its maximum capacity.

NEEDS OF THE STATE'S INSANE.

"Finally, and above all other reasons for the rounding out of this hospital by this additional construction, is the duty of the State toward its insane population. The additional room is needed, and urgently needed. The other four hospitals are crowded to their maximum capacity; the county poorhouses are overburdened; many are in jails; many more are wandering in neglect at large; and still others are improperly kept in private families, exposing the members, particularly the little children, to violence and baneful influences. The State in its Constitution promises its insane care and treatment. It should keep its obligation. It has no moral right to provide for one citizen and deny another. This is discrimination which can not be justified. * * *

"With the full completion of this hospital by the additional construction now proposed and urged, it will come nearer a complete system of State care than ever before in its entire history. * * *

"When completed and ready for occupancy every one of its 1,100 beds can be immediately filled by transfers from the alarmingly overcrowded Central Hospital, where there are now approximately 600 patients ready and waiting, and from the counties, by slight alterations of the district lines, without the development of one more case of insanity within the State's borders."

The original contract for the construction of the institution was awarded to Edwin M. Campfield, he being the lowest bidder by nearly $100,000. The contract awarded Mr. Campfield consisted of a positive and provisional contract. The positive contract covered construction and mechanical equipment as follows: Standpipe, foundation and casing; all tunnels; pumping station; administration building; rear center buildings; power-house, laundry; store; mechanical equipment, including the power equipment, low pressure mains and returns; steam heating and ventilation; water supply and iron tower; the electric equipment and wiring; plumbing and tile sewer, excepting so much of the heating apparatus, electric wiring and plumbing as belong to the buildings not enumerated in the positive contract, and including the cost of smokestack and hardware, amounted to $508,067.49.

The provisional contract as ratified by the Sixty-fifth General Assembly provided for the construction of twelve cottages, which, with equipment, supervision, etc., were to cost $559,377.82.

A FORFEITURE OF CONTRACT.

Mr. Campfield entered upon the performance of his contract, but on March 11, 1908, his contract was declared forfeited by the board, because of his utter failure to comply with its terms and provisions, and the construction of the buildings relet, after full advertisements, to Messrs. Pulse & Porter, May 28, 1908. This contract is $151,738.15 in excess of the Campfield contract. This excess occasions the necessity for the appropriation of that sum, to be made immediately available, in order that the buildings now under contract may be completed. A full history of the proceedings of the commission, the forfeiture of Mr. Campfield's contract and the reletting of the contract to Messrs. Pulse & Porter is found in the report of the commission filed with the legislative institutional committee, to which you are referred for full and complete information.

The new contractors have been prosecuting their work with energy and fidelity. All structures under contract are now well under way. The time of completion, however, has been necessarily extended to December, 1909.

The act of the Sixty-fifth General Assembly relating to the administration of the penal, correctional and charitable institutions of the State provides that the board of trustees for this institution can not be appointed until the hospital is completed. The urgent

necessity for the opening of the hospital at the earliest possible moment requires a change in this statute. The Governor should be authorized to appoint a board of trustees immediately. It will require at least four months for the board to select a superintendent and for the organization of the hospital. If the board is not appointed until the hospital is completed, the time required for the selection of a superintendent and the organization of the institution will delay its opening. Under the circumstances, delay on such account is inexcusable.

SCHOOL FOR THE DEAF.

Under the preceding administration the School for the Deaf, lands and buildings, was sold with a view of relocating the same. During the present administration a new site was purchased, consisting of 76.93 acres, advantageously situated on Forty-second street, at a cost to the State of $30,772, and of a present value of $76,930.

The Sixty-fourth General Assembly appropriated $315,000 for the purpose of constructing the new institution, one-third of which came from the sale of the old site. This appropriation was wholly inadequate. The institution faced an emergency. Its present site was sold. Purchasers were insisting upon possession. The old buildings were in need of extensive repairs. The State could not well make such repairs on property it did not own. It was absolutely necessary that prompt action of some kind be taken. After full consideration the commission decided to have plans drawn for a completed institution, and to let a contract for the construction of such part thereof as could be paid from the limited appropriation then in hand. After due advertisement a contract was let for a schoolhouse, a dining hall, a kitchen bakery, a powerhouse, a smokestack and tunnels, and a provisional contract entered into for the construction of the other buildings embraced within the plans adopted.

The proceedings of the commission were reported to the Sixty-fifth General Assembly, and an additional appropriation, amounting to $367,217, was made, under which the provisional contracts were changed into positive contracts for the construction, in part, of boys' dormitories, girls' dormitories and mechanical equipment. All these buildings are now under roof and inclosed from the weather and the work rapidly proceeding toward completion.

ADDITIONAL APPROPRIATION.

To build the institution as planned will require $409,370.50 additional appropriation. It is of the highest importance that the new institution be made habitable before the beginning of the school year, next September. This can not be done with less than $170,000, which should be made immediately available. A larger appropriation is needed, but less than that indicated will not make possible the removal of the school during the present year. The old buildings are sadly out of repair and will be scarcely habitable for another winter. Every dollar of repairs put upon them is wasted money, as they are not the property of the State.

Some criticism has been made because of the expense of the new institution, founded upon comparison with other institutions. No such comparison can be justly made. The School for the Deaf is neither a hospital nor a charitable institution. It is an educational institution. It has a dual nature. Its students are not adults, but children. They live in the institution. This necessitates dormitories, kitchen bakery, dining hall, storehouse and cold storage, and hospital accommodations, with school facilities of a peculiar kind. The large classes usual in public schools are not possible. Close individual work is absolutely essential to substantial progress. Every honest consideration precludes comparison with any other institution of the State, correctional or charitable.

SCHOOL IN THE WIDEST SENSE.

The law provides that "it shall not be regarded nor classed as a benevolent or charitable institution, but as an educational institution of the State, conducted wholly as such." In this connection I beg to submit the following from the report of the board of trustees:

"The Indiana State School for the Deaf is strictly an educational institution—a school in its widest and best sense—and should be in law what it is in fact, a part of the common school system of the State, wherein all children of the State too deaf to be properly educated in the public schools may receive an education as a matter of right, not as a matter of charity. It is in no sense an asylum for the deaf, nor a place of refuge for those who can not talk; neither is it a prison, a reform school, an almshouse, a children's home, nor a hospital, nor should it be associated and classed with such institutions.

"Neither prison nor reform school methods, nor 'home' nor asylum restrictions obtain in its management. With literary, dramatic and other societies, and with athletic associations, those in attendance constitute a genuine student body and assist in governing themselves. They mingle with the hearing-speaking world in business and social ways, and in athletic contests visit high schools and colleges of the State. * * *

"The deaf boys and girls sent to the school are not deficient in mind (insane, feeble-minded or imbecile), will or emotion (criminals, or with criminal instincts), nor in need of correction, and do not belong in the general class of so-called 'defectives.' They are here for the purpose of receiving an education such as is given to their hearing-speaking brothers and sisters in the public schools. In fact, it is the duty of the State to provide for the deaf in these same public schools, but, because of economical reasons and for their more thorough instruction, they are gathered together in a central institution. * * *

TRAINING IN SELF-SUPPORT.

"As students they are trained to become self-supporting in greater or less degree after leaving the institution, by being required to become proficient in some useful trade or occupation, or in the underlying principles of several trades while in attendance. As good citizens and taxpayers of the State they help to support the benevolent and charitable institutions of the State for the insane, the epileptics, the feeble-minded and others of penal and correctional nature. * * *

"The general plan and scheme of the entire plant of the new institution is commensurate with the modern requirements of an educational institution, with both sexes in attendance, with industrial and literary departments, with oral and sign departments, with kindergarten, primary, intermediate and academic grades, with boys and girls from six to twenty-one years of age, and the whole requiring proper division and separation, with general supervision, and with many, and especially the younger, close personal attention. These things can not be fully and properly put into execution under existing conditions, nor can they be in the future, unless special and studied attention is given to them in the complete plan agreed upon. This has been done.

THE SCHOOL'S CAPACITY.

"The new school has been planned with ample capacity for 500 students, with forced or crowded capacity for 720 students. It is not being erected for last year, this year or for next year only, but for many years to come. And if Indiana is to do her bounden duty in the education of the deaf the time is not far distant as the State's population increases, when the forced or crowded capacity will be required." * * *

In 1900 there were in the State 650 deaf persons under twenty years of age. Five hundred and nine totally deaf, 141 partially deaf.

If all the deaf children in Indiana were gathered in the institution, the student body would immediately reach five to six hundred. Under present conditions Indiana is educating about 45 per cent. of her deaf mutes, while Ohio is educating 50 per cent., Illinois 52 per cent., Michigan 71 per cent., and Wisconsin 87 per cent.

The facts when once understood will justify every step taken by the commission. The buildings now nearing completion are

substantial and beautiful structures and will be a credit to the State long after the cavilling criticism of the present has been forgotten. In my own behalf as Governor and as chairman of the board of construction and in behalf of the members of the board, I invite the most thorough investigation and inspection of the acts of the board and of the buildings themselves.

GIRLS' SCHOOL.

The Girls' School has been separated from the Women's Prison, and established at Clermont as a new institution. The needs of this institution are set out in the report of the board of trustees, to which you are respectfully referred. I deem it important for the welfare of the institution that an appropriation be made for the purchase of the twelve acres of land lying directly across the road therefrom. It is important, also, that the law relative to the parole of the inmates be amended. The Attorney-General has held that the board of trustees has no parole authority under the present statute. I have met the emergency by extending executive clemency where the board recommended it, but the power to parole should be vested in the board, and the policy of the institution should be to find homes for the girls in private families as rapidly as their physical, mental and moral development will justify.

VILLAGE FOR EPILEPTICS.

The Village for Epileptics, the establishment of which was authorized by the Sixty-fourth General Assembly, was formally opened for the admission of patients on August 19, 1907, and at the end of the fiscal year five patients were present. Since its opening five buildings for patients have been erected, furnished and occupied, and 101 patients are now in the institution. The site for the village embraces 1,244 acres of rich agricultural land, from which $4,300 were turned into the State treasury during the last fiscal year. Drainage, fencing and additional buildings are greatly needed. Provision should be made for horses, wagons and other implements in order that the highest possible use be made of the services of such patients as are able to labor. The pressure for the admission of patients is extreme. I quote from the report of the trustees:

"If the institution was now fully equipped for 1,250 patients it could be immediately filled. Surely there can not be a greater demand for State care for any class of unfortunates. The lot of the epileptic, unprovided for, in Indiana is a pitiable one. Since the establishment of this institution epileptics

are excluded from some of the institutions to which they formerly had access, upon the ground that the State has made provision for them here. In answering the appeals of relatives we can only say that provision has not yet been made for them."

I commend the growing needs of the institution to your consideration in the hope that you will meet them as fully as available funds will justify.

HOSPITAL FOR TUBERCULOSIS.

The Sixty-fifth General Assembly, by an act approved March 8, 1907, authorized the purchase of not less than 500 acres of land as site for a hospital for the treatment of tuberculosis. After much investigation and the most thorough and thoughtful consideration the commission selected a site three miles east of Rockville, containing 504 acres of land at a cost of $24,000. Provision should be made for the beginning of this institution, and, if possible, the sum of $250,000 appropriated therefor.

The ravages of tuberculosis are daily brought home to our people by the untimely death of friends and kin. I bespeak for the proposition to found and equip an institution for its prevention and cure, the serious consideration its great importance deserves.

STATE PRISON.

The population in both the State Prison and the State Reformatory has increased to such an extent as to tax both institutions beyond their normal capacity. In the State Prison 260 prisoners are compelled to sleep two in a cell. Both sanitary and disciplinary considerations preclude this. The cells are built for one prisoner, not for two. It is important, therefore, that an addition to the north cellhouse in the State Prison be provided at the earliest possible moment. This will relieve the crowded condition of both institutions, as, under the law, transfers can be made by the Executive from the Reformatory to the prison. I commend the report of the board of trustees to your kindly consideration.

STATE REFORMATORY.

A fire in the State Reformatory, completely destroying the foundry building, occurred since the close of the last fiscal year, making idle nearly three hundred inmates. The emergency seemed to demand the immediate reconstruction of this building. I, therefore, directed the board of trustees to proceed at once with its re-

construction, and authorized the payment of a sum not exceeding $15,000 out of the Governor's emergency contingent fund therefor. Whatever additional sum is required for the completion of the foundry should be promptly appropriated and made immediately available. The Governor's emergency contingent fund for the present fiscal year should be increased $15,000 to replace the expenditure therefrom on account of the sum expended for this building, as emergencies during the year may arise requiring a greater sum to meet them than that remaining in the fund after this expenditure is made. A great work is being done in the institution. It deserves your solicitous care. Its needs are fully set out in the report filed by its trustees.

NEW PENAL INSTITUTION.

I submit for your consideration the propriety of an act authorizing the purchase of a site for the location of an additional penal institution, and the appointment of a commission to purchase the same, and make a report to the next General Assembly of plans for the construction thereof and the probable cost of same. In ten years the number of prisoners in the State Prison has increased from 782 to 1,192, an increase of 410, or 52.42 per cent. The number of prisoners in the State Reformatory has increased in ten years from 941 to 1,250, an increase of 309, or 33 1-3 per cent. The combined population of the two institutions has increased in ten years from 1,723 to 2,432, an increase of 719, or 41.72 per cent. At this rate of increase both the Prison and the Reformatory will be, within ten years, utterly inadequate to care for the boys and men committed to them. The increase in population is not due in any considerable degree to an increase in crime, as the actual number of commitments have not greatly increased. The increase is not due so much to the greater number of commitments as it is to the indeterminate sentence and parole law. The operation of this law has lengthened the average term of service. The habitual criminal is retained longer than under the old definite time law, a result much to be desired. I quote Superintendent Whittaker on the proposition here advanced, with unreserved approval:

ABNORMAL PRISONERS.

"The new institution should be a special institution, not known as a reformatory or prison; it should be constructed in some agricultural community upon not less than 2,000 acres of land. To it every confirmed criminal, insane criminal, epileptic and degenerate should be transferred from the State Prison and Reformatory, and there, under humane treatment, should

be kept for the full time of their maximum sentence. * * * Forty to 50 per cent. of all boys and men who are today convicted and sent to the Reformatory or State Prison are abnormal and can no more be benefited or made to become good citizens than the dwarfed and crooked bush can be trained and cultivated into a straight tree. Subjects that are abnormal are to be pitied and should be properly cared for by the State, but should not be allowed to mingle and be classed with the 50 per cent. who are normal and who can be benefited by proper discipline, school, trade or manual instruction. * * * Something must be done to relieve our crowded condition. This system would care for our criminal population for fifty years and at all times permit of the greatest good in methods of reformation in our State Prison and Reformatory."

The inmates of the new institution on such a farm could produce all vegetables for their own consumption and could cultivate crops for the use of other State penal institutions and be employed in the manufacture of road material and the making of roads, and in this way become self-sustaining without their labor coming into competition with that of free men. I know of no greater business in which the State can engage than that of saving men, and especially boys. With the perfect classification made possible by the new institution, thousands of dollars now wasted, and hundreds of boys and men now lost, could be saved.

SUSPENDED SENTENCE LAW.

By an act of the Sixty-fifth General Assembly circuit and criminal courts were clothed with discretion to suspend sentence in certain criminal cases of first offense. This has been done in the last two years in many instances. The operation of the law in its present form is not satisfactory. Sentence is suspended. The offender is permitted to go. He does not report to either the superintendent of the Reformatory or the warden of the Prison. Neither of these officers is advised of the action of the court. The defendant is left without supervision. The court loses knowledge of him. He violates his parole, but remains unapprehended. The purpose of the law is an excellent one, but it should be so amended as to require the clerk of every circuit or criminal court within five days after the suspension of sentence in any case, to advise the superintendent of the Reformatory or the warden of the Prison, as the age of the defendant shall indicate, of the fact of conviction, the name of the defendant and the terms of the parole, so that the Reformatory or Prison authorities may have some opportunity of visitation and supervision. This will make the law effective and will save many first offenders from subsequent terms in prison cells.

INHERITANCE TAX AND OTHER NEW LAWS ADVOCATED.

I commend to your consideration the enactment of a law which shall provide for the taxation of the devolution or succession of property by devise or inheritance.

The enactment of such a law was recommended to the Sixty-fifty General Assembly. Such a measure was introduced, passed the House, but failed in the Senate. I can not now do better than to submit to you the recommendation then made:

"Such a tax is levied but once, and that at the time of the succession or devolution of property inherited or bequeathed. It is levied at a time when it can be paid without hardship. It is an eminently just form of taxation. It can be administered with small expense and collected with little friction. In the apt words of another, 'It is collected with ease and paid with contentment.' It in no way disturbs commercial activities. It levies tribute upon no business or industry. It enables the State to reach much intangible property which has been long sequestered. It is a tax which the beneficiary of the inheritance can not shift from his shoulders to the backs of others. Indeed, the tax is paid before he receives the inheritance. The right to inherit property or to dispose of it by devise exists only by grace of the State. It is wholly an artificial right, resting solely upon the authority and consent of the State. In collecting it the State simply stops the inheritance in transmission long enough to take from it a fair and just contribution in exchange for value already had and received by him who accumulated it, and then passes it on to the beneficiary. Indeed, its validity and fairness are quite generally admitted. No great fortune is the sole product of the man who organizes and directs its accumulation. It is to some extent the product of the social process to which many persons contribute. Every honest toiler contributes something to it, whatever the field of his labor.

STATE ENTITLED TO SHARE.

"The mechanic, the farmer, the teacher, the merchant, the physician, the lawyer, the minister and the statesman or the administrator of public affairs whose work makes for the progress of society or for the maintenance of the peace and order of the State, has some share in its production. The State itself is but society organized, and when the owner of a great estate dies, and in the transmission of his fortune the State takes toll out of it, it takes only what is its own. And in the taking of it, it makes for the wider diffusion of wealth and for the unity and solidarity of society. Inheritance tax laws have a place in the revenue laws of most modern states. They are found in the laws of Great Britain, Germany, France, Switzerland, Holland, Belgium, Norway, Italy, Russia, Australia and Canada. They are imposed by the laws of thirty-two States of the Federal Union. The rate should be progressive, increasing with the value of the inheritance, and as to collateral heirs, it should run from 5 to 25 per cent. In the following States the rate is progressive and is as indicated: California, 1½ to 5 per cent.; Colorado, 3 to 6 per cent.; Illinois, 2 to 6 per cent.; Iowa, 5 to 20 per cent.; Nebraska, 2 to 6 per cent.; North Carolina, 1½ to 15 per cent.; South Dakota, 2 to 4 per cent.;

Washington, 3 to 12 per cent.; West Virginia, 2½ to 7½ per cent.; Wisconsin, 1½ to 5 per cent. In the following States the rate is 5 per cent. or more: Arkansas, Delaware, Iowa, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New York, Pennsylvania, Tennessee, Utah, Vermont, Virginia and Wyoming. In Louisiana it is 10 per cent. Seventeen States include inheritances to direct heirs at a rate running from 1 to 5 per cent., exempting inheritances varying in value from $2,000 to $25,000. In the States heretofore named exemptions of inheritances to collateral heirs are made only where the inheritance is of nominal value. In six States the value is less than $500, in nine it is $500, and in eight no exemption is made at all as to inheritances to collateral heirs. In case of inheritances by direct heirs $20,000 is, in my judgment, a reasonable exemption, and in case of inheritances by collateral heirs the exemption should not be more than $1,000. Thirteen of the American States have enacted revenue laws containing the principle of the collateral inheritance tax within the last six years. France derives $40,000,000 a year from this source, or 6 per cent. of its entire national revenue. Great Britain receives from this source $70,000,000, or 10 per cent. of its revenues. In eleven months of the year just past Louisiana received $86,655 from this tax; Vermont, $40,581; Colorado, $51,236; Maine, $70,000; Iowa, $190,748; Minnesota, $159,455; Missouri, $212,814; Wisconsin, $103,917; Massachusetts, $712,720; Illinois, in the two years last past, $1,376,264; Pennsylvania, in 1895, $1,677,185.

INDIANA SLOW TO ACT.

"The income from an inheritance tax is necessarily irregular in volume, but $150,000 to $200,000 is a conservative estimate of the annual revenue such a law as that here recommended will bring into the treasury of this State. Indiana has been slow to avail herself of this form of taxation. But the time has come when the necessities of the State require its early enactment. If enacted it will meet the approval of the people and will abundantly justify the wisdom and foresight of those who support it. It should be drawn with care. It should not be imposed upon property inherited, either real or personal, but upon the succession or devolution thereof. Such a tax levied upon the transmission of the share a person receives from an estate, though progressive in character, has been uniformly upheld by the courts, the Supreme Court of the United States saying in a recent case (Magoun v. Illinois Trust and Savings Bank, 170 U. S. 283):

" 'The right to take property by devise or descent is a creature of the law and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it.' "

REGISTRATION LAW.

An unusual influx of persons of foreign birth during the last five years has raised the question in the minds of thoughtful men of the propriety of extending the time of their residence within the State before they shall be entitled to exercise the privilege of electors. I am doubtful as to the legality of any such legislation.

The Constitution of the State provides:

"Every male of foreign birth, of the age of twenty-one years and upward, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law."

The declaration required by the Federal statute, and referred to in the section of the Constitution quoted, is as follows:

"He (an alien) shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly by name, to the prince, potentate, state or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of rsidence in the United States of said alien."

The Federal laws seem to require no length of residence in the United States before an alien may declare his intention to become a citizen, and the Constitution of the State seems to provide that any male of foreign birth who has made the declaration required by the Federal law and has lived in the State six months, in the township sixty days, and in the ward or precinct thirty days immediately preceding an election, shall be qualified to vote.

I do not believe the General Assembly can add to or take from the qualifications of electors named in the Constitution.

A registration law prepared with care to meet the constitutional objection raised to such registration legislation as has heretofore been enacted, would go far toward curbing the evil sought to be inhibited. I commend such a measure to your consideration.

PRIMARY ELECTION LAW.

For four years I have watched with increasing interest the operation of primary election laws in the different States enacting them, and have become impressed with their practicability and their benefit. Such laws take the power of nomination of candidates for public office out of the hands of the few and put it into the hands of the many, where it belongs.

I recommend the enactment of a law that will provide for party

nominations of all candidates for office, state, county, municipal and township, at primary elections and at public expense.

UNIFORM SYSTEM OF ACCOUNTING.

A uniform system of accounting in all public offices, state and county, will add greatly to the efficiency of the administration of fiscal affairs, and should be provided for by you before you adjourn.

Inspection of public offices is also important, but care should be used in this behalf, that the machinery provided shall be as inexpensive as possible to obtain the results required. Annual inspection and auditing of the accounts of all the officers of the State, from the State government down to township offices, will require an army of inspectors and accountants, and will involve an expenditure wholly unjustifiable. If provision were made for the examination of county, city, town and township offices under the direction of a State accountant, upon the request of a fixed number of the taxpayers of either county, city, town or township, made in writing and filed with the Governor, the expense incurred would be greatly lessened and the law quite as effective.

The executive accountant provided for by the Sixty-fifth General Assembly has proved of great value in the discovery and correction of inefficient bookkeeping in the institutions of the State and of loss of funds due to carelessness or neglect. Unless a general system of State accounting shall be provided for, the office of executive accountant should be continued. Such an officer during the last twenty years would have saved the State hundreds of thousands of dollars, and the reputation of a number of men who have held high office in the administration of its affairs.

PUBLIC UTILITIES LAW.

I do not urge the enactment of a public utilities law, but if such a law is enacted it should be done by amending the present Railroad Commission law, extending the jurisdiction of the present commission to include public utilities, its authority in that behalf being carefully defined, and the machinery for its execution supplied.

EXECUTIVE MANSION.

The State of Indiana has reached a position in population, in wealth and in greatness to justify an executive mansion. It would add to the dignity of the executive office and immeasurably to the

comfort of the Executive and his family and to the social enjoyment and privileges of the people.

It is not in keeping with the dignity of the office or of our people that a man elected to the high office of Governor should be compelled to become a seeker for a home in rented property. Many other States, with less wealth and population than ours, provide comfortable homes for their Governors during their official terms. An incoming Governor, for reasons of delicacy rising out of his personal interest, is deterred from making any recommendation for such a departure from existing conditions.

I can now urge an appropriation for this purpose without fear of being charged with selfish interest. I hope a sum of not less than $75,000 will be provided by you either for the construction or the purchase of such a house, with grounds sufficient and of a character to insure its beauty and its dignity.

ALCOHOL AS CAUSE OF CRIME AND DEPENDENCY.

The enormous cost of the army of the criminal, defective and dependent members of society is neither appreciated nor understood by those who do not give the subject special study and investigation.

The regular appropriations asked by the authorities of the several hospitals for the insane for the next two years aggregate $2,109,290. The specific appropriations asked for are $776,530, making a total asked for, for two years, of $2,885,820 on account of the insane alone.

The School for Feeble-Minded Youth and the Village for Epileptics ask, for the next two years, in regular and specific appropriations, $641,325.

The penal, reformatory and correctional institutions ask regular and specific appropriations for the next two years aggregating $1,493,886.

Making a total asked for the insane, the epileptic, the feeble-minded and the criminal, for two years, of $5,021,031.00.

To this should be added the cost of township poor relief, which for the next two years will not be less than $454,609.42, and the cost of maintaining the county poor infirmaries of the State, which for the same period will not be less than $892,862.56.

Making a grand total demand for support and housing of the criminal, defective and dependent of $6,368,502.98.

The demands made by the authorities of these several institution represent what in the judgment of such authorities is neces-

sary for the maintenance and efficient administration of these institutions. All of the demands, of course, will not, can not, be met, but they fairly represent the immediate burden laid upon the productive, normal and law-abiding citizenship of the State because of the criminal, the defective and dependent classes of society.

FUTURE BURDEN STILL GREATER.

These figures, appalling as they are, do not, however, adequately measure the demands of the future in this behalf, for nearly all these classes are increasing year by year.

Ten years ago the number of inmates in the State Prison, Reformatory, Women's Prison, Girls' School, Boys' School and in the county jails, was 3,429; now it is 4,544, an increase of 1,115, or 32.51 per cent.

Ten years ago there were 3,395 in the hospitals for the insane; now 5,573, an increase of 2,178 or 64.15 per cent., with more than 1,100 insane persons in the State outside of the hospitals for the insane and unprovided for.

In 1898 there were 568 inmates in the School for Feeble-Minded Youth; now there are in this school and in the village for epileptics 1,188, an increase of 620, or more than 100 per cent.

Ten years ago the total enrollment in the penal and charitable institutions of the State was 7,392; now 11,305, an increase of 3,913, or 52.93 per cent. Within ten years an additional hospital for the insane and another penal institution will of necessity be added to the present burden laid upon us.

If the same ratio of increase continues in this State, the number of the criminal, the defective and the dependent will be more than doubled in twenty years, and in thirty years, the life of a single generation, three times what it now is.

ALCOHOL THE LEADING CAUSE.

Viewed in the aggregate for a term of years it presents a problem of profound and deep concern. To find its causes, and point out its prevention, would be a public benefaction of invaluable character. Formerly little concern existed on the part of society as to the care of this army of the helpless, and even less concern to find the cause producing it. Recently, however, it has challenged the thought of many men and women. Much investigation has been made and much accomplished toward finding the cause and pointing out methods of prevention. Personally, I have be-

come entirely convinced that a single evil lies at the very foundation of the problem and is responsible for from 25 to 50 per cent. of all the crime, insanity and dependency of the country together with the burdens entailed by them upon society. My conclusion is based upon personal observation and investigation made with patient, earnest purpose and sincere desire to find the truth. It is corroborated and supported by the best thought and scientific investigation of the day.

In a recently published article, notable for care of preparation, accuracy of statement and the wide investigation it discloses, Dr. Henry Smith Williams sums up the conclusion as follows:

"Considering the United States as a whole, it is variously estimated that from 25 to 50 per cent. of all the insane patients admitted to the asylums year by year owe their misfortune directly or indirectly to the abuse of alcohol. The statistics of other countries are closely similar.

"Alcohol must be held responsible for about four-fifths of the anti-social propensities that make necessary the huge paraphernalia of police systems, criminal courts, jails, prisons and reformatories that constitute so serious a blot upon present-day civilization.

ALCOHOL AND THE MORAL SENSE.

"Were it not for the influence of alcohol the vast army of delinquents who prey upon society directly when at large and indirectly through cost of sustenance when confined in correctional institutions, might be living useful, productive lives as normal members of a normal society.

"It is a characteristic feature of alcohol to produce impairment of this highest mental faculty (moral sense), while at the same time stimulating various lower propensities and passions. We might infer almost without argument, therefore, that an agent which inflames the passions and lowers the moral sense must make for the commission of crime. This inference as regards alcohol is abundantly justified by every-day experience.

"The general relation between alcohol and pauperism is everywhere recognized, and in many localities studies have been made with the aim of determining the exact share of alcohol in producing the gigantic burden of incompetency with which every civilized society is handicapped. Investigations made give secure warrant for the belief that at least one-third of all the recognized pauperism in the most highly civilized communities of christendom result from bodily and mental inefficiency due to alcoholic indulgence.

"It is fairly demonstrable that as a minumum estimate about two-fifths of the paupers in almshouses, one-fourth of the seekers of charity outside almshouses, and almost one-half of the dependent children in America owe their deplorable condition to alcohol.

"The same cause is responsible for the mental overthrow of fully one-fourth of all the unfortunates who are sent to the asylums for the insane; for the misfortunes of two-fifths of the neglected or abandoned children, and for the moral delinquency of at least half of the convicts in our prisons, and not less than four-fifths of the inmates of our jails and workhouses."

CONCLUSIONS OF COMMITTEE.

The conclusion of Dr. Williams is corroborated and partly based upon the findings of the American Committee of Fifty, which recently investigated this subject.

Prof. Henry W. Foreman, secretary of the committee, writes:

"Of the poverty which comes under the view of the charity organization societies, 18 per cent. of the persons studied brought on their poverty through the personal use of liquors, and 9 per cent. attributed it to the intemperance of parents or others.

"Of the poverty found in almshouses, 37 per cent. can be traced to liquor, and of this 32 per cent. is due to the personal habits of the inmates and 15 per cent. to the intemperance of others.

"In cases of destitution of children not less than 45 per cent. was found to be due to the liquor habits either of parents, guardians or others.

"Of the total number of cases investigated it appeared that intemperance figured as one of the causes of crime in nearly 50 per cent. It was, however, the first cause in only 31 per cent."

Mr. Koren, statistical expert of the committee, confirms the accuracy of the conclusions of Professor Foreman.

The Massachusetts Bureau of Labor Statistics, after long and careful consideration, declares in its published reports that 39 per cent. of the inmates of almshouses are there because of personal use of liquor, and 10 per cent. through intemperate habits of parents, guardians or others.

The conclusion of Dr. Williams as to the part alcohol bears in the causation of insanity is sustained by Dr. Clouston, superintendent Royal Edinburgh Asylum; by Dr. Fake, of the Royal Dundee Asylum; by Dr. Thomas B. Hyslop, a distinguished British alienist, and by the ablest alienists of France, Germany and Austria.

His conclusion as to the part it bears in the causation of crime is supported by the Committee of Fifty, the Massachusetts Bureau of Labor Statistics, the Lord Chief Justice of England, Dr. William Sullivan, Prison Medical Officer of England, the Rev. Canon J. W. Horsley, late chaplain of his majesty's prison at Clerkenwell, and the best students of criminology in France, Germany and Austria.

TESTIMONY IN INDIANA.

Within the last few days I submitted this article of Dr. Williams to the superintendents of the several hospitals for the insane, the School for Feeble-Minded Youth, to the warden of the State Prison and the superintendents of the Reformatory and correc-

tional institutions of the State, and to Mr. Amos W. Butler, secretary of the Board of State Charities, with the request that they each advise me as to how far their own observation and knowledge justified Dr. Williams' conclusions. All have submitted answers in writing.

IN THE INSANE HOSPITALS.

Dr. S. E. Smith, superintendent of the Eastern Hospital for the Insane, writes that the records of that institution show about 2 per cent. of all patients admitted are cases of alcoholic insanity "clearly and directly caused by the use of alcohol," and that 10 per cent. of all other cases admitted are addicted to the use of alcohol, and that the number whose parents have a history of alcoholism is not definitely known. This makes a record in his institution of 12 per cent. But in this estimate no account is taken of the element of transmissibility.

Speaking of these figures the doctor writes:

"This is a conservative statement, as certainly there are others in this group addicted to drink in some degree, but the history of it is either unknown or concealed."

He adds:

"I am fully convinced that alcoholic parents transmit to their offspring tendencies to both physical and mental degeneration. No study of the effects of the use of alcohol upon society can be complete or fair which does not include the element of transmissibility. It is in my judgment quite as important as its direct influence. I believe alcohol is a potent factor in the etiology of insanity and nervous disease and that it can not be habitually used in any degree without damage to some part of the human organism. No more dangerous doctrine was ever promulgated than that alcohol is a food. The truth is it is a destructive and not a constructive element."

Dr. George F. Edenharter, superintendent of the Central Hospital for the Insane, states that of the total number of cases admitted to that institution in ten years 5 per cent. are returned as due to alcohol. This takes no account of the number of cases due indirectly to its use.

Dr. C. E. Laughlin, Superintendent of the Southern Hospital for the Insane, writes:

"My observation and experience lead me to the conclusion that, if we consider the immediate and remote influence exercised by the various forms of alcohol in the causation of insanity, the estimated percentage stated by Dr. Williams in his summary is ultra-conservative; and the further belief that any one who takes an appreciable quantity of alcohol into his system assumes

thereby a risk of inflicting an increased tendency to disease and crime upon himself and his progeny."

Dr. Fred W. Terflinger, Superintendent of the Northern Hospital for the Insane, writes:

"Some years ago Dr. Rogers estimated that two per cent. of all male insane are so because of liquor; that is, their insanity was due directly to its use. Personally, I am inclined to think this estimate is low, and I would place it at 5 to 7 per cent. Intemperance as a cause of insanity assumes a much more important role indirectly than directly. While from 5 to 7 per cent. reach the hospital directly because of chronic alcoholism, a much larger number, consisting of wives of drunkards, worried into a state of suicidal depression, because of the husband's abuse and failure to provide, and a train of neuropathic, neurasthenic and choreic progeny, often conceived during a drunken spree, constitute a percentage which it is difficult to correctly estimate. On the whole, I would be inclined to say that my experience corroborates the statement of this author (Dr. Williams), and I would think that his figures are conservative."

IN SCHOOL FOR FEEBLE-MINDED.

Mr. Albert E. Carroll, superintendent of the School for Feeble-Minded Youth, writes:

"I have taken the cases of 100 female epileptics from our files, in regular alphabetical order, and the causation shown by the individual paupers as follows: Alcoholism: Father, 22; mother, 2; paternal grandfather, 2; maternal grandmother, 4; total, 30.

"I also selected in the same manner 100 male cases with idiocy and feeble-mindedness present, without epileptic history, with the following result: Alcoholism: Father, 24; mother, 2; paternal grandfather, 4; maternal grandmother, 4; total, 34.

"Alcoholism is the parent of so many vices and conditions and her generations have multiplied and spread out until in many instances it is almost impossible to trace the lineage to the original source."

As to the conclusion of Dr. Williams, concerning alcohol's share in the causation of crime, poverty and dependency, based upon the report of the Committee of Fifty, Mr. Amos W. Butler, secretary of the Board of State Charities, writes:

"The reports of the Committee of Fifty on the liquor problem are very interesting and exceedingly valuable. I can say that as far as my observation goes, they are the most accurate information we have on that subject. The figures given therein conform to my observations. In fact, in part they were drawn from our Indiana institutions."

Mr. James D. Reid, warden of the State Prison, writes, as to that portion of the article of Dr. Williams relating to alcohol's share in the causation of crime:

"The article does not overstate the facts in my judgment, based on the experience I have had with the criminal classes received at this institution. I believe if the influence of alcoholics could be eliminated and no substitute found, that 75 per cent. of crime would not exist."

PRISON STATISTICS.

In the last four years 1,101 men have been admitted to the State Prison. Of these, 51 per cent. drank to excess; 34 per cent. were moderate drinkers; total, 85 per cent. Less than 15 per cent. were abstainers.

Mr. Reid adds:

"This statement shows the moderate and excessive drinkers, with a total for these two classes. I feel that the majority of those classed as moderate should come under the excessive users. It is next to impossible to obtain reliable information regarding the habits of the parents, as few will admit that the father, and especially the mother, was a drunkard."

Mr. W. H. Whittaker, superintendent of the Indiana Reformatory, writes:

"I hereby indorse everything that is said by the writer (Dr. Williams). I think his figures are as near correct as it is possible to give them. My experience and investigation in the work of handling criminals has convinced me that the use of intoxicating liquors, either directly or indirectly, is the cause of a very large per cent. of the men who are today confined within the walls of reformatory or prison. Fifty per cent. of the fellows in the Reformatory are abnormal, and possibly 60 to 80 per cent. of these abnormal fellows would get into institutions of this character whether liquor was sold to them or not. The other 20 to 40 per cent. even of the abnormals in my judgment, are here either directly or indirectly through the cause of liquor. The other 50 per cent. of the inmates here are normal subjects, and I verily believe that 90 per cent. of the normal fellows in the institution are here absolutely through the cause of intoxicating liquors. This, summed up, gives about the same per cent. as that given by the writer of the McClure Magazine article.

"Out of the 426 fellows received last year, 105 claimed to drink temperately, 221 moderately and 100 claimed to be excessive drinkers. So that every man received at the institution last year was more or less addicted to the use of liquors from his own statement."

WOMEN'S PRISON.

Miss Emily Rhoades, superintendent of the Women's Prison, writes:

"I have had a personal interview with each woman in the correctional department, and from their own testimony I find of the 37 confined here at the present time, all but 4 were addicted to the use of intoxicants and were sentenced on that account."

GIRLS' AND BOYS' SCHOOLS.

Miss Charlotte Dye, superintendent of the Girls' School, writes:

"Our statistics give but 20.77 per cent. of drunken fathers and 5.98 per cent. of drunken mothers, a much lower per cent. than many other institutions in our own and other countries. I can not vouch for the accuracy of our statistics, as they are made up largely from statements of the children entering the institution. They often do not know the facts, and are ashamed to state all they do know. I am fully convinced that alcoholism is the chief cause of delinquency of children in Indiana. Many of our worst girls are the offspring of both drunken parents."

E. E. York, superintendent of the Boys' School, writes:

"I have read the article very carefully, and wish to say that my knowledge and experience are in accord with what the doctor says about alcoholic stimulants as crime-producing agencies. The percentage of juvenile crime that can be traced to either the direct or indirect use of intoxicants has been gradually on the increase year by year, according to statistics as compiled from our records, since April 1, 1901. Our statistics for the fiscal year closing September 30, 1908, show the direct effect of intoxicants upon admissions to the school, as follows: Total admissions, 242. Sixty-two boys were addicted to the use of intoxicants. Of the 62, 32 owe their downfall to the use of intoxicants. These boys were all under 16 years of age. One hundred and twenty were admitted whose fathers were drunkards, or were addicted to the use of liquors, which can be charged against them as a direct cause of their son's delinquency. Thirty mothers were found to be addicted to the use of liquors, making a total of 150 boys out of 242 admissions last year, whose downfall can be attributed to intoxicants. Six boys admitted last year, the offspring of drunken parents, are now in our feeble-minded class. Were the true facts known concerning the causes which have contributed to the delinquency of so many boys, I am sure that at least 85 per cent. of the 242 admissions could trace their present condition to the effects of intoxicants.

"It appears that alcohol can be held responsible for nearly three-fifths of the 242 admissions to the Indiana Boys' School during the last year, based upon reliable figures and facts.

JUVENILE COURT OBSERVATIONS.

"We have gathered our statistics from records furnished by Juvenile Court judges, by probation officers and from the boys themselves. We have found in the majority of cases that the boys refrain from divulging information as to the waywardness of their parents."

Speaking of the accuracy of the statistics given in the article referred to, Dr. Williams says:

"Let it be particularly borne in mind that the conclusions just presented as to the casual relation of alcohol to the production of each of these abnormal elements of society are as far removed as possible from mere sentimental estimates or pessimistic guesses. They are inductions based on careful surveys of evidence. Dealing with matters of great complexity, they are subject to a good deal of latitude, for reasons that I have given; but they are suffi-

ciently precise to serve the purpose of reasonably secure scientific hypotheses. Considered as gages of the misery caused by alcohol, our percentages are utterly inadequate, to be sure. There is a vast host of victims of alcohol that can not thus be classified. * * * They have no share in the estimates that have just been made."

ALCOHOL'S SHARE IN THE BURDEN.

Here, then, we have, in terms definite and certain, enough for "secure scientific hypotheses," the cause of 25 per cent. of the insanity, 33 per cent. of the poverty and pauperism and 50 per cent. of the crime with which society is inflicted.

Reduced to actual figures, alcohol's share in the burden to be laid upon the people of Indiana for the next two years on account of the insane is $881,786; on account of poverty and pauperism, represented by township aid and county infirmary housing and maintenance, $449,157; on account of crime, $726,942; an aggregate of $2,047,885. This does not include ministrations to the poor by private persons or organized charitable societies. Nor does it take into account the moral element involved.

To this extent the cause of crime, insanity and dependency is ascertained. The method of prevention is obvious—remove or minimize the cause. This you have the power to do. You know how to do it. Posterity will know that you knew how, and if you leave to it this immeasurable burden unlessened, it will forever censure you.

COUNTY LOCAL OPTION LAW.

It was this sense of responsibility to the generations yet to be, more than all else, that impelled me to seek the enactment of a law putting into the hands of the people of the respective counties of Indiana the power to inhibit the traffic in intoxicating liquors. This law was enacted but a few months since. It has been in effect less than sixty days. Three counties have already availed themselves of the power it conferred upon their people, and by majorities decisive and overwhelming have banished the traffic from their confines. Elections have been ordered in quite one-fourth of the counties of the State. An enfranchised people at last have found opportunity to speak effectively upon this question and it will be well for you to stop and think, long and seriously, before you disenfranchise them and turn loose again this hateful traffic among them. All experience admonishes of the danger that attends the disenfranchisement of a free people. Neither the individual nor the party who does it may expect continued power at their hands.

I do not claim for this law that it will entirely eliminate the evils to which I have adverted, but I do claim that it tends effectively and aggressively in that direction. The good that attends it will be accumulative. It will multiply with the years. A generation hence, if the law be sustained and the traffic limited to a half dozen counties in the State, from whence it can be finally driven entirely from its borders, its benefits will be told in the story of millions of dollars saved in the administration of the penal, reformatory, correctional and benevolent institutions of the State, to say nothing of the moral value of the men and women it will reclaim.

I am aware that there are some who have already celebrated this law's repeal, but I beg to remind all those who contemplate its repeal that it is the livest wire in the political machinery of this Commonwealth, and is charged with enough electricity to electrocute the party that repeals it.

RESPECT FOR THE LAW.

For four years there has been unbroken peace in Indiana. The National Guard, except in camps of instruction, upon civic occasions, or in case of fire, explosion or accident, has been under arms but twice, and was then used as prevention rather than as cure. In four years no shot has been fired by any member of the Guard in anger or to preserve the peace or maintain order.

Crime has decreased. This is especially true of homicide and of all other crimes involving physical violence. Respect for the law has deepened and sentiment for its enforcement increased.

Legislation, however, ought to be enacted giving the Governor of the State greater authority and providing him better machinery for the enforcement of the law than he now has. Under the constitution he is charged with the faithful enforcement of the law, but, under the law he can not act effectively except through local officials. He has no authority to direct the action of any county sheriff or prosecuting attorney in any case. It is as unjust as it is idle to charge the Executive with the enforcement of the law, and then leave him without effective means to discharge the duty imposed upon him.

CONCLUSION.

I close this message—probably my last official utterance—with malice toward no man. There are no foes that I desire to punish. I go out of office with an intensified love of the Commonwealth and

of its people. I have sought to serve them in all things unselfishly and courageously. Their welfare has been my chief concern. The recommendations I have made from time to time to successive General Assemblies, I have believed to be in their interests. The battles I have waged, I have fought for them. I have made war on men only when they were inseparably involved with public questions. The mistakes I have made, and there may be many, I have made with sincere purpose and in the white heat of zeal for what I conceived to be in the interests of the people.

The chapter is about finished. I will close it soon altogether and submit it to the impartial judgment of my countrymen, conscious that in the end their vision will be clear and their judgment true. In most part I would not rewrite or change it if I could. I am content to let it stand.

J. Frank Hanly.

ADDENDA.

Pardons, Paroles, Remissions of Fines and Commutations granted during the years 1907-1908.

February 23, 1907—

William A. Spores, commutation of death sentence to life imprisonment in the Indiana State Prison.

March 12, 1907—

Thomas O'Neil (Marion County workhouse), parole; seriously ill.

March 18, 1907—

Cyrus Todd (Indiana Reformatory), parole for 90 days; in advanced stage of tuberculosis.

March 28, 1907—

Constantinos Stathocopoulas, commutation of death sentence to life imprisonment in the Indiana State Prison.

John Lapadat, commutation of death sentence to life imprisonment in the Indiana State Prison.

May 4, 1907—

Harry Limberty (Marion County workhouse), parole; insane.

June 3, 1907—

George Denny (Marion County workhouse), parole; in advanced stage of tuberculosis.

June 28, 1907—

Michael Beegler (Indiana Reformatory), parole; in advanced stage of tuberculosis.

July 1, 1907—

Walter Mosher (Indiana Reformatory), parole.

August 19, 1907—

Harry W. Smith (Indiana Reformatory), parole for 15 days, account of serious illness of his father.

August 24, 1907—

Cyrus Todd (Indiana Reformatory), pardon; fatally ill with tuberculosis.

August 27, 1907—

Henry Tuckenbrook (Indiana Reformatory), parole; recommended by the State Board of Pardons.

Delbert Overman (Indiana Reformatory), parole.

August 28, 1907—
John Stafford (Indiana State Prison), parole; seriously ill with tuberculosis (revoked September 23, 1907).

October 3, 1907—
William Duchane (Marion County workhouse), parole.

October 9, 1907—
Hazel McMillan (Indiana Girls' School), parole.
Ulysses Grant Perkins (Indiana Reformatory), parole; fatally ill.

October 12, 1907—
William Lane (Clark County jail), remission of fine.

October 19, 1907—
Frank Dupps (Dubois County jail), remission of fine.

October 31, 1907—
William Burcham (Indiana Reformatory), parole for 15 days, account of serious illness of his mother.

November 27, 1907—
Thomas Skinner (State Prison), parole.
Jesse Voris (Marion County workhouse), parole.

December 23, 1907—
Albert Miles (Marion County workhouse), remission of fine.

December 24, 1907—
William Wolsiffer, pardon. (Paroled from Indiana Reformatory November 28, 1906.)
Orlie Costin, pardon. (Paroled from Indiana Reformatory April 17, 1906.)
Samuel Harmon (State Prison), parole; recommended by State Board of Pardons.
Joseph Osborne (State Prison), parole; recommended by State Board of Pardons.

January 2, 1908—
Harry W. Smith (Indiana Reformatory), parole for 60 days, account of serious illness of his father.

January 27, 1908—
Thomas Kinroy (State Prison), parole.

January 28, 1908—
Willard Bryant, remission of fine.

January 29, 1908—
George G. Hill, remission of fine.

January 31, 1908—
Joseph Flora (Marion County workhouse), parole.

February 14, 1908—
Louis E. Halpin (Indiana Reformatory), parole.

March 25, 1908—
Otis Wells (Indiana Reformatory), parole for 16 days, account of serious illness of his father.

April 13, 1908—
Daniel A. Hughes (Indiana Reformatory), parole.
Oliver Lindley (Indiana Reformatory), parole; seriously ill with tuberculosis.

April 15, 1908—
John Weedman (Indiana Reformatory), parole for 30 days, account of illness of his wife.

April 23, 1908—
Nellie Hogue (Indiana Girls' School), pardon.
John McGuire (Fountain County jail), parole.

May 2, 1908—
Leslie L. Miller (Marion County workhouse), parole.

May 11, 1908—
Ruchie Wilson (Indiana Reformatory), parole; blind, deaf, fatally ill.
Peter White (Indiana Reformatory), parole; fatally ill with tuberculosis.

June 2, 1908—
Dercia Wellons, Ethel Simmons, Doyne Kempf, Margaret Ellis, Nellie Segreaves, Bessie Gilbert, Hazel Cherry, Mae Bowers, Maud Johnson, Lizzie Wright, Ada Strange, Lilly Fay Sult, Dora Steele, Susie Jameson, Viola Gray, Margaret Peer, Mary Bennett, Ruth Feighner, Frances Acton, Hettie White, Goldie Holden, Frances Hall, Bertha Holman, Edith Jones, Mamie Mallory, Alma Turk, Edith Edwards, Elizabeth Howell, Jesse Henderson, Helen Saunders, Charlotte Willison, Lenna Woggerman, Mary Ragoshke, Flora Arnold, Marie Washburn, Alice Chandler and Freda Schmuck

(Indiana Girls' School). (Paroled upon the recommendation of the Superintendent and Board of Trustees of the Institution, in order that they might be placed in suitable homes.)

June 23, 1908—

John B. Newton, Charles W. Sparks, and John B. Cummins, alias John S. Burris (State Prison), pardoned in order that they might be delivered to the agent of the State of Ohio, where they were under indictment for the crime of forgery.

John Biddle and Benjamin Burdette (State Prison), pardoned in order that they might be delivered to the agent of the State of Illinois, they being escaped convicts from the Reformatory and the Prison respectively, of said State.

Frank Johnson, alias John Thomas (State Prison), pardoned in order that he might be delivered to the agent of the State of Michigan, he being an escaped convict from the Jackson (Michigan) Prison.

July 7, 1908—

Minnie Hickman, Oather Wright, Bessie Annadel, Mabel Loveless, Beulah Erney, Mae Van Buskirk, Hallie Prine, Hazel Bell and Susie Conyers (Indiana Girls' School). (Paroled upon the recommendation of the Superintendent and Board of Trustees of the Institution, in order that they might be placed in suitable homes.)

July 8, 1908—

John Pinter (St. Joseph County jail), remission of fine.

July 17, 1908—

Edison Barnhart (Indiana Reformatory), pardon. (Paroled June 10, 1905.)

August 18, 1908—

Hazel Hummer, Lena Wright, Mayme Wilson and Goldie Percival (Indiana Girls' School). (Paroled upon the recommendation of the Superintendent and Board of Trustees of the Institution, in order that they might be placed in suitable homes.)

September 11, 1908—

Sylvester Anderson (Sullivan County jail), remission of fine.

Markwood Anderson (Sullivan County jail), remission of fine.

September 16, 1908—

Geoerge Horner (Delaware County jail), parole.

September 21, 1908—

Blaine Reynolds (Henry County jail), remission of fine.

October 27, 1908—

John McIntosh (State Prison), parole; in precarious physical condition.

November 11, 1908—

William Tucker (Indiana Reformatory), parole; fatally ill with tuberculosis.

November 28, 1908—

Eva Buckner, Irene Hedges, Pearl Croft, Minnie Barnhart, Martha Hupke, Zona Jones, Linnie Wilson (Indiana Girls' School). (Paroled upon the recommendation of the Superintendent and Board of Trustees of the Institution, in order that they might be placed in suitable homes.)

December 10, 1908—

Joseph Eacock, pardon. (Paroled by State Prison Parole Board.)

December 19, 1908—

H. A. Faulkner (Indiana Reformatory), parole; fatally ill with tuberculosis.

December 23, 1908—

John Ransberger (Indiana Reformatory), parole.

December 24, 1908—

Thomas Thornburg (Indiana State Prison), parole; recommended by State Board of Pardons.

Robert Lane (State Prison), parole; recommended by State Board of Pardons.

December 31, 1908—

William Flowers (State Prison), parole.

Pardons, Paroles, Remissions of Fines and Commutations granted subsequent to December 31, 1908.

January 8, 1909—

Ernest Freeman (State Prison), parole; recommended by the State Board of Pardons.

January 9, 1909—

Bert Wentworth (Indiana Reformatory), pardon; fatally ill.

Thomas Skinner (State Prison), unconditional pardon; having faithfully observed parole.

Ira Light (State Prison), parole; recommended by the State Board of Pardons.

Charles Gray (State Prison), parole; having been a model prisoner. Recommended by the Judge and Prosecuting Attorney.

Louis Ruelle (Reformatory), parole; recommended by the State Board of Pardons.

Special Messages to the Sixty-Fourth General Assembly

APPOINTMENT OF SECRETARY.

JANUARY 9, 1905.

Gentlemen of the Senate and House of Representatives:

You are hereby most respectfully notified that I have appointed the Hon. Union B. Hunt as Secretary to the Governor, and that as such secretary he is authorized to transmit and make executive communication to the Senate and the House.

J. FRANK HANLY,
Governor.

RESIGNATION OF SENATOR FAIRBANKS.

JANUARY 9, 1905.

Gentlemen of the Senate and House of Representatives:

I hereby apprise you of the fact that I have this day received the resignation of the Honorable Charles Warren Fairbanks as a Senator of the United States from the State of Indiana. Such resignation to take effect at the close of the Fifty-eighth Congress, and that I have accepted the same according to the terms thereof. A vacancy will therefore occur in the representation of the State in the Senate of the United States on the 4th day of March next.

Respectfully,

J. FRANK HANLY,
Governor.

APPOINTMENT OF W. C. VAN ARSDEL

AS MEMBER OF BOARD OF TRUSTEES FOR INDIANA BOYS' SCHOOL.

MARCH 3, 1905.

Mr. President and Gentlemen of the Senate:

Inasmuch as the statute providing for the appointment of the Board of Trustees of the Indiana Boys' School requires that said appointment shall be made by the Governor, with the advice and consent of the Senate, I have the honor to inform the Senate that

I have this day appointed William C. Van Arsdel, of the city of Indianapolis, as a member of said board, to serve for a term of four years from the first day of March, 1905, which appointment is respectfully submitted to your honorable body for approval.

J. FRANK HANLY,
Governor.

APPOINTMENT OF ELLA B. McCOY

AS A MEMBER OF BOARD OF MANAGERS FOR INDIANA INDUSTRIAL SCHOOL FOR GIRLS AND WOMEN'S PRISON.

MARCH 6, 1905.

Mr. President and Gentlemen of the Senate:

Inasmuch as the statute providing for the appointment of the Board of Managers of the Indiana Industrial School for Girls and Women's Prison requires that said appointment shall be made by the Governor with the advice and consent of the Senate, I have the honor to inform the Senate that I have this day appointed Ella B. McCoy, of the city of Indianapolis, as a member of said board, to serve for a term of four years from the first of March, 1905, which appointment is respectfully submitted to your honorable body for approval.

J. FRANK HANLY,
Governor.

FAREWELL MESSAGE.

MARCH 6, 1905.

To the President of the Senate, the Speaker of the House of Representatives and the Members and Officers of the Sixty-fourth General Assembly:

Gentlemen—The Sixty-fourth General Assembly of the State of Indiana is about to end by constitutional limitation. In a few hours it will have gone into history, there to be judged for its deeds whether of omission or commission.

There is in the record it has made so much of the good and so

little of the bad, that I cannot forbear a word of commendation before you depart to take up again the duties of private citizenship.

Incessant labor, high ability and lofty purpose have characterized your services to the State throughout the session. You have earned the gratitude of the people whose servants you have indeed been. The volume and the character of the legislation you have enacted, bespeaks for you the continued confidence of your fellow-citizens, without regard to their party affiliations.

The measures you have passed, are in the interest of the peace and the repose of society and of its improvement and elevation, as well as for the material interests of the Commonwealth. Your work may contain imperfections—it doubtless does—the work of no man or set of men can be expected to be perfect. Some of these imperfections may not yet be apparent and may not become so until tried in the crucible of actual experience. In the main, however, your work is such as to justify the partiality of the people whose commissions you have borne.

All has not been obtained that I desired, but it has been more nearly obtained than is usual in public affairs. We have sometimes differed, but our differences have been at all times the fearless differences of courageous, sincere and honest men, who were moved by a common impulse—a desire for the welfare of the State and the happiness of its people.

Personally, I beg to thank you, one and all. You have been, without exception, considerate and tolerant. Of your kindness I am deeply sensible, and in these, the closing hours of what I believe will be looked upon as an historic session, I beg to make grateful and public acknowledgment thereof.

On the whole, you have builded better than I had hoped, and in fact better than any General Assembly convened in the State in many years has builded.

Commending you to the considerate judgment of an appreciative people, and wishing you safe return to your homes and your families, I bid you good-bye with sincerest concern and desire for your future happiness and for the prosperity and advancement of the people of Indiana.

J. Frank Hanly,
Governor.

Special Messages to the Sixty-Fifth General Assembly

APPOINTMENT OF SECRETARY.

JANUARY 18, 1907.

Gentlemen of the Senate and House of Representatives:

You are hereby notified that Colonel Fred L. Gemmer has been appointed Secretary to the Governor, and as such is authorized to convey executive messages to the Senate and the House.

J. FRANK HANLY,
Governor.

FLOOD IN SOUTHERN INDIANA.

JANUARY 23, 1907.

Gentlemen of the Senate and House of Representatives:

Southern and Southwestern Indiana has been visited within the week by a disastrous flood, occasioned by the overflow of the Ohio and Wabash rivers. Property loss is heavy. A considerable number of our people at different points have been driven from their homes. Some of them are destitute. Their needs are imperative. The inhabitants of the several communities affected who were spared the ravages of the flood have been quick and generous in their response and are doing what they can to alleviate the suffering and to provide for the immediate necessities of their unfortunate neighbors. In most instances their efforts have been sufficient, but in a few localities local resources are exhausted, and the people are still in want. In these cases the duty of the State is clear. Prompt and effective measures should be taken. The demand is not large, but the necessities of the afflicted ones are as great as though their numbers were thousands.

Believing the General Assembly will desire to take action on behalf of the State, I call your attention to the facts and suggest the propriety of a joint resolution authorizing the Executive to use such portion of the emergency contingent fund now in his hands for use during the present fiscal year as the present need shall require and authorizing him to send executive agents to the localities affected that actual conditions may be learned and that the funds may not be wasted or improperly used. A direct ap-

propriation might be made, but I believe the emergency contingent fund will be ample to meet all present requirements.

Respectfully submitted,

J. Frank Hanly,
Governor.

BINDER TWINE PLANT IN STATE PRISON.

January 28, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

In compliance with the request contained in Engrossed House Resolution No. 8, I submit herewith information relative to the installation, equipment and operation of the binder twine plant in the State Prison.

Seven items are included in said resolution, as follows:

"One. A complete detailed statement of money paid out for machinery and installing the binder twine plant, now being operated in the northern prison.

"Second. The statement to show business done, for twelve months previous ending January 1, 1907.

"Third. Number of men employed in operating said plant.

"Fourth. Number of pounds of raw material bought during the twelve months.

"Fifth. Number of pounds of twine sold and price realized from said sale.

"Sixth. Amount of money paid out for oil, grease and fuel.

"Seventh. Expenses of all nature, paid out in connection with the manufacture of said twine.

"Eighth. And any other information pertaining to the manufacturing of binder twine."

The plant had not been in operation a year on the first day of January, 1907.

Its operation was not begun until in March, 1906. It had been in operation on the first day of January, 1907, but 230 days.

The figures hereinafter given as to expense, cost of manufacturing and quantity of output are therefore based on 230 days instead of twelve months.

The expense of remodeling buildings and installing the plant was $2,135.75; cost of machinery and tools, $30,038.65; cost of plant complete ready for operation, $32,174.40.

During the 230 days the plant has been in operation the average number of persons employed therein has been as follows: Two officers, one superintendent, three foremen and sixty-six prisoners.

On the first day of January, 1907, $6,092.90 had been expended for oil, grease, fuel, sacks, asphaltum and other materials and for repairs and for free labor.

The total expense for material and operation was $135,820.24.

This, with the cost of establishing the plant, $32,174.40, aggregates $167,994.64, and is the total expenditure on account of the plant for the period named.

During this time 1,659,065 pounds of sisal were purchased, at a cost of $120,932.16, and 1,697,400 pounds of twine were manufactured.

During the summer of 1906, 535,945 pounds of twine were sold, from which $46,165.35 were realized.

On the first day of January, 1907, there was on hand sisal and other raw materials of the value of $6,458.72.

The late date at which the actual manufacture of twine was begun precluded the manufacture of any considerable quantity of twine in time for the market for the harvest of 1906.

This accounts for the fact that but 535,946 pounds were sold in that year.

Of the stock now on hand, 400,000 pounds have been contracted for for sale to the Indiana Grange, an organization composed of farmers, at 8½ cents per pound f. o. b. cars at the Prison.

A considerable quantity, in addition, has been sold, and there is little doubt that the entire product now on hand and all that can be manufactured between now and harvest time can be sold at the price named.

On the first day of January, 1907, the account stood as follows:

Manufactured twine on hand, 1,161,456 pounds, which, at 8½ cents per pound, the minimum value for which twine has been sold by the Prison authorities, is worth $98,723.76, f. o. b. cars at Prison; receipts from sales made last year, $46,165.35; sisal and other materials on hand, $6,458.72; total, $151,347.83; total cost of operating plant, including all raw materials purchased, $135,820.24; profit to the State, $15,527.79, which, I submit, is a remarkable showing for a new plant only 230 days in operation.

It should be noted that the profit for this time is almost equal to fifty per cent. of the total cost of installing the plant.

In this connection it is important also to remember that it has been necessary to find a market and establish the character and value of the product.

The quality manufactured is of the finest character and has given general satisfaction wherever it has been used.

It is equal in quality to that manufactured by the plants operated by private corporations.

The prices at which the product has been sold has been as follows: In quantities less than 500 pounds, 9 cents; from 500 pounds to 10,000 pounds, 8¾ cents; from 10,000 pounds up, 8½ cents f. o. b. cars at Prison.

The International Harvester Company controls substantially the twine output of the United States, except that manufactured by state institutions.

Prior to 1906 twine sold to the farmers of Indiana at from 12 to 14 cents per pound. Last year when the intention to manufacture twine at the Prison on State account was learned, the price was reduced to 10 and 11 cents.

It is estimated upon reliable authority that more than ten million pounds of twine are used annually by the farmers of Indiana.

The effect of a reduction of 1½ cents per pound in cost is a saving of $150,000.00, and this saving was due very largely to the establishment of the Prison plant.

A similar plant has been in operation in the Minnesota State prison for a number of years. It was operated last year, according to the report of the warden of that institution, at a profit of $200,000.

A prison plant is also in operation in Missouri, Kansas and North Dakota, all of which are being successfully operated at profit to the State.

In manufacturing binder twine the State competes with no Indiana industry.

Not a pound of binder twine is manufactured in the State other than that manufactured in the Prison.

For this reason it interferes less with free labor than almost any other industry to which prison authorities could turn.

It will result in a substantial saving to the farmers of the State. For this reason labor and agriculture both favor the establishment and operation of the plant.

In 1910 the present Prison labor contracts expire. If they are

not to be renewed, it is of the greatest importance that some preparation be made in advance for the establishment of industries in the Prison on State account.

There will be substantially a thousand prisoners in the institution from now on.

Economical and humanitarian reasons preclude that they should remain idle.

As has been seen, we have been able to employ, during the last 230 days, an average of 66 prisoners in this plant, and the profit has been such as to bring to the State more than 90 cents a day for each day they were employed.

The average price per day for prison contract labor is about 50 cents.

In November and December 388,025 pounds of twine were manufactured at a total cost, exclusive of prison labor, of $28,786.96. Valued at 8½ cents, the minimum price for which the product is being sold, the output for these two months is worth $32,982.12—a profit in two months of $4,195.16.

This gives an average return to the State of more than $1.98 for each day of prison labor employed.

Calculated at the mean price for which the product is being sold, 8¾ cents, the profit for these two months is $5,087.00, or an average of $1.52 for every day of prison labor.

The enterprise was not entered upon hastily or without full and thorough consideration, nor without assurance of legal authority of the board to install and operate the plant. On August 3, 1905, the Executive submitted the legal phases of the proposition to the Attorney-General, and was advised by him as follows:

"August 4, 1905.

"Hon. J. Frank Hanly, Governor of Indiana:

"Dear Sir—Replying to your communication of August 3, in which you ask: 'It is proposed to establish and operate in the Indiana State Prison a plant for the manufacture of binder twine, on State account. The warden and the members of the board of control, together with this department, have given much consideration to the question of the practicability of establishing and operating such plant. The question has been raised as to whether the board of control possesses the authority to purchase the machinery, construct the necessary building for a warehouse, and purchase the raw material from which to manufacture such twine, under the existing law. I therefore submit to you for your opinion the following interrogatories:

"'1. Does the act of February 8, 1899, authorize the board of control of the Indiana Prison to purchase the machinery, establish and operate such plant, and construct the necessary warehouse?

"'2. Does said act authorize said board to purchase the raw material from which to manufacture such binding twine?

"'3. Is the appropriation provided for in section 9 of said act, substantially none of the same having been heretofore used, available for the purpose of purchasing the machinery, the raw material and of operating said plant?'

"Section 6 of said act provides as follows: 'It shall be the duty of the warden to assign the convicts to such labor as, in his opinion, they are particularly adapted to, and shall recommend to the board of control from time to time such necessary materials, tools, apparatus or accommodations as are needful for the purpose of the carrying on and conducting of such industries as may be authorized under the provisions of this act.'

"Section 9 provides as follows: 'There is hereby appropriated to the board of control of the Indiana State Prison, out of moneys not otherwise appropriated, the sum of $125,000, to be used by them in purchasing materials, tools, machinery, apparatus and accommodations, as may be by said board of control deemed necessary for the purpose of establishing, carrying on and conducting such trades and industries as may be determined upon by such board of control upon the public account system, whereby the labor of the convicts of said prison shall be employed only on its own account: Provided, No expenditures shall be made for printing(,) machinery or material.'

"This appropriation is made contingent on the adoption by said board of control of the public account system, and the sums hereby appropriated shall only be used to establish, provide for and furnish the necessary machinery and materials for the inauguration of such public account system, and out of said sum hereby appropriated there shall be available each year, beginning with the present year, a sum not to exceed $25,000, but if such sum of $25,000 be not used by the said board of control in any one year, the same shall not be deducted from said sum of $125,000 hereby appropriated, but may be drawn and applied to said purposes thereafter, together with such further sums as may, at the ttime or thereafter, become available for such use.

"Under the provisions of this act it is my opinion that the warden and the board of control of said Prison have authority to purchase machinery and furnish accommodations and establish and operate any sort of a manufacturing plant that such board shall determine to be proper and efficient, and the provisions of the act clearly provide that in the operation of such plant the board is authorized to purchase such materials, apparatus and appliances as may be necessary for any sort of manufacturing business engaged in and the appropriation provided for in section 9 may be used for either or all of such purposes.

"I have the honor to be, very truly yours,

(Signed) "CHARLES W. MILLER,
"Attorney-General."

The sum appropriated and available under the provisions of the section cited in the opinion of the Attorney-General was insufficient to install and operate the plant.

After consultation with the Executive and the Attorney-General, and with their assent, the board of control reinvested from

funds derived from the sale of binder twine $41,776.47 that the plant might be kept in operation and its practicability demonstrated. In addition to this, Warden Reid has advanced, within the last sixty days, out of his own personal funds, more than $4,000.00. He has done this voluntarily that he might be able to demonstrate the value and importance of the enterprise. His act was wholly unselfish and patriotic, and is in accord with the high service the warden is daily giving the State. By so doing, even though estimated at the minimum price for which the product of the plant is sold, 8½ cents per pound, he made for the State, during the months of November and December, $4,195.16.

The bill making an appropriation for the future operation of the plant, now pending before you, carries a revolving appropriation of $200,000.00. This should not be in addition to the money already invested in the plant, in raw material or in manufactured product. The revolving fund should be $200,000.00, but the proceeds of the sale of present and future stock in excess of such sum should be paid into the treasury.

Sisal is the principal raw material entering into the manufacture of binder twine. It is not produced in the United States. It must be purchased in large quantities. It can usually be purchased at best advantage and at lowest cost in the months of August, September and October. The revolving fund should be large enough to permit the State to take advantage of the lowest price for the purchase of sisal in sufficient quantity for a year's run of the plant. The saving of a quarter of a cent per pound on sisal means of itself a fair profit to the State.

Such an appropriation is not a straight out appropriation like that made for the construction of a building or the establishment of a State institution, nor is it ever all called for longer than a few months at a time, after which it is returned to the treasury.

There has been no opposition to the establishment and operation of this plant coming to Executive knowledge, except that inspired by the International Harvester Company people.

This opposition is due solely to the fact that the manufacture of binder twine on State account will make it possible for the State to dispute with them the Indiana market.

The board of control, the warden and the Executive are fully convinced that the establishment of this plant and its operation under an appropriation such as that made in the pending measure, will go far toward making the Prison self-sustaining.

Every dollar thus gained is a dollar taken from general taxa-

tion. It will give employment after a little to a hundred men and will be a long step toward solving the problem of prison employment at the expiration of the present labor contracts. It will not compete with any Indiana industry.

It will save thousands of dollars annually to the farmers of the State. It is therefore a matter of no little importance and should receive thoughtful, candid consideration at your hands.

Respectfully submitted,

J. Frank Hanly,
Governor.

BABCOCK INSURANCE BILL.

February 6, 1907.

Gentlemen of the Senate and House of Representatives:

In view of the constitutional obligation imposed upon the Executive that "he shall, from time to time, * * * recommend" to the General Assembly "such measures as he shall judge to be expedient," I feel it to be my duty to urge the passage of House Bill No. 31, commonly known as the "Babcock Bill," the same being Senate Bill No. 89, commonly known as the "Farber Bill," creating a separate department of insurance, and providing for the appointment of a commissioner with power to effectively administer such department.

This bill represents the best thought of the hour relative to the establishment of a State Department of Insurance and the powers which should be conferred thereon. It had, in the beginning, the careful consideration of the committee which recently investigated insurance conditions in Indiana. While neither of the members of that committee is an insurance expert, each is a man of affairs, of clear thought and of high and disinterested purpose, and each gave substantially a year to the investigation of the subject to which the bill relates. Actuaries of ability and character and of independent relations have been consulted concerning it. Many of its most essential provisions were taken from the legislation recommended by the conference of governors, attorneys-general and insurance commissioners of the various States, held in Chicago in 1906 for the purpose of considering insurance abuses and remedial legislation relating thereto, and prepared by the committee appointed by such conference.

The personnel of this conference is of itself of a character to entitle its report to the highest consideration. Governor John A. Johnson, of Minnesota, was its chairman, and Frederick H. Nash, Esq., was its secretary. The committee appointed to prepare the report consisted of the following insurance commissioners: Thomas D. O'Brien, Minnesota; Zeno M. Host, Wisconsin; B. F. Carroll, Iowa; J. L. Pierce, Nebraska; Henry R. Prewitt, Kentucky; Thomas E. Drake, District of Columbia; Reau E. Folk, Tennessee; W. D. Vandiver, Missouri; E. Myron Wolf, California; A. I. Vorys, Ohio; B. F. Crouse, Maryland, and George H. Adams, New Hampshire; the following attorneys-general: E. T. Young, Minnesota; J. H. Meyer, New York, and J. E. Bird, Michigan; and Messrs. F. H. Nash, Massachusetts; N. E. Hadley, Michigan, and John A. Hartigan, Minnesota.

The committee also had the benefit of the presence and advice of Butler Ames, M. C., Massachusetts; the Legislative Investigating Committee of Wisconsin, consisting of Mr. James A. Frear, Chairman, H. L. Ecker, G. A. Beadle, W. S. Braddock, B. Potter, J. E. Roche, James L. O'Connor, Counsel, and J. M. Glover, Actuary; the Legislative Investigating Committee of Iowa, represented by Messrs. J. M. Jameson, Chairman, John L. Blaeckly, N. E. Kendall, F. F. Jones and T. E. Cleary; also Mr. Earle Stewart, Chairman of the Legislative Investigating Committee of Ohio, and the following members of the Insurance Committee of the Commission on Uniform Laws: Messrs. Amasa M. Eaton, C. F. Libby, Talcott H. Russell, J. C. Richburg and Robert W. Williams.

Since the introduction of the bill it has received the attention and thoughtful study of the members of the House and Senate Committees on Insurance. Public hearings have been held and full and free discussion had. Objections and criticisms have been considered and wherever such objections and criticisms have seemed just and tenable, modification and amendment have been made. As the bill now stands before you it is the best thought of many minds. It is presented to you in response to a widespread and imperative need, not peculiar to Indiana, but common to all the States. It is a part of an effort being made throughout the country to secure the reformation of life insurance practices which have been and are injuring the business of life insurance and wronging the policy holders of such companies. Its passage will constitute the first great step toward insurance reformation in Indiana.

The reports it requires of the companies are already required in a number of the States. This is especially true in Minnesota and

Wisconsin. These reports are essential if present abuses are to be ended. The bill puts an end to divided service on the part of departmental officials by placing the department on the people's side of the counter and by requiring those who administer it to remain on that side of the counter.

It does not deal generally with questions remedial in character, such as special contracts, rebates, the distribution of surplus, the inhibition of political contributions, forms of policies, real estate holdings, the status of persons soliciting insurance, the issuance of non-participating policies by companies issuing participating policies, the election of directors, the retirement of capital stock, the preliminary term plan, or other kindred questions. These are left to be covered by separate and specific bills. It relates wholly to matters of departmental administration and the supervision of insurance companies doing business in the State. It inhibits agency companies, foreign and domestic, provides for publicity as to salaries and expenses, and for the making of reports which shall give information calculated to expose extravagant administration and fraudulent practices wherever they exist. These matters are all so closely related to the administration of the department and to the supervision of the administration of insurance companies, that they come naturally and logically within the purview of legislation creating an insurance department.

Representatives of certain Indiana life insurance companies have based their objections to the bill on the ground that it discriminates against domestic companies and in favor of the foreign companies doing business in the State. The contention is absolutely without foundation. In fact, nothing is further from the truth. The bill itself is the best answer to this argument. Every section affects foreign and domestic companies alike save four, and one of these relates solely to foreign companies. Of the three sections, relating exclusively to domestic companies Section 22 simply requires agents of such companies to procure a license from the insurance department before soliciting insurance, and fixes a fee of $1.00 for such license. The present law requires all agents of foreign insurance companies doing business in the State to be licensed and the fee therefor ranges from $3.00 to $5.00. This law will not be changed by the passage of the proposed bill. Here then in one of the three sections which apply solely to domestic companies, is a clear discrimination in their favor. As suggested Section 25 applies only to foreign insurance companies. It is one of the most radical sections in the statute. Sections 26 and 27 apply

to domestic companies only. Their provisions are similar to the provisions of Section 25, which, as we have seen, applies alone to foreign companies, except as to the action of the commissioner in cases of insolvency or of disobedience by the companies of executive orders entered by the commissioner. In the event of the insolvency of a foreign company doing business in this State or of disobedience of executive orders entered of record by him, the commissioner is authorized by Section 25 to revoke the right of the company to do business in the State. The company not being incorporated under our laws and not being domiciled in the State, it is difficult to see how more than this could be done. Our courts could have no jurisdiction beyond the assets of the company within the State. The limit of authority is reached when the company is deprived of the right to conduct business within our borders. Domestic companies are chartered under our own laws. They are domiciled here and in case of insolvency or disobedience of certain executive orders entered by the commissioner, the commissioner is authorized to institute proceedings in the courts of Marion County for the appointment of a temporary receiver and in proper cases for the dissolution of the company. In every such case the court has ample power to protect the rights of the company against all aggressions of the commissioner. Indeed, his every act is made the subject of review by the courts at the will of any company aggrieved.

Instead of being directed against domestic companies to their injury, its fundamental purpose is their protection. They will find in it a sure defense from the assaults of foreign companies as long as their own affairs are managed with economy and integrity. The certificate of the department it creates that Indiana companies have complied with its requirements and are administering their affairs in conformity with its regulations, will be accepted at home and abroad as conclusive evidence of good character and of honest and efficient management. I am profoundly impressed with the conviction that the establishment of such a department will do more to reinstate Indiana life insurance companies in the confidence of the people throughout the country than any other single piece of legislation that you can enact.

The expense of a separate department has also been the basis of some criticism. The difference, however, between the annual expense of a separate department and that of a proper department administered in the Auditor's office, is but nominal. The present measure provides for a total annual expense of $19,440.00. The

bill prepared at the instance of Indiana insurance companies, pending in the Senate, providing for an insurance department in the Auditor's office, carries an annual expense of $14,720.00. The difference is but $4,720.00. This difference will be more than made up in fees, the collection of which is provided for and which are required to be turned into the treasury as the property of the State. The greatest benefit, however, to accrue from the establishment of a separate department will be in the way of increased efficiency. By this statement I mean no reflection upon either the integrity or the ability of the present Auditor of State.

I speak only of conditions admitted and well known. His office is already in need of additional clerical help in both the auditing and banking departments. As the fiscal agent and accountant of the State, he has to do with receipts and disbursements aggregating each year something like $8,000,000. He is by law a member of the State Board of Finance and his duties in this behalf will, in all probability, be substantially added to by any public depository legislation that may be enacted. He is a member of the State Printing Board which has to do with the making of contracts for all the printing for the offices and institutions of the State, the passing upon their reports and requisitions for supplies and the allowance of all bills for such printing, amounting to many thousands of dollars annually. He is also a member of the State Board of Tax Commissioners and is required by the present law to give 45 to 50 days each year to matters coming before that body. He has the supervision and control of 217 state banks, over 200 private banks, 70 trust companies, 4 savings and more than 300 building and loan associations, all of which impose upon him much labor, supervision and responsibility. The duties of the office have multiplied many times in recent years and will continue to multiply with the growth of the State in wealth, enterprise and population. A single comparison will serve to illustrate this point. In 1896 the Auditor of State collected insurance taxes and fees aggregating $183,705.73; in 1906, $427,310.35. In 1893 there was not a single domestic legal reserve life insurance company in the State; now there are 18, with more than 30,000 policy holders and millions of dollars of insurance in force. The present Auditor of State, recognizing and appreciating the conditions I here present, recently made the following statement in a letter addressed to the Chairman of the House Committee on Insurance:

"Realizing the importance and continued growth of all these departments until they have reached a magnitude where one's best judgment would dictate

that the public and the insurance world can best be served by placing the supervision of the insurance companies in a separate department, I am willing to lay aside any selfish wish of mine and for the good of the people and of the State acquiesce in and recommend the establishment of a separate insurance department under such wise provisions of law as our legislative body may enact. I do this without any idea or purpose of shirking any duty that may be imposed upon me, knowing full well that my hand and brain will be busy with other arduous duties in the Auditor's office."

The head of the State insurance department, if it is to be effectively administered, must necessarily possess something of special qualification. He ought to be removed from the exigencies of politics and placed beyond the importunities and influences of the special interests which constantly seek to influence his official action in matters relating to them. Under the present law the Auditor of State is elected for a term of two years. He is eligible to renomination and election. Whoever is Auditor naturally desires to succeed himself. He is more than human if he is at all times able to resist the powerful influences that are brought to bear upon him in matters relating to insurance supervision. The history of the office in the last twenty years does not sustain the contention that the Auditor of State, being elected by the people, is a safer depository of the power necessary to the proper supervision of life insurance than a commissioner appointed by the Executive. Prior to the term of the present incumbent of that office no man in twenty years, with a single exception, has administered its affairs with fidelity to the interests of the people. The records in the office, as I have heretofore shown in an executive message to this General Assembly, disclose a continuous story of peculation and defalcation—a system carried on without interruption save for the term of a single incumbent.

The Governor of the State cannot succeed himself. Our fathers, in the exercise of high wisdom and far-seeing statesmanship, precluded his doing so by constitutional inhibition. Whoever enters the executive office assumes its duties with full knowledge of that fact. No other officer in the State, not even excepting judicial officers, is so fully and entirely removed from the temptation to use his position for political purposes or in response to the appeals or the threats of special interests as is the Executive. They may succeed themselves by re-nomination and re-election. He can not. Personally, the authority to appoint a commissioner of insurance means absolutely nothing to the present incumbent of the executive office. The duties and responsibilities of the office will soon slip from his shoulders, to be assumed by another. He is a

candidate for no office. He has no use for a political machine. Given the authority to appoint, selection will be made upon qualification alone. If the proposed law is enacted the appointment of a commissioner will come in the middle of the executive term, and after two years' experience in the office of Governor, any man who occupies the position will hesitate long before he declines to reappoint a commissioner whose services during the term of four years show him to be impartial, courageous and efficient. These reasons lead me to the conclusion that the head of the department should be appointed by the Executive.

I have heretofore called your attention to some of the existing abuses in the administration of the present insurance department and have supplemented what I have said by facts and figures which seem to me to be conclusive. I desire, however, to submit further information upon the subject.

The present actuary receives a salary of $2,000.00 per annum from the State. He is the only person in the department who has technical knowledge of the business of life insurance. Whatever is done in the department is done largely upon his advice and under his direction. From the very nature of the case this is necessarily so. Being in the employ of the State and being charged with duties in relation to the supervision of life insurance companies doing business in the State, both foreign and domestic, his place is always on the State's side of every question arising between the State and insurance companies. Indeed the people have no other representative than he. Under the present system, however, the actuary spends more time in the employment of the companies whose affairs it is his duty to supervise, than he does in the service of the State, and annually receives more money from the companies than he receives from the State. In 1905 the present actuary of the department received from the State $2,000.00. But he received from the insurance companies of the State in the way of fees $2,226.00. In 1906 he received from the State $2,000.00; from the companies, $2,925.00. In the month of January, 1907, his salary from the State amounted to $166.66 2-3, but he received from the insurance companies $716.00. The law does not forbid this divided service, but the condition presented seems to me to be an intolerable one. In 1905 the State Life Insurance Company paid the present actuary $350.00; the Inter-State Life Insurance Company paid him $298.00; the American Central, $135.00; and the Reserve Loan Life Company, $443.00. In 1906 the State Life Insurance Company paid him $425.00; the Inter-State Life

Company, $617.00; the American Central Company, $188.00; the Reserve Loan Life Company, $115.00. In the month of January, 1907, the State Life Insurance Company paid him $455.00; the Reserve Loan Life Company, $123.00; the Inter-State Life Company, $98.00. The proposed bill will put an end to this practice. If it be permitted to continue the responsibility will be yours alone. If you fail to end it, you may be able to make satisfactory answer to the people who commisioned you, but as for me I am unable to conceive an adequate answer.

I have also heretofore called your attention to certain abuses in the administration of the affairs of certain domestic life insurance companies, which have long existed and which still continue to exist, and I now submit additional facts and further information in that behalf. In doing so it is necessary that I use the name of a certain life insurance company and the names of certain of its officers. I do so from necessity and not as a personal attack upon the company or upon the individuals to whom I shall advert. I am not and have not been engaged in personal attacks upon any one. During my official life I have attacked the acts of no man outside the purview of my official obligation. And then only when they have related to public affairs and when attack and exposure were necessary to preserve the public welfare. In such cases I have spoken with all the vigor and directness my knowledge of the English language has permitted, but I have done so in every instance without personal malice, moved only by a sense of public duty.

The State Life Insurance Company has no capital stock. It is a mutual company. It has no asset that is not the property of its policy holders. It is governed by a board of five directors. The present directors hold enough proxies, gathered from year to year, to insure their re-election. They have resolved, by written resolution spread of record upon their minutes, to be a self-perpetuating body. The company was incorporated in 1894. It is now 12 years old. The following facts, taken from the books of the company, disclose the character of administration it has received from the hands of these five directors:

In 1899, A. M. Sweeney, as president, received a salary of $7,000.00; as director, $600.00; as an office employe, $2,000.00; total, $9,600.00. Samuel Quinn received a salary as vice-president of $7,000.00; as director, $600.00; as an office employe, $2,000.00; total, $9,600.00. W. S. Wynn, as secretary, received a salary of $7,050.00; as director, $600.00; as an office employe,

$2,000.00; total, $9,650.00. Charles F. Coffin, as counsel, received a salary of $1,800.00; as director, $600.00; for legal services, $1,200.00; total, $3,600.00. R. W. McBride received a salary as director of $600.00; fees for legal services, $400.00; total, $1,000.00.

In 1900, Mr. Sweeney, as president, received a salary of $8,000.00; as director, $1,250.00; as an office employe, $1,750.00; total, $11,000.00 Samuel Quinn, as vice-president, received a salary of $8,000.00; as director, $1,000.00; as an office employe, $2,000.00; total, $11,000.00. W. S. Wynn, as secretary, received a salary of $8,000.00; as director, $1,000.00; as an office employe, $2,000.00; total, $11,000.00. Charles F. Coffin, as director, received a salary of $1,000.00; allowance for legal expense, $4,000.00; total, $5,000.00. R. W. McBride, as director, received a salary of $950.00; allowance for legal expense, $500.00; total, $1,450.00.

In 1901, Mr. Sweeney, as president, received a salary of $10,250.00; as an office employe, $750.00; as director, $1,000.00; total, $12,000.00. Mr. Quinn, as vice-president, received a salary of $10,200.00; as an office employe, $1,000.00; as director, $800.00; total, $12,000. Mr. Wynn, as secretary, received a salary of $8,000.00; as an office employe, $3,000.00; as director, $1,000.00; total, $12,000.00. Mr. Coffin, as director, received a salary of $1,000.00; allowance for legal expense, $4,000.00; total, $5,000.00.

Mr. McBride, as director, received a salary of $1,000.00; allowance for legal expense, $450.00; total, $1,450.00.

In 1902, Mr. Sweeney, as president, received a salary of $12,000.00; as director, $1,500.00; total, $13,500.00. Mr. Quinn, as vice-president, received a salary of $12,000.00; as director, $1,500.00; total, $13,500.00. Mr. Wynn, as secretary, received a salary of $12,000.00; as director, $1,500.00; total, $13,500.00. Mr. Coffin, as director, received a salary of $1,500.00; allowance for legal expense, $4,500.00; total, $6,000.00. Mr. McBride, as director, received a salary of $1,500.00; allowance for legal expense, $100.00; total, $1,600.00.

In 1903, Mr. Sweeney, as president, received a salary of $16,000.00; Mr. Quinn, as vice-president, received a salary of $16,000.00; Mr. Wynn, as secretary, received a salary of $16,000.00; Mr. Coffin, as director, a salary of $1,525.00, and an allowance on account of legal expense of $6,475.00; total, $8,000.00. Mr.

McBride, as director, received a salary of $1,500.00, and an allowance on account of legal expense of $500.00; total, $2,000.00.

In 1904, Mr. Sweeney, as president, received a salary of $18,000.00; Mr. Quinn, as vice-president, received a salary of $18,000.00; Mr. Wynn, as secretary, received a salary of $18,000.00; Mr. Coffin, as director, received a salary of $204.00, and an allowance on account of legal expense of $14,000.00; total, $14,204.00. Mr. McBride, as director, received a salary of $2,000.00 and an allowance on account of legal expense of $6,300.00; total, $8,300.00.

In 1905, Mr. Sweeney, as president, received a salary of $20,000.00; traveling expenses, $491.25; total, $20,491.25. Mr. Quinn, as vice-president, received a salary of $20,000.00; traveling expenses, $1,630.00; total, $21,630.00. Mr. Wynn, as secretary, received a salary of $20,000.00; traveling expenses, $481.70; total, $20,481.70. Mr. Coffin, as director and counsel, received a salary of $9,000.00; allowance on account of legal expenses, $11,000.00, and on account of traveling expense, $505.00, a total of $20,505.00. Mr. McBride received salary and allowances aggregating $8,000.00.

In 1906, Mr. Sweeney, as president, received a salary of $16,000.00; Mr. Quinn, as vice-president, received a salary of $16,000.00, and traveling expenses aggregating $1,140.00; total, $17,140.00. Mr. Wynn, as secretary, received a salary of $16,000.00, and an allowance of $221.50 for traveling expenses; total, $16,221.50. Mr. Coffin, as director, received a salary of $16,000.00 and an allowance for traveling expenses of $500.00; total, $16,500.00. Mr. McBride received a salary and allowance aggregating $7,000.00.

Not a dollar of the money allowed for traveling expenses is vouchered, and with the exception of the allowances made to Mr. Wynn, no itemized account thereof has been given.

It will be seen that Mr. Sweeney, while drawing one salary as president of the company and another as director, during the years 1899, 1900 and 1901, drew $4,500.00 as an "office employe"; that Mr. Quinn under like circumstances as to salaries as an officer and director, drew $4,000.00 as an "office employe," and Mr. Wynn, $6,000.00. What their duties were as "employes" is left to conjecture.

The policy holders are entitled to know why $14,500 was paid in three years to these three men in addition to the dual sal-

aries they were receiving as executive officers and directors. They have a right to be advised as to the services performed by them.

In eight years Mr. Sweeney drew from the treasury of the company, on account of salary and allowances made to him, $116,660.25; Mr. Quinn, $118,870.00; Mr. Wynn, $117,852.00; Mr. Coffin, $78,809.00; Mr. McBride, $30,800.00. In the four years, 1903, 1904, 1905, 1906, four men drew, in salaries and allowances, from the treasury of the company, an aggregate of $274,196.45. In the three years, 1904, 1905 and 1906, allowances were made to two men as directors and counsel of the company aggregating $74,509.00. In eight years the total allowance to these five men aggregate $462,947.45—almost a half million dollars.

The bill pending creates a department with authority to put an end to such wasteful and systematic misappropriation of trust money as that evidenced by the figures I have just given. If this condition is permitted to continue, the responsibility for its continuance will be yours. If you do not end it, it may be when you return to your homes you can make satisfactory answer to the people whose commissions you hold, but I am unable to conceive an adequate answer for such failure.

In addition to these allowances, $8,306.15 were paid in 1896 and $11,562.48 in 1897, to a corporation known as the Star Agency Company, on account of collections of premiums made by it. I am advised that Messrs. Sweeney, Quinn and Wynn were stockholders in that corporation. If so, they were on both sides of the counter when this money was paid.

In 1904, $3,675.38 were paid to a single individual for inspection services and $5,116.66 to a company known as the National Agency Company. I am advised that this company is operated by and under the control of one of the employes in the home office of the State Life Insurance Company.

In 1905, $9,835.16 were paid to this company, making an aggregate of $14,951.82 paid to it in two years, and a total on account of inspection services within that time of $18,627.20.

The aggregate allowances made in 1905 to Messrs. Sweeney, Quinn, Wynn, Coffin and McBride and to the National Agency Company, were $93,942.11.

The books of the company also disclose the payment, in the month of February, 1899, of six several checks payable to the cashier of the company and by him turned over to the executive committee of the company, aggregating $3,290, on account of "attorneys' fees." None of this money was used in the employment

of counsel. The company had able and efficient counsel of its own. The Sixty-first General Assembly of the State of Indiana was then in session. It is now admitted by the officers of the company that the sums represented by these several checks were used for the purpose of securing the passage of legislation then pending in that body. The entry "attorneys' fees" upon the books was simply a blind to conceal the real purpose for which these funds were used.

It is of the utmost importance, in the administration of every life insurance company, that every expenditure in excess of nominal sums should be itemized and vouchered. Under the present system entries upon the books of the company of "traveling expenses" or "attorneys' fees" constitute the only information given. Such entries are of no value in ascertaining the actual use made of the money in question as we have seen in the items just named. They may readily be used to conceal unqualified sins.

The figures I have given measure to some extent the possibilities under the present system of State supervision for the personal enrichment of the officers of these companies and disclose better reasons why the men who are profiting thereby are opposed to the proposed legislation than any they have as yet given to either you or to the public.

As already suggested, the bill inhibits the licensing of agency companies. It applies to all such companies whether doing business for domestic or foreign insurance companies, and whether they themselves be domestic or foreign corporations. It incorporates substantially the language of the legislation proposed by the conference on uniform insurance legislation upon this subject. It is insisted by the promoters of these companies that they furnish insurance companies the means of acquiring a large volume of insurance at less cost then it could be acquired through personal agencies responsible directly to the insurance companies. The experiences, however, of the last two years do not sustain the contention. So far as I have been able to learn the commissions provided for in the contracts between such companies and the insurance companies have been excessive without exception. For instance: the contract of the Lafayette Life Insurance Company with its agency company provides for the payment of 10 per cent. on all renewal premiums collected. The contract of the Inter-State Life provides for the payment of 15 per cent. for the second year, 5 per cent. for the third, 10 per cent. for the fourth year, and 7½ per cent. until 13 annual premiums have been paid; the contract

with the Reserve Loan Life requires the payment of 7½ per cent. on all renewal premiums, and that of the State Life with the State Agency Company provides for the payment of 7½ per cent. on all renewal premiums on policies written either before or after the execution of the contract. Renewal premiums are being collected in this State now by some insurance companies at a cost of 1½ per cent., and in no instance ought such collections to cost more than 5 per cent. These companies are simply open doors to extravagance and fraud. They are officered by high salaried officers. Their stockholders have been in many instances officers of the insurance companies whose representatives they are and without exception they have been organized at the instance of insurance officials. A more striking illustration of the truth of this can scarcely be desired than that furnished in the late State Agency affair of the State Life Insurance Company.

I know of no worse misfortune that could befall domestic life insurance companies than your failure to enact effective insurance legislation. The conditions I have described to you exist. They are not to be talked or reasoned away. They will continue to exist until the law, backed by efficient executive authority, strikes them down. Till this is done the question of such legislation will remain open. The matter can not be definitely settled until it is settled right. If it is not settled right the agitation will continue for the next two years and until another General Assembly shall have been elected and convened. Agitation and discussion, though helpful to the public in its effort to recover its rights, can not be helpful to the insurance companies. Every honest insurance official and every policy holder ought to join hands in an effort to obtain legislation that will end the conditions complained of. These ended, agitation and discussion will cease.

The people expect, and have a right to expect, effective legislation at your hands. Enactments with high sounding titles covering weak and ineffectual provisions, will not do. Such measures will not end present conditions nor stop discussion. Time and opportunity both are yours. And the people know they are yours. You are not like the hapless mother in travail. She must needs give birth to whatsoever has been begotten. But you have the power to choose. You can send forth men-children instead of stillborn sexless things, if you desire. This power of choice measures the weight and height of your responsibility.

At such an hour, personalities should be forgotten. Supposed "political advantages" and "tactical positions" assumed for parti-

san purposes will in the end be valueless. Every safe path leads to a higher plane than the field of factional dissensions or of party strife. Into those safer paths I am willing to go with you, majority and minority, friend and foe, leaving personal differences to be settled at other times and in other forums, that the public welfare may be conserved and the rights of the people preserved.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE ENROLLED ACT No. 248.

March 8, 1907.

Mr. President and Gentlemen of the Senate:

I herewith return to the Senate, Senate Enrolled Act No. 248, in compliance with the request of the Senate that the same should be returned to it.

Respectfully submitted,

J. Frank Hanly,
Governor.

Special Messages to the Special Session of the Sixty-Fifth General Assembly

"NIGHT RIDER" SITUATION IN INDIANA.

SEPTEMBER 24, 1908.

Mr. President and Gentlemen of the Senate:

Engrossed Senate Resolution No. 9, requesting the Executive "to furnish at his earliest convenience to the Finance and Agricultural Committees and to the Senate all documents and information in his possession relative to the 'Night Rider' situation," has been received and given consideration.

In answer thereto I beg to submit that my information has come to me through letters and documents filed in the executive office by persons living in localities where the threats and depredations complained of have been made or committed; from personal interviews with many responsible citizens from said localities, and from investigations made by the Adjutant-General of the State and other agents under executive direction.

For some three years there has been an effort on the part of certain tobacco growers living in the tobacco districts in the State of Kentucky, to control the production and sale of tobacco through an organization known as the "American Society of Equity." The successful pooling of a tobacco crop depends upon securing the assent and co-operation of enough tobacco growers to substantially control the production and sale of tobacco each year. This effort has led to differences among tobacco growers, some preferring to determine for themselves the extent of their own planting of tobacco and the marketing of their own crops. These differences have intensified and widened until enmities have been engendered between the independent owners and those belonging to the society, of a character to challenge serious consideration. Under cover of conditions thus created, organized bands of men on horseback, popularly known as "Night Riders," because they ride and commit their depredations in the night, have ridden to and fro over the tobacco section of the State of Kentucky, terrorizing the people, destroying crops, burning barns, and sometimes killing innocent citizens who have refused to diminish the planting of tobacco or to pool their crops when produced. The entire National Guard of the State seems to have been insufficient to meet and control the situation. In some counties the condition has been and now is but little better than anarchy. Even railway depots and structures have been burned because the National Guard was permitted to encamp upon the company's right of way. Within the last two

years the American Society of Equity has been effectively organized in this State and in Ohio.

In the early spring, at the time of sowing the tobacco beds, the tobacco growers in Ohio and Indiana were quite generally warned not to plant a crop this year because the crop produced and pooled last year had not yet been marketed, as satisfactory prices had not been obtained. These notices varied in form, but were all to the same effect. Many of them were mailed at postoffices in Kentucky; some of them from Cincinnati, Ohio; others from postoffices in Indiana. Yet others were tacked upon doors or left in mail boxes. Copies of some of the notices are submitted:

"Did you ever stop to think what you were doing by not cutting out the 1908 crop? You are running great risk by standing in with the Trust. We have cut out the 1908 crop and made better prices for you, which you are taking advantage of. We are holding our tobacco, and our people are suffering. *We say cut it out! You had better do so for your own good.*"

"Sir: Did it ever occur to you it would be better for you to cut your 1908 crop out? Do you not realize you and the tobacco trust are squeezing the life out of many women and children? *We say stop! What do you say?*"

"Sir: You had better cut out your 1908 crop of tobacco or you may not have any barn to put it in. We are watching you."

These notices were usually signed "Night Riders" or "N. R.," and with them matches were usually enclosed.

The tobacco beds of certain persons who failed to heed the warning given were destroyed in several counties of the State, and in Ohio barns were burned and other depredations committed. The Governor of that State recently informed me that Ohio has been compelled to expend during the spring and summer more than $40,000 to protect the property and lives of her citizens living in the counties of that State bordering upon the Ohio River, and that even then the Executive Department has not been able altogether to prevent the destruction of property. Conditions in Indiana became such in April and May as to cause many tobacco growers—men of integrity and of substantial property—to appeal to the Executive of the State for protection. The appeals became so numerous and urgent that I sent the Adjutant-General to make investigation. His investigation disclosed facts amply justifying the fear and alarm of those complaining. Other agents were employed by the Executive and further investigations made. In some instances local officials were appealed to; in other instances no appeal was made to them because of information that such officials were themselves either members of the organization, whose repre-

sentatives were infracting the law, or were in full sympathy with the infractions committed or threatened. After the tobacco crop was planted, threats and depredations in this State ceased for a while, but by the latter part of August both were renewed, the form of the notice sent out at that time frequently running as follows:

"Pool your tobacco. A hint to the wise is sufficient. N. R."

This notice has been almost invariably accompanied with matches, implying the intent of arson if the warning was not heeded. The tobacco crop while growing could not be destroyed without detection, but now as it is being cut and housed it may be easily destroyed by burning the barns or sheds in which it is enclosed. In the investigations made I have expended $680.00 of the Governor's Emergency Contingent Fund during the present fiscal year. I here submit extracts from some of the letters I have received:

"The tobacco industry in this part of the State amounts to thousands of dollars annually, which will be an entire loss unless some assurance is given at once. Our tenants are mostly panic stricken and are leaving us. Hoping you will give this your immediate attention and will find some way in which our rights and property may be protected, we are," etc.

"We believe they will try to destroy our property if we do not receive protection in some way. We believe we should have the privilege of raising on our own farms such crops as we see fit. We believe these threats are sent out by order of the Tobacco Association of Kentucky, and are intended to be carried out."

"Every person that raises tobacco in this vicinity has received similar notices. Will you please answer immediately and let us know what protection if any, we may expect?"

"What aid, if any, can the State furnish us in our efforts to peacefully follow our vocations?"

"Numerous threatening letters have been received and personal threats made. The situation is becoming serious."

"I have no doubt some barns will be burned and likely soon."

"I have no doubt that the plan is to destroy crops later on and later still to resort to the burning of barns. I have many times said in discussing the situation in Kentucky that I did not believe such practices would be permitted in our State."

"There is a spirit of anarchy and we ask you to take such steps as you think best to suppress it and bring the guilty parties before the courts. If we don't want the same reputation Kentucky has, you must 'nip it in the bud'."

"The man who received the letter is a respectable citizen and has on hand a fine crop of tobacco. He is scared almost to death and asked me to inform you. If he sells his tobacco he is warned to leave the county."

The above is from a letter received on the 22d inst.

"On one night during the latter part of August a supposed 'Night Rider' from the Owensboro Ferry went out through the Patronville neighborhood and tobacco district, and left letters in each mail box along the road, warning tobacco growers, and closing with the threat 'Save your back and your barn.' If Mr. Lieb had the welfare of his own constituency at heart he could have found all the information on this subject he wanted and would not now be asking the Governor for more specific information.

"In this vicinity the growers have had their tobacco plants destroyed and barns burned, two large barns, one recently. The owner of this barn was warned to cease growing his tobacco. That night they burnt his barn containing 11 head of horses and mules, 40 tons of hay, a lot of grain and all his farming implements."

This letter was received on the 21st inst.

These letters, complaints and appeals could be multiplied almost without number, but repetition is needless.

I am advised that two barns other than those mentioned in the communication above have been burned within the last thirty days, and I am in receipt of a statement from Spencer County, signed by three reputable citizens of that county, one a buyer of tobacco, one a prominent lawyer, and the other a substantial tobacco grower, setting forth conditions of a character well calculated to challenge the consideration of every thoughtful man, a copy of which accompanies this message and is filed herewith.

I do not charge the American Society of Equity with the threats made or the crimes committed. I do not know that those who make or commit them are members of such society. I do not here seek to fix either guilt or responsibility. I simply submit the condition.

The transmission of the letters and documents I have received, the information I have, or the particulars of the investigations I have made, in further detail than I have given them, is incompatible with the public welfare. With due deference to your honorable body and with all courtesy and respect I am compelled to withhold them. Their publication would subject the persons writing them and the persons who have brought me information to immediate persecution and attack. I deem it my duty to protect these people; to withhold all names, all letters and documents except the copy of the statement filed herewith, consent of the parties signing it to file it having been obtained. The right of the Executive to exercise his discretion in such case is clear and well established. The conditions described obtain in more or less degree in all the counties bordering upon the Ohio River in which tobacco is produced. In some of the counties the situation is really grave; the danger

imminent. I have convened the General Assembly in special session. The facts are before you. I have asked for additional funds and authority that I may, in some measure, discharge the duty of the State to the citizens whose property and lives are threatened. The responsibility is now yours. If you act upon the recommendations made and serious trouble is averted without the use of the appropriation made or the exercise of the authority conferred, no harm will have been done. If you fail to act and conditions that threaten finally obtain, I am at a loss to understand how you will justify your failure.

Respectfully submitted,

J. Frank Hanly,
Governor.

To His Excellency, J. Frank Hanly, Governor of the State of Indiana:

For your information with reference to the Night Rider situation in southern Indiana, we desire to submit the following statement as to the condition in Spencer County:

That Spencer County produced last year about 4,000,000 pounds of tobacco of the aggregate value of about $300,000; that there is now growing and in process of curing, a crop in excess in quantity and value of last year's crop; that Spencer County is the southernmost county in the State, and lies in close proximity to the Night Rider depredations in the State of Kentucky; that in many cases the tobacco crop is grown principally by tenants and ranges in acreage from one to about ten or twelve acres per tenant; that at Lake in Luce township, there is a Society of Equity organized for the purpose of pooling the tobacco crop in Spencer County; that for two years last past it has pooled some tobacco; that about eight weeks ago notices were distributed throughout the southern end of this county containing this language:

"Pool your tobacco. A hint to the wise is sufficient. N. R."

These notices were enclosed in a plain envelope, with from two to three matches, and left at the late hours at night at the gates, doors and barns of perhaps 125 tobacco growers. These notices were printed upon plain bond paper about two by three inches, and from all indications the printing was done with a rubber stamp. One or two days following the distribution of these notices certain officers of the Society of Equity canvassed among the respective farmers requesting them to sign pooling contracts, pooling their tobacco with this society. Some of the farmers signed through fear; some signed willingly; many refused to sign.

This notice produced fear and anger among many of the farmers. It is the general opinion of the citizens of Spencer County that there is danger of barns being burned and property destroyed in the event that the farmers do not pool their tobacco. It is also common talk among the farmers that if any barns of tobacco is destroyed, the origin of which can be traced to parties engaged in the pooling of tobacco that lives will be sacrificed and property belonging to those who are attempting to force the pooling of tobacco will also be destroyed.

The situation is such at the present time that if any barns are burned that can reasonably be traced to the Night Riders that all insurance on all tobacco barns and farmers' barns containing tobacco will be cancelled, and that buyers of tobacco in Spencer County will be compelled to go out of the market on account of not being able to protect their property with insurance; that some of the leading companies are now refusing, and have so notified their agents not to take any further risks on tobacco in Spencer County.

We desire to say to you that the chief objection by the farmers to pooling their tobacco in the pooling house of the above society is that the society requires them to deposit their tobacco in their warehouse to be classified, mixed and bulked with all tobacco placed in the pooling house; that the society does not give to the farmer any contract, bond, nor indemnity that it will safely keep his tobacco and indemnify him against damages in case it is injured in bulk or in handling. In fact the situation is simply this:

The farmer under the pooling agreement deposits his tobacco with the society and thereby loses all control over it as to its sale, the price, insurance and its return to the farmer in case it is not sold or handled properly; that the officers of this society grade the tobacco and control it until it is finally sold. These officers receive certain compensation for their services. The compensation of the officers and all expense is fixed and created by the society and the tobacco grower has no voice.

We also desire to call your attention to the fact that the present representative from Spencer County is the father-in-law of the attorney and confidential advisor of this Society of Equity; that this confidential advisor's father is the chief pooling officer of this society and is the grader and classifier of the tobacco pooled.

It is our opinion and the opinion of many of the leading citizens of Spencer County that the Governor should be clothed with such power as will enable him to deal promptly and effectually with any depredations that may be committed. A stringent law should be passed to punish those who are guilty of the destruction of property, also that a law should be passed to mete out severe punishment to those who send out these notices as referred to above. We also desire to say to you that if you so wish we will furnish you with names of those who have received Night Rider notices, supported by their affidavit as to their receiving same and that they desire protection from the State along the lines set out herein, as there have already been two barns burned in Spencer County about four weeks ago on the same night, origin of which is mysterious and unknown.

Respectfully submitted,

(Signed) T. R. Hardy,
Allen Payton,
J. J. Brown.

"NIGHT RIDER" SITUATION IN INDIANA.

SEPTEMBER 24, 1908.

Mr. Speaker and Gentlemen of the House of Representatives:

The resolution of the House of Representatives, requesting "more specific information" relative to the situation in the tobacco district of the State and to certain expenditures made from the Governor's contingent fund, has been received and considered.

(Remainder of message similar to that to the Senate, p. 201.)

CHARGES MADE BY LUTHER W. KNISELY.

SEPTEMBER 29, 1908.

Mr. Speaker and Gentlemen of the House of Representatives:

I am advised, through the press of this date, that Luther W. Knisely, a member of the House of Representatives, has sworn to and published the following statement:

"I, Luther W. Knisely, a representative in the General Assembly of the State of Indiana from the county of Dekalb, and as such being in Indianapolis in attendance upon the special session of said General Assembly, on the morning of September 26, 1908, do state under oath that upon the said morning of said date and twenty minutes before the House convened Senator Wickwire came to me and took me and wanted an interview. He made me the proposition that if I would vote for the county local option bill I could have a position. I asked him what kind of a position. He said the position would pay from $700 a year up to $2,000 and better, according to my ability to fill the same.

I made the statement to him that he had no authority to give these positions. He wanted to know if I would accept any higher authority. I said I could consider the matter and went back to the House. About ten minutes before the House opened Senator Wickwire came to me and took me to Governor J. Frank Hanly, who conducted me into his private office. There the Governor requested me to vote for the county local option bill, saying that if I would I would be well taken care of. I said: 'Governor, I am a democrat; if you were put in my chair and I in yours, what would you do in this case?' He answered: 'I would most certainly accept.' He also said: 'Knisely, this is the opportunity of your life.' I answered: 'I beg to differ with you.' Then the conference ended and I returned immediately to the House chamber."

I am also advised, through the public press, that Mr. Knisely is advising against any investigation of his charge by the House.

The charge made is a grave one. It involves the honor of the House of Representatives, the honor of a member of the Senate, and the honor of the Governor of the State of Indiana. The facts relating to this charge should be known by the House. If they are true, I ought to be impeached and removed from office. If they are false, I am entitled that their falsity should be disclosed.

Knowing that the charge is wickedly and maliciously false and without any foundation or semblance of truth, I deem it my duty to call your attention thereto and to request that a committee be appointed, with power to send for persons and papers and to administer oaths, to make full and complete investigation of said charge, and return the facts to this House for such action as in its judgment shall be proper in the light of the facts disclosed.

Respectfully submitted,

J. Frank Hanly,
Governor.

Senate Veto Messages, Sixty-Fourth General Assembly

SENATE BILL No. 48.

FEBRUARY 20, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 48 without my approval. I do so with reluctance and regret, for I am conscious that my act may be criticised by some of the persons whom it is attempted to make beneficiaries under the bill. I have, also, a sincere and profound appreciation of the services rendered by the soldiers, sailors and marines of the country. Their valor and sacrifices saved and preserved the integrity of the republic and carried its flag in a march of glory around the world.

But for the fact that my duty to the State precluded my doing so I would have gladly signed this bill. After the best thought of which I am capable, however, I am compelled to believe that the good of the public service and the welfare of the institutional life of the State, penal and benevolent, require that the measure should not become a law. I have therefore preferred to accept the hazard of criticism rather than lack the courage to do what has seemed to me to be a plain public duty.

The bill provides that any honorably discharged soldier, sailor or marine of the United States, who is a resident of Indiana, and who makes application for appointment, and who served in the Civil War, the war with Spain or the war in the Philippines, and who

"is honest and competent, shall be given the preference for any appointment to be made by whatever administrative authority conferred by the State of Indiana to any position paying not more than ninety dollars per month in any penal institution, benevolent institution, public building or other institution or employment maintained or conducted by the State of Indiana."

This would compel the appointing power to appoint them in every such instance, or, by the act of non-appointment, to brand them either as dishonest or incompetent. Failure to appoint them could be justified, under the law, solely upon the ground that they are either dishonest or incompetent. I cannot sign an act that would compel me to do that.

It will be observed that the proposed law does not require the preference to be given to the class named where their qualifications are equal to the qualifications of other citizens, but whenever they are applicants and are "honest and competent."

"Competent" is defined by the Century Dictionary to mean "having ability or capacity." There are degrees of competency, degrees of ability, and degrees of capacity. Ten men are applicants for a position; all of them may be competent; all of them may have ability; and all of them may have capacity; but some of them are more competent, have greater ability and possess greater capacity than some of the others; and of the ten, one is most competent, has the greatest capacity and possesses the greatest ability of all the ten. In such a case he is the one of all the ten who ought to be appointed, for the welfare of the State and the good of the public service or of the institution the control of which he is to assume. Under the proposed legislation he could not be appointed if any one of the ten applicants happened to be an "honest" soldier, marine or sailor who is competent to discharge the duties of the position, though it stands confessed that such soldier, marine or sailor is the least competent of all the ten applicants.

It is now forty years since the Civil War closed and the armies of Grant and Sherman returned to civil life—more than an average lifetime. Few survivors of that war are today under sixty years of age. Physical and mental infirmities have impaired in many instances both body and mind.

The above language limits the appointing power of the entire executive and administrative departments of the State in making appointments to any positions in the service of the State where the compensation is not more than ninety dollars per month, to soldiers, sailors and marines of the United States, who served in either of the wars named, whenever any such soldier, sailor or marine, who is "honest and competent," is an applicant.

If the class of citizens named in this bill are entitled to appointment to all positions in the public services where the compensation is not more than ninety dollars per month, upon application made by any of them who are "honest and competent," then they are equally entitled to appointment to all positions in the public service upon application made by any of them who are "honest and competent," however great the compensation or arduous and difficult the duties of such positions.

I do not understand why an arbitrary limitation to positions paying not more than ninety dollars per month has been made. It cheapens the class of citizens it seeks to befriend, and is in effect a legislative declaration that the public services of all such citizens are limited in value to less than ninety dollars per month—a declaration in which I decline to join.

Should this bill become a law every appointment made in any of the institutions of the State where the compensation is not more than ninety dollars per month; every member of every board of trustees, board of control or board of managers of any such institutions; every member of every police board in every city operating under the metropolitan police law of the State; and every appointive position in every department of the State government not paying more than ninety dollars per month, would have to be made from ex-soldiers, sailors or marines of the United States, if any such were applicants for appointment and any of such applicants were "honest and competent."

While many of them are still entirely competent to discharge the duties of any position included within the provisions of this bill, many thousands of them are competent to do so only in a limited sense, and have certainly ceased to be the most competent persons for such positions. Not all, but many of them, lack the strength and fiber, the tenacity of purpose, the firmness of will and the grasp of large affairs essential to the most capable and efficient administration of the great penal and benevolent institutions of the State—institutions requiring the expenditure and handling of hundreds of thousands of dollars of public funds each year. Yet the boards of control of all these institutions, under the provisions of this bill, would have to be made up of soldier, sailor and marine applicants if they were "honest and competent," though they were far less competent than thousands of other and younger men in the State, whose services could be had if the executive or appointing power were left free to select from the entire body of our citizenship.

This administration will not be satisfied with merely competent men for these State institutions. It insists upon having the privilege of selecting the *most competent* and the *best men* for these positions afforded by our entire citizenship, if such men can be induced to enter such service.

Every one upon whom the responsibility of these appointments has ever rested has found the field from which to select none too large, though he had the whole body of citizens from which to make selection.

Then, too, the public service ought to be open to all men and the State ought not to be deprived of the services of its best and most capable citizens by any limitation whatever. This is especially true of the State institutions mentioned. If there be any citizens whose services to the country in time of war and whose fit-

ness for these positions justify the partiality of the appointing power, and they are found to be willing to accept positions in the public service, this administration will be only too glad to avail itself of their services and thereby recognize the services they have already rendered in behalf of the country on the field of battle.

Another well-known fact to those who have had experience in public affairs touching the management of our State institutions is that the best and most competent persons, those who possess the highest qualifications for positions on the institutional boards, are rarely found among those who are applicants for appointment thereto. The necessity of going outside of all applicants and of selecting men whose character, habits and peculiar ability give them special fitness for such positions, has been felt by every man who has occupied a position with appointive power.

In some instances I have already gone outside of all applicants and selected persons whom I have believed to have a special fitness for the position in question, and I hope to do so many times during this administration, unless prevented by restrictions laid upon me by legislative action.

If I can find such men among the soldiers, sailors and marines of the wars named, I shall be glad indeed to recognize their services to the country in the hour of its need and appoint them. But if I cannot, I shall unhesitatingly make selection of others, feeling that in so doing I am only discharging my duty to the State whose servant I am. The administration ought to be left free to call to its aid the services of the most competent men in the State without regard to past military service.

In vetoing this bill I am simply saving to one of the States of the republic the Union soldiers, sailors and marines fought to save, the opportunity of obtaining the highest and best possible administration of its public affairs. The motive that prompts me to do it does not widely differ from the motives which prompted the soldiery of the country to the performance of its duty in the years gone by.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 80.

FEBRUARY 20, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 80 without my approval. The law as it now is provides adequate redress for every substantial injury to the peaceful possession or quiet enjoyment of the home or property of any citizen arising from the maintenance of a private nuisance.

If such peaceful possession or quiet enjoyment is impaired in any substantial degree, by anything which is in fact a nuisance maintained by an adjoining property owner, damages may be recovered and the maintenance of such nuisance enjoined under existing law in any court of competent jurisdiction in the State. There must, of course, be substantial invasion either of such possession or of such enjoyment, and the thing sought to be enjoined or abated must be a nuisance in fact before an action for damages or injunction will lie. This is as it should be. The law is right as it is.

The bill returned herewith makes

"any fence or other structure in the nature of a fence unnecessarily exceeding six feet in height, maliciously erected or maintained for the purpose of annoying an owner or an occupant of an adjoining property,"

a private nuisance *per se*, whether it be so in fact or not, or whether or not there is in fact any impairment of such adjoining owner's possession or enjoyment of his property.

Actual injury to, or impairment of, such possession or enjoyment by such adjoining owner, is not a necessary element at all under Section 1 of the bill. The only elements necessary to constitute the fence or structure a nuisance are, an unnecessary height of more than six feet, a malicious purpose in the mind of the person erecting or maintaining such fence or structure, and a purpose to annoy the owner of the adjoining property. Such a fence or structure maintained with such a purpose is declared to be a nuisance *per se*, and an action will lie though such fence or structure results in no injury or impairment whatever to the possession or enjoyment of the adjoining owner's property.

The proposed law is wholly unnecessary and is petty in character. It is calculated to engender ill-will and to intensify existing and trivial differences between neighbors, and will tend to multiply

frivolous and spiteful litigation between persons who ought to be friends.

Section 3 of the bill contains a declaration of an emergency for the immediate taking effect of the act upon and from its passage. An emergency clause has no justification in a bill such as this. By it the bill makes unlawful today what was lawful yesterday, and gives the citizen no opportunity to conform to the change in the law. It makes it possible to bring an offending citizen into court the moment the passage of the bill is completed by executive approval. The bill creates a new cause of action and imposes new liabilities instantly and without warning. This ought not to be done.

An emergency for the immediate taking effect of an act from and upon its passage ought rarely, if ever, to be declared where the act carries a penalty for its violation, imposes a forfeiture, or makes unlawful an existing deed or thing which was lawful before the passage of such act.

Under the Constitution of the State the General Assembly has authority to declare the existence of an emergency for the immediate taking effect of a legislative act. But it ought not to do so arbitrarily. There should exist some reason for such declaration, and where no emergency does in fact exist, none should be declared to exist. There is absolutely no emergency of which I have been able to learn for the immediate taking effect of this act.

The act of legislation, under the Constitution of this State, is not complete—the passage of a bill is not accomplished—until it receives executive approval, or, having received executive disapproval is passed by the General Assembly notwithstanding such disapproval. There being in fact no emergency for the immediate taking effect of the act in question, and the act itself being of doubtful propriety, creating a new cause of action and providing for penalties for its violation, I cannot join in the arbitrary declaration of the existence of an emergency.

I have given more consideration in this message to the bill than its importance deserves; but I have done so in the hope that the General Assembly may be induced to adopt a more conservative course in declaring an emergency for the immediate taking effect of measures, when in fact no such emergency exists, or where the measures create new causes of action, or carry penalties for their violation, or impose forfeitures.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 17.

FEBRUARY 23, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 17 without my approval. The bill seeks to legalize a certain gravel road proceeding in Orange County, to validate the bonds issued therein and the assessments made for the creation of a fund with which to retire such bonds. The measure is special and local in its character. It has application to but one county in the State and to a particular proceeding in that county, and involves the assessment and collection of taxes for road purposes to the extent that it seeks to validate the bonds issued and the assessments levied for their retirement.

Section 22 of Article 4 of the Constitution of the State provides:

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say * * *. For laying out, opening and working on highways * * *. For the assessment and collection of taxes for * * * road purposes."

As the case sought to be reached by the bill now stands, the bonds issued in the proceedings sought to be affected are invalid, and the assessments are also invalid, because of errors in said proceedings.

The measure under consideration is forbidden by the Constitution. It is an attempt to validate said proceedings, said bonds and said assessments. It is, therefore, in effect, an attempt to authorize an assessment and collection of taxes for road purposes by an act local and special in character, and is clearly within the constitutional inhibition.

The question here involved has recently had the consideration of the Supreme Court of the State in the case of Board v. Spangler, reported in the 159 Ind. 579, where the unconstitutionality of a like statute is declared.

In that case a proceeding for the establishment of a free gravel road in Owen County was pending at the time the act of February 7, 1899, limiting the issue of bonds or other evidence of indebtedness for the construction of free gravel or macadamized roads to four per centum of the total valuation of the taxable property of the township, became a law. On March 4, 1899, an act, containing an emergency, was passed, exempting proceedings in counties hav-

ing a population between 15,000 and 15,050, and which were pending at the time of the taking effect of the first act, from the provisions of said act.

Afterward, relying upon the validity of said act of March 4, 1899, a contract was let in said gravel road proceedings in Owen County for a sum in excess of four per centum of the taxable valuation of the property of the township in which such road was located.

In 1901 the General Assembly passed a curative act, solely applicable to said proceedings in Owen County, by which all of said proceedings and said bonds were declared validated.

In the bill returned herewith said proceedings in Orange County, including the contract, the bonds and the assessments, are sought to be validated substantially as it was sought by the act of 1901 to validate the contract, the bonds and the assessments in the Owen County proceedings.

In the Owen County case the court held that while Owen County was not mentioned by name in the act of March 4, 1899, the court would take judicial notice of the fact that such act applied to Owen County alone, it being the only county in the State having a population between 15,000 and 15,050, and that the act, in effect, sought to provide that the provisions of the general act of February 7, 1899, limiting the issue of bonds, should not apply to certain described proceedings to improve gravel roads in the county of Owen.

In passing upon the validity of the act of March 4, 1899, the court said:

"The attempted exclusion of pending proceedings for the improvement of gravel roads in Owen County from the operation of the general law prohibiting an issue of bonds for gravel road purposes in excess of four per centum of the taxable valuation of property of the township, was in effect an attempt to provide by a local law not alone for an issue of bonds, but for the levy of a tax that, under existing law, constitutes the means of retiring such bonds. We think that it was not competent for the General Assembly to make such exception. The act of March 4, 1899, does not purport to be a curative act, and it is not curative in the sense of attempting to validate a past proceeding, but we think that its validity is to be tested by the considerations that are applicable to statutes that purport to be curative. In cases where it would have been originally competent for the General Assembly to have authorized particular proceedings upon the part of a board or other official, the same source of power may ordinarily validate the proceedings; but unless the General Assembly had the power to have authorized the proceedings originally by an act that in its substance would have been of the same character as the curative act, then the curative act would be invalid.

Walsh v. State, ex rel., 142 Ind. 357, 33 L. R. A. 392; Schneck v. City of Jeffersonville, 152 Ind. 204.

"The act of February 7, 1899, was general in its character, and if it had contained an exception that excluded from its operation proceedings generally that were then pending, we take it that it would not have thereby lost its general character. It cannot, however, be contended with any show of reason that it would have been competent to have limited said act so as to exclude from its operation proceedings to improve highways in Owen County, thereby legislating for Owen County in such particular. This is in substance what it was sought to do by the act of March 4, 1899. As the subject of the legislation falls within Sec. 22, of Article 4, of the State Constitution, we hold that the proceedings could not be validated by any act that could properly be characterized as local or special."

The curative act of 1901 was also held invalid for like reason. In speaking of that act, the court said:

"The act of 1901 is also invalid. The attempts to validate the contract and the assessment of taxes to pay the bonds upon their maturity were abortive, because of the special and local character of the act; and as it is not to be presumed that the issue of bonds would have been declared validated by the General Assembly, had it been advised that there was no power to retire such bonds in the manner proposed, the entire act must be regarded as a nullity."

I believe the above case is decisive of the question involved in the bill returned herewith; that it is controlling upon both the legislative and executive departments of government, and therefore precludes me from giving it my approval.

It is, perhaps, proper, however, to suggest that the relief sought by this bill is not improper, and that a general measure validating all gravel road proceedings in the State, where the defects in such proceedings are only technical in character, would be a valid exercise of the legislative power.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 160.

FEBRUARY 27, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 160 without my approval. This bill provides for the reimbursement of Henry J. Hostettler, late trustee of Clear Spring township, Lagrange County, out of the public funds of said township, for certain moneys of such township coming into his hands as such trustee, and by him deposited in a certain banking institution, which moneys were lost to him through the failure of such institution, and which amounted to the sum of $1,812.00.

Other bills providing for the reimbursement of other public officials of Lagrange County, for public moneys lost in like manner, have received the sanction of the General Assembly. The aggregate appropriation of public funds belonging to the citizens of this county made by bills already passed exceeds $3,400.00.

Similar bills for the relief of certain other township and county officers of Elkhart, Dekalb, Laporte, Jasper and Steuben counties, on account of similar losses, have passed both houses of the General Assembly. The aggregate appropriations of the funds of these several counties and the several townships thereof, made by the several measures already passed, are more than $65,000. This is a goodly sum to give away. And yet, as shown by the calendars of the respective houses of the General Assembly, other measures having like provisions and like purposes are far on their way toward legislative approval.

I am unable to state with accuracy the amount of the aggregate appropriations carried by these several pending bills, but the grand total of such appropriations made by these bills, passed and pending, is startling in amount and is certainly sufficient to challenge the thoughtful consideration of every member of the General Assembly.

The character of this legislation, the number of public officials relieved of just and solemn obligations, and the great sum of money appropriated by it in the aggregate from the treasuries of the several townships and counties affected and placed in the pockets of private individuals as a gift, have caused me to consider with thoughtful care two questions which seem to me to go to the very heart of each of these measures.

First. Does sound public policy admit of such an appropriation of the public funds of a township or county?

Second. Is such legislation inhibited by the Constitution of the State?

I am compelled to answer the first of these questions in the negative. A public policy which relieves from liability a public official who makes a deposit of public funds entrusted to his care in a bank which fails, and in which failure such funds are lost to him, is unsound and dangerous. If such policy be generally adopted and long continued, it will inevitably beget loose and careless administration, multiply such losses and mulct the people daily by the use of public funds raised by taxation to recoup private losses.

Between the trustee named as the beneficiary in the bill returned herewith and the people of his township there was an implied contract. A contract none the less binding and sacred because it was unwritten. On his part this contract required him to faithfully discharge his duties as such official and account to his township for all moneys belonging to such township and coming into his hands. On the people's part it required them to pay him the salary fixed by law. Then, in addition, that the assurance on the part of the trustee might not fail, the law required from him a solemn and binding written contract with surety that he would faithfully discharge his duties and account for all moneys belonging to his township which should come into his hands. The amount of money received by him measured his liability. He was bound, as a public officer, to keep the funds in his hands safely. He was, in fact, an insurer of the safety of the funds in his hands and was bound to account for the moneys lost by him, though lost without his fault.

Good morals and a sound public policy require that these contracts, both the implied and the written one, shall be kept, and that there shall be no impairment of either of them, and that there shall be no relief from the penalties by them imposed.

When the beneficiary named in this bill sought and obtained his office he knew the obligation he would be required to assume. He knew, also, the hazards he would incur, and that the extent of his liability would be measured by the amount of money coming into his hands. Knowing this he was not deterred from accepting his trust. On the contrary, he chose to qualify and to enter upon the discharge of his duties as such trustee.

Having entered upon the discharge of such duties, he was not compelled by any public necessity to withdraw in bulk the funds

due his township from the county treasury. He could have left them there until required for public use. While such funds were in the county treasury he, as township trustee, would have carried no hazard of their loss, nor would he have incurred any liability had they been lost while in such treasury. He chose to remove them in bulk and in larger sums than public necessity required and to place them on deposit in a bank of his own choice. The bank failed. The loss of funds so deposited was his individual loss. The deposit of such funds in such bank was his affair and not the public's. Knowing the law, he chose to carry the hazard, to assume the risk and to accept any liability consequent upon the loss of any part of such funds, and now, that such loss has come upon him, he is in no position to ask relief from the requirements imposed upon him by the law. He has no claim, either moral, legal or equitable.

As to the second question, the inhibition of the Constitution against such measures as these, the law is too clear to admit of serious debate.

The decision of the Supreme Court in the case of Mount, Trustee, v. The State, ex rel. Richey, 90 Ind. 29, has been cited in support of the constitutionality of the bill by its friends and by the friends of the several kindred measures hereinbefore referred to. I have given consideration to that decision. It was written by a learned and eminent judge, in whose ability and learning I have very great confidence. The decision is in point and the bill is clearly within the rules therein declared, in so far as it seeks to reimburse the beneficiary on account of public funds lost by him, but it is not in point and the provisions of the bill are not within the rules of the decision in the case named in so far as it seeks, by direct provision, to relieve such beneficiary and the sureties on his official bond and discharge them from any and all liability on account of such bond for the payment of the money due the said township from such beneficiary.

I am thoroughly convinced, however, that the decision is wrong in principle; that it is opposed to the great weight of judicial decision upon the question involved; that it rests upon a false premise, involving mixed questions of law and fact; and that it has been modified, if not overruled by implication, in a subsequent decision of the Supreme Court, and that it has ceased to be the law. And I am quite as thoroughly persuaded that it never ought to have been the law.

The bill is silent upon the question as to whether or not the trustee sought to be relieved has paid to his township the moneys

lost by him. If he has paid the township the money lost, he occupies to his township, as to such money, the position neither of debtor nor creditor. He has no right in law or in equity to the return of his money. In the absence of special legislation for the purpose such money cannot be returned to him. A return of it would amount to nothing but a gift, pure and simple, *a gift, too, of public money for a private purpose.*

That the General Assembly has no constitutional power to make an appropriation of public funds raised by taxation to a private purpose is agreed by all authorities. This is conceded in the decision in the 90th Ind., above cited. On this point I submit the language of the decision:

"It is, perhaps, true that the legislature cannot authorize the assessment of a tax for a mere private purpose * * *."

The writer of the opinion states the basis of the decision as follows:

"Reimbursing a public officer for the loss of public funds, occurring while he is engaged in discharging public official duties, cannot be deemed an appropriation to private purposes."

This is the sole basis of the decision, and the pith and point of the decision itself is embraced in the following sentence:

"We do no more than decide that the legislature has power to direct the application of township funds to the payment of claims growing out of the discharge of official duties by the trustee where the claims are of a public nature."

The premise stated above is a mistaken one. It involves two mixed questions of law and fact, both of which are erroneous:

First. It assumes that the money was lost by the trustee "while engaged in discharging public official duties."

Second. It declares that an appropriation reimbursing a trustee for the loss of public funds "cannot be deemed an appropriation for a private purpose."

When the trustee drew the money from the treasury in bulk and before it was needed to meet the public expenses of his trust, and deposited it in a bank, he was not engaged in the discharge of any public official duty. No duty he owed to the public and no duty imposed upon him by law required him to withdraw the money from the county treasury in bulk before there was a necessity to pay it out for the public benefit and deposit it in a bank. That act was a private act in which the public was not concerned. It was done either for his own convenience or profit.

If, having made this disposition of the money, he loses it through the failure of the bank, he is liable for the loss. His bond is also liable. He or his bondsmen must make it good. Knowing his liability and the liability of his bondsmen, he does make it good by restoring to the public fund the sum lost. This done, the transaction is closed. It never was at any time a public official act, but the private act of a public official, which was not required by law or by any duty he owed to the public. But whatever the act—private or official—the transaction is a closed incident. The township has lost nothing. The books are square. He has no claim. The township has no claim. He goes out of office with a clean account.

It is in that condition that we find him. While he is in that condition it is proposed to do what? To appropriate public money to pay an obligation which the public owes to him? Not so. The public owes him no obligation, legal, moral or equitable. But it is proposed to appropriate *public funds, raised by a tax upon the property owned by the people of the township, to make him a gift for his private and personal benefit*, the only basis of which is public sympathy for a private misfortune. To say that such an appropriation of public funds made under such circumstances is for a public and not a private purpose, is to distort a self-evident truth, one so plain that there is room for neither cavil nor dispute.

The foundation upon which the decision is based, it will be observed, melts away under analysis and leaves no grain of fact or truth upon which it may rest, and the decision itself must therefore fall.

It will be remembered that in the language of the court itself the opinion does "no more than decide that the legislature has power to direct the application of township funds to the payment of claims *growing out of the discharge of official duties by the trustee, where the claims are of a public nature.*"

Neither the claim in the Mount case, supra, nor the claim now under consideration grew out of the discharge of official duties, nor was the Mount claim or is this of a public nature.

These considerations led the Supreme Court to correct the above decision, in the case of McClelland, Trustee, v. The State, ex rel. Speer, 138 Ind. 321, and to decide that the levying of taxes upon the property of a township to create a fund to reimburse a trustee for money lost under such circumstances would be the taxing of the property of the citizens of the township for a private and not a public use.

In that case the court said:

"Here was an unconstitutional discrimination between citizens, in this, that the act arbitrarily requires the taxpayers of Wayne township to give the relator the sum of $2,812.90 and fastens upon a township and its taxpayers a debt for that amount, for which the township never received anything and for which it never gave its consent nor contracted a liability. In our opinion the General Assembly is not vested with power to legislate a tax upon the people of a township for a private purpose."

It is urged that in the McClelland case, just cited, the question involved was different from the question involved in the Mount case, supra, in that the money lost by the trustee in the McClelland case was not raised by taxation upon the property of the people of the township whose property it was proposed to assess to create a fund with which to reimburse the trustee. In part that is true, but not wholly so. A part of the funds lost by him *were raised* by taxation upon the people of the township whose property the legislature proposed to retax for the purpose of creating a fund with which to reimburse such trustee.

In passing upon the question of what is a public use, the court, in the McClelland case, aptly said:

"We think the law is well settled that nothing can fairly be regarded as a public use, unless it has a state use or a national use in furtherance of a state use. To defray the necessary expenses of a township, or to make necessary improvements in a township, is a state or public use. But the donation of a large sum of money to the relator in this case cannot be regarded as a public use of money."

It is true that in the above case the act provided for the levy of a tax upon the property of the citizens of the township from which to create a fund with which to reimburse the trustee, there being no funds in the township treasury out of which he could be reimbursed. We submit, however, that there is no distinction in principle between that case and the case involved in this bill. If the General Assembly has no power to legislate a tax upon the people of a township for a private purpose, it has no power to take the funds of a township, which have been raised by a tax levied upon the property of the people of such township, and appropriate them to a private purpose. If the General Assembly is inhibited from laying a tax for a private purpose, it must necessarily be inhibited, on like principle and for like reasons, from appropriating for a private purpose the money which has been raised by taxation.

The levying of a tax, or the appropriation of money raised

by taxation, for the reimbursing of the trustee named in this bill, would be, in effect, taking the property of one man to bestow it upon another. In effect, it would be a taking of the property of the citizens of the township affected for a private and not a public use. It would be, in plain English, a robbery and a spoliation of the citizens of the township for the benefit of the individual named as the beneficiary in the bill—a robbery and a spoliation for which no warrant can be found in the Constitution of the State, in law, in equity, or in the conscience of honest men.

The bill under consideration provides specifically for the levying of a tax for the creation of a fund to recoup the township for the money appropriated by it for the reimbursement of the trustee.

That it is an attempt to make an appropriation of public funds for a private purpose, and, in effect, to take private property for private use, through the appropriation of public funds which have been raised by taxation, and that such an attempt is unconstitutional, is well established by judicial decision. In fact, there is almost an unbroken line of authority to that effect:

McClelland, etc., v. The State, 138 Ind. 321;
State, etc., v. Tappen, 29 Wis. 664;
People v. Supervisor, etc., 16 Mich. 253;
Bristol v. Johnson, 34 Mich. 123;
Hoagland v. City of Sacramento, 52 Cal. 142;
Lowell v. City of Boston, 111 Mass. 454;
Thorndyke v. Inhabitants of Camden, 82 Me. 39;
Cooley on Constitutional Limitations, pp. 332-341.

On the other side, the case in 90 Ind., supra, stands practically alone. The premise upon which the decision rests, as we have shown, is a mistaken one. It consists of a bare statement without a word of reasoning or the citation of a single authority to support it.

In the discussion of the power of the legislature to make such an appropriation as was there sought to be made, the case of Brooks v. Landsborough, 36 O. St. 227, is cited, but the citation is somewhat unfortunate, in that the Ohio court, in its decision, was construing a law entirely different in principle from the one before the Indiana court. In the Ohio case the treasurer of a school district was robbed. He was unable to replace the money. The legislature passed an act relieving his bondsmen and authorizing the district officers to levy a tax upon the property of the district to reimburse him, *after first submitting the matter to the vote of the electors of the district and receiving their approval.* It will be

observed that the bondsmen were not relieved and that the tax was not levied by the act of the Ohio legislature. It only provided a way by which the people of the school district might relieve the bondsmen and levy a tax.

That case, we submit, is slight authority for an act which levies a tax, or takes funds raised from a tax levy, for the reimbursement of public officials for money lost by them, and does so without the consent of the citizens taxed.

There is yet another reason, as before indicated, why the bill returned herewith is unconstitutional, and which takes it clearly outside of the rule laid down by the court in the case of Mount v. State, supra. It provides

"that the said Henry J. Hostettler and the sureties on his bond as trustees shall be released and discharged from any and all liability for the payment of the money of said township so lost."

This provision is clearly within the constitutional inhibition contained in Section 24 of the Bill of Rights which provides that

"No * * * law impairing the obligation of contracts shall be passed."

It is also in direct conflict with the decisions of the Supreme Court of the State.

The case of Johnson v. The Board of Commissioners of Randolph County, reported in the 140 Ind. 152, is directly in point. The decision there rendered has never been criticised, modified or overruled, so far as I have been able to ascertain. The above case involved the validity of a statute which sought to relieve a county treasurer and his bondsmen from liability on account of the official bond of the treasurer for money belonging to his county and lost by him.

The language of the statute seeking to relieve the official and his bondsmen from liability on his official bond, is substantially the same as the language used in the present bill.

In speaking to the question of the constitutionality of the statute, the court said:

"The act could not have been any more violative of the Constitution, both state and federal, if it had provided that the obligation of the bond be, and the same is, hereby abrogated and annulled. Because, if the Legislature can release a party from a part of the obligation of his contract, it can release him from all of it. Both Constitutions forbid the Legislature to pass a law impairing the obligation of contracts * * *.

"We, therefore, hold that the act referred to was and is void because it violates the constitutional provisions above referred to."

Because of the considerations named above, I have been unable to give my approval to this measure, and I venture to express the hope that there is not a member of the General Assembly who will be willing to sustain the bill and the kindred measures still pending, before the General Assembly, upon a careful consideration of the authorities cited, in view of the public policy involved, and his oath to support the Constitution of the State.

Respectfully submitted,

J. FRANK HANLY,
Governor.

SENATE BILL No. 174.

FEBRUARY 27, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith without my approval, Senate Bill No. 174, for the relief of William Watters, Treasurer of Lagrange County.

The bill provides that

"said Watters and his sureties are hereby released and discharged from any and all liability for the loss of said money."

This language refers to the loss of certain public moneys coming into the hands of said Watters as treasurer of said county, and by him deposited in a certain bank, and lost through the failure of such bank.

The bill also provides for the levying of a tax for the creation of a fund from which to recoup said county for the money appropriated for the purpose of reimbursing said treasurer.

I withhold my approval from the bill for the following reasons:

First. It is against public policy.

Second. It is unconstitutional.

My reasons for my action are fully set forth in the message accompanying Senate Bill No. 160, this day returned to the Senate without my approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

SENATE BILL No. 38.

FEBRUARY 28, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 38 without my approval. The bill provides for certain changes and innovations in matters of pleading and practice in civil, probate, special statutory and criminal proceedings, and purports to "provide for the removal of technical defects and for the decision of causes upon the substantial issues between the parties," but its effect, if it became a law, would be to increase appeals and multiply reversals rather than to minimize them.

I agree with the friends of the measure that pleading and practice is too technical in the courts of Indiana, and that there are too many reversals of causes upon grounds other than the merits of such causes. The sole object of judicial machinery should be to secure exact justice between men. In so far as existing judicial machinery falls short of that purpose, it is defective and ought to be amended.

The frequent reversal of causes for slight errors in the admission of testimony or trifling slips made by the trial judge in the progress of the trial, impairs the confidence of the public in the certainty of justice, and is to be greatly regretted. There are some provisions in the bill under consideration that, if enacted, would tend to minimize such errors. These appeal to me, and I would give my approval to them if I could. But there are provisions in the bill which I am confident would multiply such errors, and which preclude me from assenting to its passage.

Sections 1 to 5, inclusive, require that all demurrers, motions to quash, or motions of any kind, addressed to any pleading, containing two or more paragraphs or counts, or to two or more subjects or questions; and that two or more joint objections to any motion or proceeding, or to two or more items of evidence, shall be held to be separate and several, and shall be sufficient to challenge, separately and severally, the sufficiency of each paragraph or count of any such pleading, or of each of such subjects or questions, or the correctness of the ruling of the court upon each of such items of evidence or upon such motions.

Said sections also provide that any exception taken to any ruling of the court shall be held to be separate and several objections to each question ruled upon, though it be a joint exception in fact.

They further provide that exceptions taken to the giving, refusing or modifying instructions, though such exceptions be general in character, shall be held to be separate and several, and that general assignments of error in motions for a new trial shall be held to be separate and several.

They also further provide that any demurrer, motion, objection, exception or assignment of error, in which two or more parties shall join, shall be held to be separate and several.

In short, it applies to the whole procedure of issue and trial, the vice embodied in the general demurrer for want of facts now allowed by the law.

I know of no one rule of practice which makes it possible to plant so many errors in causes pending in the *nisi prius* courts of the State as does the right of general demurrer.

Lawyers find what they conceive to be a fatal defect in a pleading filed by opposing counsel. They file thereto a general demurrer for want of sufficient facts. Argument is made upon the demurrer, but the real defect is adroitly and purposely concealed and not presented to the court, lest the court discover and permit amendment and thereby remove the chance to implant error in the record of a cause of doubtful merit. Not being presented, the court overlooks it, and overrules the demurrer. Counsel promptly except to the ruling. The trial proceeds. The cause is lost on its merits. Then the knowledge of the existence of a fatal error in the record impels both counsel and client to take an appeal. The appeal is taken. Once in the Supreme Court, the battery so carefully masked in the trial court is revealed, the error pointed out, and the cause reversed.

The provisions contained in the first five sections of the bill will make possible a like practice in all the proceedings of causes in the trial court, involving the issues, the trial and the motion for a new trial. If enacted, they will inevitably increase appeals and multiply reversals, and prove a grievous disappointment to those who enacted them with the belief that they would minimize appeals and reversals.

If there is real desire to minimize appeals and reversals, an act precluding the reversal of a case on account of any ruling of the trial court on a demurrer for want of sufficient facts, except for such causes as are specified and set out in such demurrer, ought to challenge the favorable consideration of the General Assembly, and, if enacted, it would do much toward accomplishing the object desired.

Section 10 of the bill is also objectionable. It provides that any rule made by any court shall not be binding upon the court when its enforcement will work a hardship or injustice.

Rules of court, when adopted and declared, now have the force and effect of statutes, and are binding upon the court who makes them, upon all counsel and upon all litigants who come before such court. They rest upon and bind all alike, and so they ought to do.

If a cause has progressed until a rule of court attaches thereto, the court ought not to have the power to waive the rule and take such cause out of the operation of such rule upon discretion.

Section 11 provides that where one division of the Appellate Court has rendered a decision, one or more judges of the other division of such court may at any time, before the opinion has been certified to the trial court, bring such cause before the full court for further examination, opinion or decision.

The effect of this provision would be to cause counsel, who lose a case in one division of the Appellate Court, to importune members of the other division of such court until some one of such members exercise the power vested in him by the statute and brings the case before the whole court. In this way the business of the court would be disarranged and obstructed and the court compelled to sit *en banc* upon every case.

I am fully convinced that there ought not to be two divisions of the Appellate Court, and that the court should be required in every case to sit as a single body, but the statute ought to make direct provision for such change and not seek to do it by the indirect provisions found in said section.

I am conscious that lawyers differ greatly upon questions of practice and judicial procedure, and that what may be accepted by one as the consummate flower of human wisdom may appear to another as dangerous or as little better than a useless and ineffective provision. For this reason I would hesitate to withhold my approval from the present measure were it not for the presence in the bill of a section that is clearly within the inhibition of the Constitution.

Section 12 of the measure provides that when a petition for a rehearing is filed in either the Appellate or the Supreme Court, the chief justice or presiding judge shall distribute the case to some judge other than the writer of the original opinion, who shall reexamine such record, and report thereon. This section presents a graver question than any heretofore mentioned. It is a direct invasion by the Legislature of the rights and powers of another in-

dependent and co-ordinate department of the State government. By express constitutional provision the government of this State is divided into three separate departments, independent and co-ordinate—legislative, executive and judicial. The judiciary constitutes an independent department of government—possessing not only equal powers, but exclusive powers with respect to the duties assigned to it. The Supreme Court is a constitutional tribunal. Its power to prescribe rules regulating the conduct of its business exists, not by virtue of legislation, but by virtue of the inherent right of that tribunal to maintain its dignity and independence and to decide for itself the manner and mode in which it shall discharge its official duties. Into that domain the Legislature has no right to go.

In the case of Smythe v. Boswell, 117 Ind. 366, this language is used in the discussion of the question now under consideration:

"* * * the judiciary is an independent department of government, exclusively invested by the Constitution with one element of sovereignty, and this court receives its essential and inherent powers, rights and jurisdiction from the Constitution and not from the legislature."

An act of the General Assembly of 1889 provided that

"It shall be the duty of the Supreme Court to make a syllabus of each opinion recorded by said court * * *."

This act was held unconstitutional on the ground that it sought to add duties to those devolved upon the judges of the Supreme Court by the Constitution. In passing upon the question the court said:

"We have no doubt that it is our right and our duty to give judgment upon the questions we have stated, because they directly concern the rights, powers and functions of the court, and no other tribunal can determine for us what our rights, duties and functions are under the Constitution."

Ex Parte Griffths, 118 Ind. 86.

In a very early case in this State it was decided:

"The powers of the three departments are not merely equal,—they are exclusive, in respect to the duties assigned to each. They are absolutely independent of each other."

Wright v. Sefrees, 8 Ind. 298.

Speaking upon this question Judge Elliott, in his "Appellate Procedure," aptly says:

"It is true, no doubt, that the Legislature may regulate the procedure, but it cannot in any manner destroy or impair the substantive power, for that is above legislative reach. The fundamental principle to which we have re-

ferred requires that it should be held that the conduct of business, the course of argument and the like, are matters for the determination of the courts and not for legislative decision. The Legislature may, of course, prescribe rules of pleading and practice and require the courts to conform to those rules, but it cannot so far control the conduct of business as to invade the domain of the judiciary. It is very questionable whether the Legislature can direct how briefs shall be prepared or arguments conducted, since the attempt to exercise such power would seem to be an unauthorized encroachment upon the province of the courts.

"It is an ancient principle that courts may prescribe rules for the conduct of business and this power is an inherent one, so far, at least, as concerns the mode of conducting the affairs of the court. * * * It is not, and cannot be, within the legislative power to so fetter or control the action of the courts in the conduct of business as to preclude the exercise of judicial discretion or judgment. * * * In so far as regards the personal conduct of judges of constitutional courts in the exercise of the duties of the judicial office it is the law that legislative power is ineffective to control them, for it is evident that without freedom of judicial action government must degenerate into a system of sovereign and supreme legislative power, and this cannot be allowed to take place under a republican form of government."

Elliot's Appellate Procedure, Sections 6 and 7.

In a very recent opinion of the Supreme Court, handed down as late as the first day of the present month, and not yet published, the court has spoken quite vigorously upon this question. The language hereinafter quoted is used in construing an act of the General Assembly, approved March 9, 1903, concerning civil procedure and requiring the Supreme Court to weigh the evidence and decide questions of fact in certain cases, and is as follows:

"The court's power to prescribe rules regulating the conduct of its business is inherent in the tribunal. It does not depend on any authority granted by the Legislature. While the latter may prescribe rules of procedure and pleading by which both courts and the parties in the case are bound, nevertheless, it cannot, under the Constitution, encroach on judicial domain by prescribing the manner and mode in which the courts shall discharge their official duties. The Legislature has no more right to break down the rules prescribed by this court for conducting its official business, than the court has to prescribe the mode and manner in which the Legislature shall perform its legislative duties."

Parkinson v. Thompson, No. 20,401.

A California statute provided:

"All decisions given upon an appeal to any Appellate Court of this State, shall be given in writing, with the reason thereof, and filed with the clerk of the court."

Acting under this statute the Supreme Court of that State decided a case without giving an opinion in writing setting forth its

reason for the decision. A motion was made to require the court to file an opinion giving its reason. In passing upon the motion the court said:

"The provisions of the statute had not been overlooked when the decision was rendered. It is but one of many provisions embodied in different statutes by which control over the Judiciary Department of the government has been attempted by legislation. To accede to it any obligatory force, would be to sanction a most palpable encroachment upon the independence of this department. If the power of the Legislature to prescribe the mode and manner in which the Judiciary shall discharge their official duties be once recognized, there will be no limit to the dependence of the latter. If the Legislature can require the reasons of our decisions to be stated in writing, it can forbid their statements in writing, and enforce their oral announcement or prescribe the paper upon which they shall be written, and the ink which shall be used. And yet no sane man will justify any such absurd pretension, but where is the limit to this power if its exercise in any particular be admitted?

"The truth is, no such power can exist in the legislative department, or be sanctioned by any court which has the least respect for its own dignity and independence. In its own sphere of duties, this court cannot be trammeled by any legislative restrictions. Its constitutional duty is discharged by the rendition of decisions. The Legislature can no more require this court to state the reasons for its decisions, than this court can require, for the validity of the statutes, that the Legislature shall accompany them with the reasons for their enactment."

Houston v. Williams, 13 Cal. 25.

The Legislature of this State has no power to require a re-examination or a rehearing of a case already considered and adjudicated by the Supreme Court.

Address of Mr. Justice Brown on Judicial Independence, Second Volume, American Bar Association, 1889.

Nor has the Legislature power to require the Supreme Court of this State to give an opinion in writing. The fact that an opinion in writing is prepared and handed down in every case decided by the Supreme Court, is due not to legislative enactment, but to a constitutional provision.

Section 7, Article 5, State Constitution.

It has been urged by the friends of this measure that the Supreme Court can take care of itself and needs no assistance from me. I think the statement is quite true. But the Supreme Court, nor any other tribunal or department of government, can perform for me the constitutional functions devolved upon me. These I myself must assume. One of the duties devolved upon this office is that whoever occupies it shall participate in legislation to the extent

of approving or disapproving all measures passed by the General Assembly. This duty, considered in the light of his official oath, requires whoever is Governor to decide for himself the constitutionality of every legislative measure coming before him. If, upon consideration, the unconstitutionality of a measure is clear to him, it is his duty to interpose objection to its passage and to give the reasons of his objection.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 130.

March 5, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 130 without my approval. The bill provides for the elevation of steam railroad grade crossings and other matters relative thereto, in the city of Indianapolis, and is indentical with House Bill No. 145, which I have already signed, and deposited with the Secretary of State, as heretofore reported to the House of Representatives.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 278.

March 6, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 278 without my approval.

The bill relates to the improvement of streets, alleys, sidewalks and other public places in incorporated towns and in incorporated cities having a population at the last United States census of less than 35,599.

I approve of its provisions, but, upon examination, I find that similar provisions are incorporated in Senate Bill No. 75, concerning municipal corporations, which has received executive approval, and which will become the law upon the publication and distribution of the session acts.

Two acts containing two systems of procedure relative to the same kind of improvements in cities and towns, and substantially

alike in all their provisions, ought not to encumber the statutes. I therefore withhold my approval from said bill.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 224.

March 8, 1905.

Mr. President and Gentlemen of the Senate:

I deposit herewith Senate Bill No. 224, with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill seeks to amend Section 2 of an act concerning the location and construction of free gravel, stone and macadamized roads, approved March 11, 1901. The subject-matter thereof is fully covered by the provisions of Senate Bill No. 77, entitled "An act concerning highways," which has this day received executive approval. The provisions of the bill deposited herewith are substantially the same as the provisions of said Senate bill.

The session acts ought not to be encumbered by two separate acts covering the same subject matter and containing substantially the same provisions. I therefore withhold executive approval from said Senate Bill No. 224.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 275.

March 8, 1905.

Mr. President and Gentlemen of the Senate:

I deposit herewith Senate Bill No. 275 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill is supplemental to an act concerning the location and construction of free gravel, stone and macadamized roads, approved March 11, 1901. The subject-matter of such bill is covered by the provisions of Senate Bill No. 77, the same being "An act concerning highways," which has this day received executive approval. The provisions of both bills are substantially the same.

The session acts ought not to be encumbered by two acts containing substantially the same provisions upon the same subject. I therefore withhold executive approval from said Senate Bill No. 275.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 310.

March 8, 1905.

Mr. President and Gentlemen of the Senate:

I deposit herewith Senate Bill No. 310 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill seeks to amend Section 256 of "An act concerning proceedings in civil cases," approved April 7, 1881, in force September 19, 1881, and being Section 413 of the Revised Statutes of 1881 and Section 417 of Burns' Revised Statutes of 1901.

The title of the act sought to be amended is improperly set out in the title of the bill. The bill reads, "An act to amend Section 256 of an act entitled an '*act concerning civil procedure.*' "

As above suggested, the title of the act sought to be amended is an "*Act concerning proceedings in civil cases.*"

The error in the title renders the bill invalid.

Section 21, Article 4, of the Constitution provides:

"No act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length."

R. S. 1901, Section 117.

It has been decided that where the title to an amendatory statute refers to but does not recite the title of the act sought to be amended, the designation in such title is insufficient, although the section attempted to be amended is referred to as being a designated section of the Revised Statutes of 1881.

Boreing v. State, 141 Ind. 640;
Feibleman v. State, 93 Ind. 516;
Linquest v. State, 153 Ind. 543.

In the last cited case the court announces the rule as follows:

"It is settled by the decisions of this court that, in the revision of an act or the amendment of a section, two things are required: (1) The title of the act to be amended must be referred to by setting it out; (2) The act as revised, or section as amended, must be set forth, and published at full length * * *.

"When the act is identified in the manner required by the Constitution, and it is not certain what act was intended to be amended, the court will resort to means other than the title to determine what act was intended. But if the act is not identified in the manner required by the Constitution, the court cannot resort to other means of identification, although a resort to such other means would point out the act intended beyond any question."

The exact question presented by the defect in the title to the bill filed herewith was presented to the Supreme Court in the case of Mankin v. Pennsylvania Company, 160 Ind. 453. In this case the court was asked to construe an act of the General Assembly of 1891, which purported to amend Section 350 of the act of 1881 concerning struck juries. The amendatory act submitted to the court for construction referred to the title of the act to be amended as "*An act concerning trial by jury,*" giving the number of the section of the act sought to be amended, and the section number thereof in the Revised Statutes of 1881. The act sought to be amended was the same act sought to be amended by the bill filed herewith. As we have seen, the title of said act of 1881 is "*An act concerning proceedings in civil cases.*"

The court held the act of 1891 to be unconstitutional and void, under the provision of the Constitution hereinbefore cited. I quote from the opinion:

"It has been uniformly held by this court that two things were required by said section of the Constitution in the amendment of a section of an act: (1) The title of the act amended should be referred to by setting the same out in the title to the amendatory act; and (2) the section as amended should be set forth and published at full length. * * *. The title to the act of 1891, in controversy, reads as follows: 'An act to amend Section 359 of an act concerning trial by jury, in force since September 19, 1881, the same being Section 525 of the Revised Statutes of 1881.' The reference in the title to Section 359, under the cases cited above, is not sufficient. Said section may be found in an act entitled 'An act concerning proceedings in civil cases,' * * *. It will be observed that the amendatory act of 1891 does not refer to the title of the act to be amended by setting it out, as required by said Section 21 of Article 4 of the Constitution, but refers to the act to be amended as 'An act concerning trial by jury,' which is not the title of the act in which said Section 359, supra, may be found. When the act or section to be amended is identified in the manner required by the Constitution, and it is not certain what act or section was amended, the court will resort to means other than the title to determine what act or section was amended. But if the act or section is not identified in the manner required by the

Constitution, the court will not resort to such other means of identification, although the act intended would thereby be ascertained beyond question. * * *. It follows that as the title of said act of 1891, supra, fails to identify the section to be amended by setting the same out in the title thereof, as required by Section 21 of Article 4 of the Constitution, the same is unconstitutional and void, * * *."

From the above authorities it becomes clear that the title to the bill filed herewith is insufficient, and that the act would be invalid if the bill were signed. I therefore refuse to approve the same.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 235.

March 9, 1905.

Mr. President and Gentlemen of the Senate:

I deposit herewith Senate Bill No. 235 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill is entitled "An act concerning the city court and the judge thereof in cities of more than 36,500 and less than 43,000 inhabitants, as shown by the last preceding United States census, and declaring an emergency." It is, however, in fact an act regulating the practice in certain courts of justice in the class of cities named and for the punishment of crimes and misdemeanors. It is local and special in character, and is within two of the inhibitions contained in Section 22, Article 4, of the State Constitution.

In effect, it divides the cities of the State into three classes, viz.: those having a less population than 36,500,—those having a population of more than 43,000,—and those having a population between 36,500 and 43,000.

The provisions of the bill apply only to the last named class of cities. The difference in population between the cities of the first class, having the minimum population, and those of the second class, having the maximum population, is only 6,500, and the cities of the third class, to which the provisions of the bill apply, must be found within that narrow limitation.

In terms the bill is general, but no one is deceived thereby. In effect, it is local and special, and applies to but one city in the State,—Terre Haute,—that being the only city in the State shown by the last United States census to have a population between 36,-

500 and 43,000. No other city in the State comes within the limitation named. In all such cases the subterfuge of arbitrary classification might as well be dispensed with, and the name of the city sought to be affected boldly written into the bill. The measure under consideration might as well have contained the name of Terre Haute, and have been entitled, "An act to regulate the practice in certain courts of justice and for the punishment of crimes and misdemeanors in the city of Terre Haute." Its meaning would have been exactly the same, and, in addition, it would have been an honest declaration of its purpose.

That such acts are local and special in character has been decided by the Supreme Court so often and so recently that the decisions ought to be fresh in the minds of even the laity.

In re application of Bank of Commerce, 153 Ind. 474;
Board v. Spangler, 159 Ind. 579;
School City of Rushville v. Hayes, 162 Ind. 198;
The Town of Longview v. City of Crawfordsville, No. 20,-274, handed down January 13, 1905.

In the second case cited above, an act of the General Assembly, approved March 4, 1899, making an arbitrary classification of counties between those having a population of 15,000 and 15,050, according to the last Federal census, was under consideration. The court said:

"This court takes judicial notice of the population of the counties of this State according to the federal census of 1890. It is, therefore, advised that the only county in this State that had a population between 15,000 and 15,050, according to the federal census of 1890, was Owen County. As the population referred to in said act was to be determined according to a particular past census, so that other counties could not subsequently enter the class, it is apparent that by said act the General Assembly, in effect, sought to provide that the provisions of the general act of February 27, 1899, should not apply to certain described proceedings to improve gravel roads in the county of Owen. * * *. The attempted exclusion of pending proceedings for the improvement of gravel roads in Owen County from the operation of the general law * * * was in effect an attempt to provide by a local law not alone for an issue of bonds, but for the levy of a tax that, under existing law, constitutes the means of retiring such bonds. We think that it was not competent for the General Assembly to make such exception. * * *. As the subject of the legislation falls within Section 22, of Article 4, of the State Constitution, we hold that the proceedings could not be validated by any act that could properly be characterized as local or special."

The Sixty-third General Assembly enacted nine laws arbitrarily establishing classifications of counties and cities upon differences of population varying, as to the classes legislated for, from

5 to 1,000. In considering one of these acts in a recent case, the Supreme Court said:

"Its legal foundation is not more secure than if it had been declared to apply to all cities and towns bearing the name of Rushville, as shown by the last preceding census. The classification is entirely arbitrary and artificial, and the plain command of the Constitution cannot be evaded by so weak and transparent a device.

Let it be supposed that the act of March 9, 1903, supra, is valid, what provision of the Constitution cannot be rendered nugatory by similar evasions? If cities and towns may be classified according to trifling differences in population, so may counties and townships. By means of statutes, general in form, but local and special in purpose, resting entirely upon slight differences in population, every provision of Article 4, Section 22, of the Constitution may be successfully evaded.

Inferior in dignity and force of obligation only to the Constitution of the United States and the acts of Congress and treaties made under it, the State Constitution is the supreme law of the Commonwealth. It is to be interpreted and applied in a reasonable manner; it is to be observed and obeyed, and not evaded and defeated by distinctions and classifications which rest upon no rational or natural basis, and which deceive no one. When it declares that the General Assembly shall not pass local or special laws providing for supporting common schools and for the preservation of school funds, its mandate cannot be defeated by creating a class of cities differing in no material respect from scores of others in the State. The mere convenience of local communities, the financial necessities of particular cities, the conflicting views of citizens on the subject of the necessity for the erection of school buildings, are not sufficient to authorize legislation which the Constitution prohibits. Attempted evasions of the Constitution, the object of which is to meet and overcome such local and special conditions, cannot be tolerated. A due regard for the highest interests of the citizens of the State requires that all constitutional limitations and restrictions shall be firmly and constantly enforced."

The School City of Rushville v. Hayes, 162 Ind. 198.

In the case of the Town of Longview v. City of Crawfordsville, supra, construing another act of the Sixty-third General Assembly, in a decision rendered as late as the 13th day of January, 1905, the same court said:

"In jurisdictions where classification is permitted by the organic law, it is settled that the same, in order to furnish a basis for legislation that will exempt it from the charge of being special, must be a classification which in the nature of things suggests and furnishes a reason for, and justifies the making of the class. The reason for the classification must inhere in the subject matter, and the same must be natural, not artificial. Under this rule, neither mere isolation nor arbitrary selection is proper classification."

In the statute above referred to the classification made was based on a difference of 1,000 in population. The court held it to be an arbitrary classification, and in the course of its opinion said:

"Applying these tests it is evident that the classification in said act is merely arbitrary and cannot relieve the same from the infirmity of being special and local. There is no reason inhering in the subect matter of the act for giving the power mentioned therein to cities of a population between six and seven thousand according to the last preceding United States census, and not giving the same to the other cities in the State."

In the measure under consideration the classification of cities is based upon a difference in population of only 6,500, and is, therefore, clearly within the rule above declared, unless there inheres in the subject-matter thereof a reason natural and not artificial for the classification. As we have seen, the subject-matter of the bill is the regulation of practice in certain courts of justice and of the punishment of crimes and misdemeanors. It is clear that there inheres in such subject-matter no natural reason for the making of a classification of cities having no greater difference in population than that named. There inheres in the subject of the practice in courts of justice in cities under 36,500 no natural reason why such practice should be regulated by a different law in such cities than that which regulates the practice in similar courts in cities of over 43,000; nor does any natural reason inhere in the subject-matter of regulating the practice in said courts in cities having a population between 36,500 and 43,000 for a different regulation of the practice in such courts than that which governs in either of the other classes named; nor is there any natural reason inherent in the subject of the punishment of crimes and misdemeanors upon which such classification can be based. The classification made by the bill is wholly arbitrary and artificial, and is based on no natural reason inherent in the subject-matter thereof. It is true that arbitrary and artificial classifications may be made and local and special laws passed in reference to certain subjects not included in the seventeen inhibitions of Section 22, of Article 4, of the Constitution, and that when so made the courts cannot review the action of the Legislature. But the inhibitions in Section 22 are absolute, and as to them the reason for the classification must be a natural one and must inhere in the subject upon which such classification is based.

There can be no doubt of the local and special character of this bill. That fact is established, and may as well be admitted. To admit the local and special character of the bill, however, is to admit its invalidity, if we keep in mind the fact that its purpose is the regulation of the practice in certain courts of justice and of the punishment of crimes and misdemeanors in the city of Terre Haute.

The Constitution provides:

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * For the punishment of crimes and misdemeanors; regulating the practice in courts of justice."

Section 22, Article 4, State Constitution.

I am thoroughly convinced that the provisions of the bill under consideration, making an arbitrary classification of cities based upon a difference of 6,500 in population, concerning a subject in which there is no natural and inherent reason for a classification, make such measure local and special in character.

I am equally well convinced, providing as it does for the punishment of crimes and misdemeanors and for the regulation of the practice in courts of justice in the city of Terre Haute, that it is within the inhibition of Section 22, Article 4, of the Constitution.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 214.

March 10, 1905.

Mr. President and Gentlemen of the Senate:

I deposit herewith Senate Bill No. 214 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill extends, by amendment, the provisions of the act of March 2, 1901, concerning surety companies and the securities in which they may invest their funds. The extension includes in such securities: "Bonds or other evidences of indebtedness, bearing interest, of any county, incorporated city, town, township or school district, or street improvement, sewer, drainage or gravel road bonds, or municipal improvement bonds, in any such State (where it is doing business), when such bonds or other evidence of indebtedness are issued by authority of law, and on which interest has not been defaulted."

This would materially change the character of the investment of surety companies, and open wide the door to the investment of the funds of such companies in cheap, doubtful and uncertain securities issued by small municipalities of distant States, or by the townships and school districts thereof. It would make it possible

for such companies to invest in such securities as soon as issued and before there could be a default in the payment of interest. As to the class of securities named in the above quotation, there is not even a requirement that they shall have a current value of not less than par at the time when such investment is made. Such restriction is made in the law as to much more valuable and stable securities, but it seems to have been carefully excluded as to these. Under the law of this State, surety companies are taken as surety on all kinds of official bonds, or upon bonds of any person acting in a fiduciary capacity. The value of the bond upon which such company becomes surety depends in each instance wholly upon the character and value of the securities in which the funds of such companies are invested, and the law ought not to give opportunity for uncertain and questionable investments of their capital. It may be true that such companies are too closely limited as to the securities in which they may invest under the present statute, but by the provisions of the bill under consideration, practically all limitation is removed as to investments that may be made by them.

I am convinced that a due regard for the interests of the public, who deal with surety companies, requires that the law remain as it is, rather than become what it would be if this measure were the law. That the law shall remain as it is, I know is safe so far as the public interests are concerned. If it were changed, as suggested, I would have grave doubts as to the safety of such interests. I am fully persuaded that the evidence of the indebtedness of a school district in a distant State is not the character of security in which the funds of such companies should be invested. Nor are street improvement or sewer bonds of small municipalities in such States safe securities. For these reasons I decline to give my approval to the measure.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 265.

March 10, 1905.

Mr. President and Gentlemen of the Senate:

I deposit herewith Senate Bill No. 265 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill provides for the publication of notice in two newspapers of general circulation, of different politics, of each item of any and all allowances made by the board of trustees of any town or by the common council of any city having a population of less than twenty-five thousand, within ten days after the making of such allowances.

Section 2 provides a penalty of from ten to twenty-five dollars for any violation of the provisions of such bill.

There is no public demand nor necessity for this measure. If enacted, it would conserve no public purpose. It would benefit no one in any community except the publishers of local newspapers in the several towns and cities to which its provisions would apply. I concede the value of local newspapers to such communities. They are worthy of consideration and encouragement. They are not, however, entitled to consideration and encouragement at the expense of the several municipal treasuries of the State. Public funds raised by taxation ought not to go for any purpose other than a public one.

It is urged that publicity will prevent extravagant and fraudulent allowances, and the law requiring township trustees to publish annually a statement of public expenditures is referred to as a justification for the measure under consideration.

It is true that, under existing law, township trustees are required to publish an account of their expenditures. But this is required only once a year. The position of township trustee differs materially from that of town boards and city councils. The township trustee generally lives in a rural district. He is more or less isolated. The people are separated from him by distances of greater or less length. Many of his official acts are done in private. There is little opportunity for the taxpayers of the township to know what expenditures he is making. For these reasons there is some justification for the existing law requiring him to make publication once a year of such expenditures. It is doubtless true, also, that the fact that he is required to make publication of

such expenditures has a restraining influence upon him, and that the law has done something to prevent extravagant expenditure of township money. But the law has been the subject of no inconsiderable abuse through the separation of items, resulting in an increased number of items for publication, to the profit of the local newspapers and the detriment of the township.

Trustees of towns and common councils of cities are not so situated. They meet at fixed and stated intervals. They have a designated place of meeting. The public is advised of the time and place of such meetings. No expenditure of public money can be made or authorized except in open sessions of such boards duly convened. The places of meeting for such bodies are convenient of access. The population of towns and cities is centralized, and every opportunity is given the citizens of such municipalities to know exactly what expenditures are being made. Every allowance made is practically made in the presence of the people whose money supplies the fund from which payment is made. Opportunity for debate and discussion is always present. A record is required to be made of every allowance. This record is open to the inspection of any taxpayer.

Under the provisions of the bill filed herewith, every item allowed by any such board is required to be published in two newspapers, if there be such newspapers in such city or town, at an expense of five cents per item for each paper, within ten days after such allowance is made. This would necessitate repeated notice of partial payments and would multiply the expense many times beyond what it would be if notice of such allowances was required to be made at the close of the year. For example: If John Smith is employed by the town or city as a laborer upon its streets and an allowance is made to him therefor, it must be immediately published. In most towns and cities of the State, the boards of trustees and the city councils meet at least once each month, and in many of them twice each month. Every allowance made to John Smith for labor upon the streets of any such town or city must be published as a separate item within ten days after it is made. If he is employed a single day each week during the year, 25 different publications will be required, at a cost of $2.50. The same is true of every other laborer upon the streets of any such town or city. The only purpose of this expenditure is to inform the taxpayers that Smith has been paid,—a fact of which every taxpayer has had ample opportunity to know without publication.

In my judgment the benefit to the public is not worth the cost.

And this is especially true in view of the fact that every such allowance must be, and in fact is, made openly, on motion, by a public body in a public meeting of which general knowledge exists, and to which every taxpayer may go, and to which many do actually go. Here is another example: A city employs 120 school teachers. Their salaries are paid monthly. Each such payment is made up of 120 items. Such publication, therefore, will be required once a month for as many months as constitute the school year in such city, which is usually from eight to nine months. If such school year is nine months in length, the items of salary allowance to teachers alone, if made monthly, will aggregate 1,080. At 10 cents per item for each publication the total cost of such publications in such city is $108.00. What value has the public received for this expenditure? Absolutely nothing beyond the information that the school board has paid the several teachers of the city the salaries which were fixed by written contracts, of which contracts public record was made before the term of service of any of such teachers began. This is but one instance. I repeat, the information is not worth the cost.

This measure, if it became a law, would involve the expenditure by the various towns and cities to which it would apply of from $100.00 to $1,000.00 per annum, for which the taxpayers would receive substantially no return. When we consider the number of towns and cities in the State that would be subject to the provisions of the bill, we can at least roughly estimate the cost. The aggregate of such expenditures would, in the course of a year, reach a startling sum. I know of no way in which I can better serve the citizens of such municipalities than by withholding executive approval from such a measure. I do not undervalue the newspapers of these several communities. I know they would profit by the measure if it were the law. But I am a public servant of the public interest and not a private servant of private interests. I therefore decline to sign the bill.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 306.

March 10, 1905.

Mr. President and Gentlemen of the Senate:

I deposit herewith Senate Bill No. 306 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill appropriates $500 for such printing and stationery as may be required by the "Assistant Adjutant-General and Assistant Quartermaster-General of the Department of Indiana, Grand Army of the Republic," to be procured, through the Commissioners of Public Printing, of the State Printer, to be paid out on vouchers approved by said Commission and said officers.

This seems to me to be a most extraordinary appropriation of public funds. It is one to which I have given much consideration, for I have been impelled by sympathy and gratitude to give it my approval, but I am unable to do so.

I have the highest possible regard and esteem,—amounting almost to veneration,—for the men who constitute the Grand Army of the Republic. The story of their services and valor is linked forever with the history of the Nation's life. The debt the present generation owes them can never be fully paid. Of this I am keenly conscious. The memory of what they did and what they wrought in behalf of constitutional government, makes it hard for me to do my duty in this matter. It would be far easier for me to sign the bill and allow it to become a law, than to withhold executive approval from it. And I would do so were I not convinced that by so doing I would betray my trust, set a dangerous precedent and do an unconstitutional thing. These considerations, and these alone, prevent my signing it. Neither sympathy nor grateful remembrance can justify one in my position for the doing of an act unwarranted by the law of the land which, with uplifted hand, he has sworn to support.

The Grand Army of the Republic, however noble its prupose and splendid its services, under the law of the State, has no official relation to the State. It performs no service for the State, which can be recognized by the appropriation of public funds for its benefit. It serves the State, and serves it greatly, by keeping alive the memories of the sacrifice and devotion made by its members in behalf of the land in which we live and in defense of the flag we love, and by planting in the hearts and incul-

cating in the minds of the children who are to be the men and women of tomorrow a reverence for lofty devotion and the lessons of patriotism; and by maintaining the general observance of the most sacred day in the national calendar,—Memorial Day; but these are services for which, under the law of the land, no money compensation can be made out of the public funds.

Every church, every social, benevolent, or fraternal, or civil order, in greater or less degree serves the State in the same way. There is no more warrant in law for the appropriation of public funds to defray the expenses of the officers of the State Department of the Grand Army of the Republic, than there is for the appropriation of public funds to meet the expenses of the annual conferences of the several churches of the State, or of the officers of the grand lodges of the various civic orders of the State, such as the Knights of Pythias, the Independent Order of Odd Fellows, or the various Masonic bodies.

It has been suggested to me that the appropriation is small,—only $500.00. But the precedent, if I were to sign the bill, would be far-reaching and lasting in its effect. A bad precedent founded upon a small appropriation is as dangerous and far-reaching as though founded upon a large appropriation. Such a precedent as this, if established, might be considered warrant for an appropriation of public funds for the payment of all the expenses of the State Department of the Grand Army of the Republic, including the salaries of its officers. The power to do the one implies the power to do the other, and the policy of the one necessarily includes the policy of the other.

It suggests a door that must not be opened. It is against public policy. It is also against the best interests of the Grand Army of the Republic. That organization will hold a higher place in the hearts and affections of the people if it does not become the recipient of public funds appropriated in defiance of the Constitution of the State. Its members fought on many fields to preserve the Constitution not only of the national government, but of the State as well, and they ought not now to ask either the Legislature or the Chief Executive of the State to violate that Constitution.

What I have said implies the unconstitutionality of the measure. That it is unconstitutional is so clear to me that no doubt remains. The appropriation is an appropriation of public funds for the use of private persons. It may be said that the Assistant Adjutant-General and the Assistant Quartermaster-General of the Department of Indiana of the Grand Army of the Republic, are

not private persons, but officers of the civic order to which they belong. That, however, is not an accurate statement. Under the law, they are private persons. They are not officials of the State. They have no official connection with the State. In contemplation of law they serve the State in no way. Whatever positions they may hold in the order named, they are simply private citizens in law. The order to which they belong is not a department of the State government; but, on the contrary, it is a civic order, private in character.

I have recently had occasion to veto certain measures passed by the General Assembly, appropriating money of the people,—public funds,—for the purpose of reimbursing certain public officers for moneys of the public lost by them, on the ground that such appropriations were for the use of private persons, and beyond the purposes of taxation contemplated by the Constitution.

That the General Assembly has no constitutional power to make an appropriation of public funds raised by taxation for a private purpose, or for the use of a private individual, is agreed by all the authorities.

In the case of McClelland, trustee, v. The State, ex rel. Speer, 138 Ind. 321, it was held that the levying of taxes upon the property of a township to create a fund for a private and not a public use, was without the Constitution. In that case the court said:

"Here was an unconstitutional discrimination between citizens, in this, that the act arbitrarily requires the taxpayers of Wayne township to give to the relator the sum of $2,812.90 and fastens upon the township and its taxpayers a debt for that amount, for which the township never received anything and for which it never gave its consent or contracted a liability. In our opinion the General Assembly is not vested with power to legislate a tax upon the people of a township for a private purpose."

In passing upon the question of what is a public use, the court in the above case aptly said:

"We think the law is well settled that nothing can fairly be regarded as a public use, unless it has a state use or a national use in furtherance of a state use. To defray the necessary expenses of a township, or to make necessary improvements in a township, is a state or public use. But the donation of a large sum of money to the relator in this case cannot be regarded as a public use of money."

The word "tax" of itself implies a public purpose. Properly defined, it is:

"An enforced proportional contribution levied on persons, property or income, either (a) by the authority of the State for the support of the gov-

ernment and for all its public or governmental needs, or (b) by local authorities for general municipal purposes."

This definition furnishes no room or shelter for an appropriation of public funds for the use of any person or organization that has no claim upon the State, or to whom no legal obligation is due.

A public statute cannot be valid which is intended to, and does in effect, so tax an individual as to take private property for private use. Such an appropriation is a gift, pure and simple. To warrant taxation the purpose must not only be beneficial, but it must concern the public. A merely private benefit is not enough. Under a free government, when no public considerations are involved, every man must be allowed to choose for himself when it comes to the giving of money. As already suggested, taxation, by the very meaning of the term, implies the raising of money for public use and excludes the raising of it for private objects and purposes. The acquisition, possession and protection of property are among the chief ends of government. To take, directly or indirectly, the property of individuals to give to others, is to withdraw it from the protection of the Constitution and submit it to the will of an irresponsible majority.

It is true that the bill does not contemplate the levy of a tax upon the property of the citizens of the State, from which to create a fund with which to meet the appropriation it makes. But there is no distinction in principle between the appropriation of public funds already raised by taxation and the laying of a tax for the creation of a fund for such an appropriation. If the General Assembly has no power to legislate a tax upon the people of the State for a private purpose, it has no power to take the funds of the State, which have been raised by a tax levied upon the people of the State, and appropriate them to a private purpose. If it is inhibited from laying a tax for a private purpose, it must necessarily be inhibited, on like principle and for like reasons, from appropriating for a private purpose the money which has been raised by taxation. In either case it is taking the property of one man to bestow it upon another, and this is clearly within the constitutional inhibition that no man's property shall be taken without due process of law.

Respectfully submitted,

J. Frank Hanly,
Governor.

House Veto Messages, Sixty-Fourth General Assembly

HOUSE BILL No. 39.

FEBRUARY 22, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 39 without my approval.

This bill provides for the reimbursement of certain ex-trustees of seven several townships of Dekalb County, out of the public funds of said respective townships, for certain sums of money respectively paid by them to their said several townships on account of township funds received by them, as trustees of their said respective townships, and deposited in certain banking institutions, which sums were lost to them through the failure of such institutions.

These sums range from $195 in one instance to $2,323.97 in another, and amount in the aggregate to $6,961.30.

Other bills providing for the reimbursement of other public officials of Dekalb County for public moneys lost in like manner have received the sanction of the General Assembly. The aggregate appropriation of public funds belonging to the citizens of this county made by bills already passed exceeds $18,000.

Similar bills for the relief of certain other township and county officers of Steuben, Elkhart, Jasper, Laporte and Lagrange counties, on account of similar losses, have passed both houses of the General Assembly. The aggregate appropriations of funds of these several counties and the several townships thereof, made by the several measures already passed, are more than $65,000. This is a goodly sum to give away. And yet, as shown by the calendars of the respective houses of the General Assembly, other measures having like provisions and like purposes are far on their way toward legislative approval. I am unable to state with accuracy the amount of the aggregate appropriations carried by these several pending bills, but the grand total of such appropriations made by these bills, passed and pending, is startling in amount, and is certainly sufficient to challenge the thoughtful consideration of every member of the General Assembly.

The character of this legislation, the number of public officials relieved of just and solemn obligation, and the great sum of money appropriated by it in the aggregate from the treasuries of the several townships and counties affected and placed in the pockets of private individuals as a gift, have caused me to consider with

thoughtful care two questions which seem to me to go to the very heart of each of these measures.

First. Does sound public policy admit of such an appropriation of the public funds of a township or county?

Second. Is such legislation inhibited by the Constitution of the State?

I am compelled to answer the first of these questions in the negative. A public policy which relieves from liability a public official who makes a deposit of public funds entrusted to his care in a bank which fails, and in which failure such funds are lost to him, is unsound and dangerous. If such policy be generally adopted and long continued, it will inevitably beget loose and careless administration, multiply such losses and mulct the people daily by the use of public funds raised by taxation to recoup private losses.

Between each of the several trustees named as beneficiaries in the bill returned herewith and the people of their respective townships there was an implied contract. A contract none the less binding and sacred because it was unwritten. On the one part this contract required each of said officers to faithfully discharge his duties as such official and account to his township for all moneys belonging to such township and coming into his hands. On the other side it required the people to pay him the salary fixed by law. Then, in addition, that the assurance on his part might not fail, the law required from him a solemn and binding written contract with surety that he would faithfully discharge his duties and account for all moneys belonging to his township which should come into his hands. The amount of money received by him measured his liability. He was bound, as a public officer, to keep the funds in his hands safely. He was, in fact, an insurer of the safety of the funds in his hands and was bound to account for the moneys lost by him, though lost without his fault.

Good morals and a sound public policy require that these contracts, both the implied and the written one, shall be kept, and that there shall be no impairment of either of them, and that there shall be no relief from the penalties by them imposed.

When the beneficiaries named in this bill sought and obtained their respective offices they knew the obligation they would be required to assume. They knew, also, the hazards they would incur, and that the extent of their liability would be measured by the amount of money coming into their hands. Knowing this they were not deterred from accepting their several trusts. On the con-

trary, they chose to qualify and to enter upon the discharge of their respective duties.

Having entered upon the discharge of such duties, they were not compelled by any public necessity to withdraw in bulk the funds due their several townships from the county treasury. They could have left them there until required for public use. While such funds were in the county treasury they, as township trustees, would have carried no hazard of their loss, nor would they have incurred any liability had they been lost while in such treasury. They chose to remove them in bulk and in larger sums than public necessity required and to place them on deposit in banks of their own choice. These banks failed. The loss of funds so deposited was their respective individual loss. The deposit of money in such banks was their affair and not the public's. Knowing the law, they chose to carry the hazard, to assume the risk and to accept the liability consequent upon loss, and now, that such loss has come upon them, they are in no position to ask relief from the requirements imposed upon them by the law. They have no claim, either moral, legal or equitable.

As to the second question, the inhibition of the Constitution against such measures as these is too clear to admit of serious debate.

The decision of the Supreme Court in the case of Mount, trustee, v. The State, ex rel. Richey, 90 Ind. 29, has been cited in support of the constitutionality of the bill by its friends and by the friends of the several kindred measures hereinbefore referred to. I have given consideration to that decision. It was written by a learned and eminent judge, in whose ability and learning I have very great confidence. The decision is in point and the bill is clearly within the rules there declared.

I am thoroughly convinced, however, that the decision is wrong in principle; that it is opposed to the great weight of judicial decision upon the question involved; that it rests upon a false premise, involving mixed questions of law and fact; and that it has been modified, if not overruled by implication, in a subsequent decision of the Supreme Court, and that it has ceased to be the law. In fact, it never ought to have been the law.

The bill recites that the officials named therein have paid to their respective townships the several sums lost by them. Since doing that they have ceased to hold their respective offices. They occupy to their respective townships, as to the moneys lost and made good by them, the position neither of debtors or creditors.

They have no right in law or in equity to a return of their money. In the absence of special legislation for the purpose such money can not be returned to them. A return of it would amount to nothing but a gift, pure and simple,—*a gift, too, of public money for a private purpose.*

That the General Assembly has no constitutional power to make an appropriation of public funds raised by taxation to a private purpose is agreed by all authorities. This is conceded in the decision in the 90th Ind., above cited. On this point I submit the language of the decision:

"It is, perhaps, true that the legislature cannot authorize the assessment of a tax for a mere private purpose * * *."

The writer of the opinion states the basis of the decision as follows:

"Reimbursing a public officer for the loss of public funds, occurring while he is engaged in discharging public official duties, cannot be deemed an appropriation to private purposes."

This is the sole basis of the decision, and the pith and point of the decision itself is embraced in the following sentence:

"We do no more than decide that the legislature has power to direct the application of township funds to the payment of claims growing out of the discharge of official duties by the trustee where the claims are of a public nature."

The premise stated above is a mistaken one. It involves two mixed questions of law and fact, both of which are erroneous:

First. It assumes that the money was lost by the trustee "while engaged in discharging public official duties."

Second. It declares that an appropriation reimbursing a trustee for the loss of public funds "cannot be deemed an appropriation for a private purpose."

When the trustee drew the money from the treasury in bulk and before it was needed to meet the public expenses of his trust, and deposited it in a bank, he was not engaged in the discharge of any public official duty. No duty he owed to the public and no duty imposed upon him by law required him to withdraw the money from the county treasury in bulk before there was a necessity to pay it out for the public benefit and deposit it in a bank. That act was a private act in which the public was not concerned. It was done either for his own convenience or profit.

If, having made this disposition of the money, he loses it

through the failure of the bank, he is liable for the loss. His bond is also liable. He or his bondsmen must make it good. Knowing his liability and the liability of his bondsmen, he does make it good by restoring to the public fund the sum lost. This done, the transaction is closed. It never was at any time a public official act, but the private act of a public official, which was not required by law or by any duty he owed to the public. But whatever the act,—private or official,—the transaction is a closed incident. The township has lost nothing. The books are square. He has no claim. The township has no claim. He goes out of office with a clean account.

It is in that condition that we find him. While he is in that condition, it is proposed to do what? To appropriate public money to pay an obligation which the public owes to him? Not so. The public owes him no obligation, legal, moral or equitable. But it is proposed to appropriate *public funds, raised by a tax upon the property owned by the people of the township, to make him a gift for his private and personal benefit,* the only basis of which is public sympathy for a private misfortune. To say that such an appropriation of public funds made under such circumstances is for a public and not a private purpose, is to distort a self-evident truth,—one so plain that there is room for neither cavil nor dispute.

The foundation upon which the decision is based, it will be observed, melts away under analysis and leaves no grain of fact or truth upon which it may rest, and the decision itself must therefore fall.

It will be remembered that in the language of the court itself the opinion does "no more than decide that the Legislature has power to direct the application of township funds to the payment of claims *growing out of the discharge of official duties by the trustee, where the claims are of a public nature.*"

Neither the claim in the Mount case, supra, nor any of the claims now under consideration grew out of the discharge of official duties, nor was said claim or any of these of a public nature.

These considerations led the Supreme Court to correct the above decision, in the case of McClelland, trustee, v. The State, ex rel. Speer, 138 Ind. 321, and to decide that the levying of taxes upon the property of a township to create a fund to reimburse a trustee for money lost under such circumstances, would be the taxing of the property of the citizens of the township for a private and not a public use.

In that case the court said:

"Here was an unconstitutional discrimination between citizens, in this, that the act arbitrarily requires the taxpayers of Wayne township to give the relator the sum of $2,812.90 and fastens upon a township and its taxpayers a debt for that amount, for which the township never received anything and for which it never gave its consent nor contracted a liability. . In our opinion the General Assembly is not vested with power to legislate a tax upon the people of a township for a private purpose."

It is urged that in the McClelland case, just cited, the question involved was different from the question involved in the Mount case, supra, in that the money lost by the trustee in the McClelland case was not raised by taxation upon the property of the people of the township whose property it was proposed to assess to create the fund with which to reimburse the trustee. In part that is true, but not wholly so. A part of the funds lost by him *were raised* by taxation upon the people of the township whose property the Legislature proposed to retax for the purpose of creating a fund with which to reimburse such trustee.

In deciding this branch of the case, the court declares the rule to be directly the opposite to the rule declared in the Mount case.

In passing upon the question of what is a public use, the court, in the McClelland case, aptly said:

"We think the law is well settled that nothing can fairly be regarded as a public use, unless it has a state use or a national use in furtherance of a state use. To defray the necessary expenses of a township, or to make necessary improvements in a township, is a state or public use. But the donation of a large sum of money to the relator in this case cannot be regarded as a public use of money."

It is true that in the above case the act provided for the levy of a tax upon the property of the citizens of the township from which to create a fund with which to reimburse the trustee, there being no funds in the township treasury out of which he could be reimbursed. We submit, however, that there is no distinction in principle between that case and the case involved in this bill. If the General Assembly has no power to legislate a tax upon the people of a township for a private purpose, it has no power to take the funds of a township which have been raised by a tax levied upon the property of the people of such township, and appropriate them to a private purpose. If the General Assembly is inhibited from laying a tax for a private purpose, it must necessarily be inhibited, on like principle and for like reasons, from appropriating for a private purpose the money which has been raised by taxation.

The levying of a tax, or the appropriation of money raised by

taxation, for the reimbursing of the trustees named in this bill, would be, in effect, taking the property of one man to bestow it upon another. In effect, it would be a taking of the property of the citizens of the several townships affected, for a private and not a public use. It would be, in plain English, a robbery and a spoliation of the citizens of such townships for the benefit of the seven individuals named as beneficiaries in the bill,—a robbery and a spoliation for which no warrant can be found in the Constitution of the State, in law, in equity or in the conscience of honest men.

That this bill is an attempt to make an appropriation of public funds for a private purpose, and, in effect, to take private property for private use, through the appropriation of public funds which have been raised by taxation, and that such an attempt is unconstitutional, is well established by judicial decision. In fact, there is almost an unbroken line of authority to that effect:

McClelland, etc., v. The State, 138 Ind. 321;
State, etc., v. Tappen, 29 Wis. 664;
People v. Supervisor, etc., 16 Mich. 253;
Bristol v. Johnson, 34 Mich. 123;
Hoagland v. City of Sacramento, 52 Cal. 142;
Lowell v. City of Boston, 111 Mass. 454;
Thorndyke v. Inhabitants of Camden, 82 Me. 39;
Cooley on Constitutional Limitations, pp. 332-341.

On the other side, the case in 90 Ind., supra, stands practically alone. The premise upon which the decision rests, as we have shown, is a mistaken one. It consists of a bare statement without a word of reasoning or the citation of a single authority to support it.

In the discussion of the power of the legislature to make such an appropriation as was there sought to be made, the case of Brooks v. Landsborough, 36 O. St. 227, is cited, but the citation is somewhat unfortunate, in that the Ohio court, in its decision, was construing a law entirely different in principle from the one before the Indiana court. In the Ohio case the treasurer of a school district was robbed. He was unable to replace the money. The legislature passed an act relieving his bondsmen and authorizing the district officers to levy a tax upon the property of the district to reimburse him, *after first submitting the matter to the vote of the electors of the district and receiving their approval.* It will be observed that the bondsmen were not relieved and that the tax was not levied by the act of the Ohio legislature. It only provided

a way by which the people of the school district might relieve the bondsmen and levy a tax.

That case, we submit, is slight authority for an act which levies a tax, or takes funds raised from a tax levy, for the reimbursement of public officials for money lost by them, and does so without the consent of the citizens taxed.

In conclusion, I venture to express the hope that there is not a member of the General Assembly who will be willing to sustain this measure and the kindred measures still pending before the Assembly, upon a careful consideration of the authorities cited, in view of the public policy involved, and his oath to support the Constitution of the State.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 27.

FEBRUARY 22, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 27, for the relief of George W. Willennar, Treasurer of Steuben County, without my approval.

The bill provides for the reimbursement of said treasurer out of the public funds of said county for certain moneys paid by him to said county on account of county funds received by him and deposited in a certain banking institution, which moneys were lost to him through failure of said institution. My reasons for returning the bill without my signature are:

1st. The measure is against public policy.

2d. It is unconstitutional.

I have more fully set out these reasons in a message accompanying House Bill No. 39 this day returned to you without my approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 113.

FEBRUARY 22, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 113 for the relief of George M. Wilcox, Samuel L. Luce, John Bill, Joseph Stewart and Charles M. Blue, ex-township trustees of certain townships in Jasper County, without my approval.

The bill provides for the reimbursement of certain ex-trustees of five several townships of Jasper County, out of the public funds of said several townships, for certain sums of money respectively deposited by them in a certain banking institution, which sums were lost to them through the failure of said institution. These sums range from $673 in one instance to $2,929.14 in another, an amount in the aggregate of $7,939.54. The reasons for returning the bill without my signature are:

1st. The measure is against public policy.

2d. It is unconstitutional.

My reasons are more fully set forth in a message accompanying House Bill No. 39, this day returned to you without my approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 146.

FEBRUARY 22, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 146 without my approval.

The title of the bill applies to cities of over 100,000 population, and the bill is evidently intended to apply to the city of Indianapolis, that being the only city in the State of over 100,000 population.

Section 1 of the act, however, applies to "cities of this State having a population of 100,000." The word "over" has evidently been omitted from this section by mistake. As the section reads it would apply only to cities having 100,000 population. There is no city in the State having such a population.

My failure to approve the bill is based wholly upon this omis-

sion, which, in my judgment, is a fatal defect. I am informed that a similar bill is still pending before the General Assembly, and if so, this error can be corrected and the pending bill passed.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 208.

February 27, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 208 without my approval.

The act authorizes the Governor to issue patents for certain Michigan road lands in this State, heretofore sold under the acts of the General Assembly and the purchase price of which has been fully paid, and for which no patents have been issued heretofore by the State.

The purpose of the measure is not an improper one, and I would give the bill my approval were I not convinced that it fails to accomplish the purpose intended. There is an irreconcilable conflict between the provisions of the bill.

One provision requires the Governor to issue a patent, under certain conditions named, to any such lands "in the name of the original purchaser," and provides that when the patent is so issued it "shall vest in such purchaser all the title and interest held by the State at the time of such final payment for the land so purchased." And this, without regard as to whether the original purchaser is now the owner of the lands covered by the patent.

The next succeeding sentence provides "that upon issuing of such patent the title to the land therein described shall vest in said original purchaser, if still living and the owner of such lands, or if dead, such title shall vest in the heirs, devisees, legatees or assignees of such original purchaser."

One sentence vests the title in the original purchaser without regard to present ownership. The other vests the title in the original purchaser on the condition that he is still the owner. The two provisions are inconsistent. Instead of removing the cloud resting upon the title to any such lands by furnishing a missing link in the chain of such title, which I have no doubt was the purpose of the author of the bill, the measure, if it became a law, would cast an additional cloud or doubt upon such title.

If the intention of its author was to vest the title of the State to these lands in the present owners thereof, the bill ought to so provide.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 92.

March 1, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 92 without my approval.

The bill authorizes and directs the county council of Spencer County to appropriate, for the payment of the unpaid court expenses of the Spencer Circuit Court for the year 1903, a sum of money sufficient to cover and pay such unpaid expenses, not exceeding $250.00.

There is nothing in the bill to disclose what is included in the words "unpaid court expenses," an appropriation for the payment of which is ordered. I have been informed, however, that such unpaid expenses consist of fees due certain citizens of said county for jury services rendered in said court during said year. These persons are, it is said, sixty-four in number, and their unpaid claims vary in amount from $2.00 to $6.00 and aggregate $241.15; that said last named sum is in excess of the appropriation made by said Spencer County county council for court expenses for said year; that the excess exists because of the fact that the terms of said court were extended by an act of the General Assembly passed after the county council of said county had made the appropriation for court expenses for said year; that the fact that such appropriation was exhausted was not observed by the judge of said court, nor called to his attention by the county officials, until near the close of the November term of said court for said year; that there was the utmost good faith in the entire transaction; that the services were honestly rendered, the money honestly earned by said jurors, and that they ought to be paid. It is also said that the county council of said county has refused to make an appropriation for the payment of such fees, and that they remain unpaid because of said failure to make such appropriation.

The bill is local and special. It applies only to Spencer County, which is referred to by name. It is clearly within the constitutional

inhibition contained in Section 22 of Article 4 of the Constitution of the State, which provides:

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * Regulating county and township business."

The term "county and township business" has been defined by the Supreme Court as follows:

"The term 'business,' when applied to a public corporation, signifies the conduct of the usual affairs of the corporation, and the conduct of such affairs as commonly engage the attention of county and township officers."

Mount, Trustee, v. The State, ex rel. Richey, 90 Ind. 31.

I have had occasion heretofore to criticise the decision rendered in the above case, in so far as it held constitutional legislative acts for the reimbursement of public officers on account of public funds lost by them. I am, however, in accord with the definition given in the opinion in said case upon the question now under consideration. The correctness of such definition has since been recognized by the Supreme Court and has never, to my knowledge, received judicial criticism.

In a later opinion it is said, with reference to the above definition:

"This statement of the law is, we think, correct and especially applicable to the case now before us, * * *."

Mode v. Beasley, 143 Ind. 316.

In this case it is held that the seventeen inhibitions contained in Section 22 of Article 4 of the Constitution are absolute, and that the Legislature has no discretion or right of judgment relative to the subjects therein named. The court said:

"One of the seventeen subjects embraced in that section, and thereby put beyond the power of the Legislature to pass a local law upon it, is the subject of 'regulating county and township business.'"

The provisions of the bill under consideration bring it clearly within the above definition of "county and township business."

If "county and township business," as used in the Constitution, signifies the conduct of the usual affairs of the corporation, and the conduct of such affairs as commonly engage the attention of county and township officers it certainly includes the act of making an appropriation by the county council for the payment of the expenses of the circuit court of the county. It also includes the allowance for jury fees by said court, and their payment upon the warrant of the auditor by the treasurer of the county. These duties,—

making such appropriation, allowing such fees and paying such jurors, are clearly devolved by the law upon the members of the county council, the judge of the court, and the auditor and the treasurer, all of whom are officers, who, when so acting, are engaged in the conduct of the usual affairs of the county.

It may be conceded that the claims of the several persons included in the appropriation ordered to be made by the terms of the bill, are just and that they ought to be paid. But the fact remains that the General Assembly has no power to authorize their payment. If the claims are just, it is the duty of the county council to make an appropriation for their payment. That duty is devolved upon them by the law. They have full authority to act. The appeal that justice be done these claimants should be made to such council and not to the Legislature.

The claim provided for in the bill is little, it is true, but if the bill were to become a law it would establish a bad precedent, and a bad precedent based upon a little claim is as dangerous as if it were based upon a large one. If this bill were to become a law, it would in a few years become quite the custom on the part of those having claims against counties, which the county councils of such counties have refused to recognize, to come to the General Assembly for relief, and secure the passage of measures ordering and directing such councils to make appropriations for the payment of such claims. Such legislation is against public policy, is clearly unconstitutional, and cannot receive my approval.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 306.

March 2, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 306 without my approval.

The act creates and defines the crime of child desertion and provides punishment therefor. I am in full symapthy with the principal object of the bill, and regret that I am not able to give it my approval in its present form.

The title of the bill is, I think, clearly insufficient. It reads as follows: "An act concerning child desertion." It is impossible to tell from this title that the bill is penal in character, that it de-

fines a crime, or provides punishment for the commission of the act inhibited.

The bill provides:

"That the father, or, when charged by law for the maintenance thereof, the mother, of a legitimate child or an illegitimate child or children under sixteen years of age living in this State, who, being able, either by reason of having means or by means of having capacity to earn wages by personal services or labor, to provide such child or children with proper and necessary home, care, food and clothing, shall neglect or refuse so to do, * * * shall be deemed guilty of child desertion."

It also provides that any such father or mother, their

"said child or children being legally an inmate or inmates of a county or other children's home, who shall neglect or refuse to pay the trustees of such children's home the reasonable cost of keeping such child or children in said home, shall be deemed guilty of child desertion and on conviction shall be imprisoned in a state prison not less than one year nor more than three years."

The last clause just quoted in effect provides for imprisonment for debt. It creates a civil liability,—an obligation upon the part of such father or mother to pay money,—and provides imprisonment for failure to meet such obligation.

Section 22 of the Bill of Rights provides:

"There shall be no imprisonment for debt, except in case of fraud."

The clause under consideration is therefore invalid. So, also, is Section 3, the same being based upon the offense created in the clause just considered.

There ought to be a statute defining child desertion, making the same a crime, and providing for the punishment of persons found guilty of such offense. That portion of the first section of the act, which provides that failure on the part of the parent who is able, either by reason of having means or by reason of having capacity to earn wages by personal services or labor, to provide for the necessary and proper home, care, food and clothing of his child, and makes the neglect or refusal of such parent so to do an offense punishable by imprisonment, is, I have no doubt, a valid exercise of legislative authority, and I would be glad to give approval to such a measure.

I therefore suggest that the bill be rewritten, that the clause and the section thereof within the constitutional inhibition, be eliminated therefrom, that the title thereto be rewritten and made sufficient, and that such bill be then reintroduced and passed.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 149.

March 4, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House bill No. 149 without my approval.

The bill seeks to preserve the fresh water lakes of the State of Indiana at their established level and protect them from being injuriously affected or destroyed by the lowering of the water level thereof.

In the main the bill has my approval. It has some provisions, however, which are so clearly within the inhibitions of the Constitution as to render it invalid.

Certain provisions of the bill contemplate that drains may hereafter be established within forty rods of fresh water lakes, in accordance with the present drainage laws.

Section 6 provides that the State Board of Health, if it determines that the water level in a lake has fallen below the high water mark as established by the act, and has consequently affected the public health, may enter an order requiring the drains within forty rods of the lake affected to be filled, and file a copy of this order with the clerk of the court in the county where such lake is situate, whereupon notice shall be given to the parties interested, by publication, and any person interested or aggrieved by the action of said board in ordering the filling up of such portion of said ditch as lies more than forty rods and less than eighty rods from the meander or marginal line of said lake, may appeal to the circuit court of said county and that thereupon a hearing shall be had before such court upon the single issue, as to whether the level of water in such lake is not threatened or impaired by the escape of waters into such ditch. The ditch ordered filled may have been constructed under the public drainage laws and the cost of its construction met by assessments upon property benefited thereby and may have resulted in the reclamation of lands above the point in said ditch ordered to be filled.

In every such case the filling of such ditch would destroy an improvement in which each of said land owners would have a vested right,—a property interest. It might also destroy valuable lands reclaimed by such improvement and cause them to become waste or overflowed. This would result in the destruction of property rights that are clearly within the constitutional inhibition found in Section 31 of the bill of rights which provides that no man's property shall be taken by law without just compensation.

There is no provision in the act for the assessment of any compensation or damages on account of the destruction and the taking of the property. In effect this section of the measure under consideration takes the property of the citizen without any provision whereby his damages and injuries may be asssessed. It is so clearly invalid as to require neither argument or citation of authority beyond the Constitution itself.

I am informed that the subject of the protection of the fresh water lakes of the State is fully covered by the provisions of the general drainage act which has been pending in the General Assembly and which I understand has passed and is now being enrolled for transmission to the Executive. If so, no substantial injury will follow the failure of the present measure to become a law.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 186.

March 4, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 186 without my approval.

The bill, in special terms, declares that all sales or transfers in bulk of the whole or any part of a stock of merchandise, otherwise than in the ordinary course of trade and in the usual course of the seller's business, shall be void as against the creditors of the seller, unless, at least five days before such sale or transfer, the purchaser shall demand and receive from such seller a full detailed inventory, showing the quantity and so far as possible, with the exercise of reasonable diligence, the fair wholesale value of each article to be included in such sale or transfer, and unless the purchaser shall further demand and receive from the seller a written statement, under oath, of the names and addresses of all creditors of the seller, with the amount of indebtedness owing to each, or, if there be no creditor, a written statement to that effect, and unless the purchaser or seller shall, at least five days before the taking possession of the merchandise and articles included in such sale or transfer, notify personally, or by telegram, or by registered mail, every creditor whose name and address is included in said statement of the proposed purchase, sale or transfer.

The purpose of the bill, no doubt, is to prevent fraudulent sales

by merchants and to secure the equal distribution of the property of insolvent merchants,—a purpose which I concede is a proper and legitimate one. But it is not confined to insolvent persons. Unfortunately, it is so framed as to include all merchants who may be in any manner indebted to any one. It is not directed at fraudulent sellers or at sales by insolvent merchants. There is no question but what the Legislature has ample power to declare fraudulent sales void, and to pass proper enactments for the just distribution of the property of insolvents. But it is equally clear that it possesses no power, under the Constitution, to declare fraudulent and void a transaction that is not as a matter of fact tainted with fraud. It is not within the power of the Legislature, by the use of an epithet, to change an innocent transaction into a vicious one; nor can it destroy the rights of solvent debtors in endeavors to equitably distribute the assets of insolvents. There must be some public reason existing to justify the invasion by the Legislature of the inalienable and ancient rights of the citizens. No public reason can be offered why an honest and solvent merchant shall be trammeled and restricted in his power to sell and dispose of his goods simply because he may be indebted to some extent.

In a recent and well-considered Ohio case it is said:

"While it is not required that every act which restricts the enjoyment of property must affect every member of society, it is required that every such act must be founded upon a reason of public nature, and the act must affect all who are within the reason of its enactment. * * *.

"For every restriction upon the enjoyment and use of property there must be some substantial reason of a public character. * * *. If a restriction is placed upon the alienation of property, it must be for the benefit of either the entire body of the people, or at least of all who are within the reason of the restriction."

Glos v. Mulchay, 71 N. E. 630.

In another very recent decision, remarkable for the force, accuracy and cogency of its reasoning, for the care with which it was considered and the learning and research it displays, it is said of an act similar to the one here under consideration, in speaking of the police power of the State, under the authority of which the validity of the act was sought to be maintained:

"The power may be exercised to promote the safety, health, comfort and welfare of society, and to sustain legislation as a proper exercise of the police power it must have reference to some such end. * * *.

"The enactment in controversy does not appear to have reference to either of the objects here indicated. It can hardly be said that a law which prevents a person, though indebted, who is substantially able to pay his

debts, from selling his property in the same way his neighbors do, and in accordance with the time-honored custom or usage, either promotes the safety, health, comfort or welfare of the community or the State.

"If the act referred generally to insolvent debtors it would present a different question, but it relates simply to debtors and creditors of debtors of a particular and specified business whether solvent or insolvent; so that the merchant who is worth a fortune over and above his indebtedness, and who is able to respond instantly to his creditors, who may be only such because of convenience in trade and business transactions, nevertheless finds himself, under the provisions of this act, deprived of the liberty to sell his goods, or to contract in relation thereto in the same manner that others engaged in the same business may lawfully do."

Sol Block & Gieff v. Schwarts, 27 Utah, 402.

In a dissenting opinion filed in a Tennessee case hereinafter referred to, the reasoning of which is much stronger than that of the principal opinion, it is said of a similar statute:

"No good reason can be given why merchants should be trammeled and restricted in the sale of their goods, when farmers, traders, manufacturers and other dealers have the unrestricted right to sell when they please, provided it is done in good faith.

"Nor is there any good reason why such a sale should, in the case of a merchant, be presumed to be fraudulent, when in the case of other dealers the presumption is in favor of good faith, and proof is required to show fraud. Nor is there any good reason to restrict the merchant who is solvent from making sale of his goods, as he may deem advisable, in order to prevent the insolvent merchant from exercising the same option and privilege."

Neas v. Borches, 109 Tenn. 405.

In an able and well-considered case decided by our own Supreme Court, the following quotation from Judge Cooley on Constitutional Limitations is cited with approval:

"The doubt might also arise whether a regulation made for any one class of citizens, entirely arbitrary in its character, and restricting their rights, privileges or legal capacity in a manner before unknown to the law, could be sustained, notwithstanding its generality. Distinctions in these respects must rest upon some reason upon which they can be defended,—like the one of incapacity in infants and insane persons; and if the Legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power even if no express constitutional provision could be pointed out with which it would come in conflict. To forbid to an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their pursuit of happiness, and those who should claim a right to do so ought to be able to show a

specific authority therefor, instead of calling upon others to show how and where the authorities negatived."

The bill under consideration clearly applies, and is intended to apply solely to those engaged in the sale of merchandise and has no application to any other class of citizens. It would have no application even to one whose business was to buy, sell and exchange stocks of merchandise in bulk, because this would be a sale in the ordinary course of such person's business. It can apply only to those engaged in mercantile business,—merchants.

The merchant engaged in the regular mercantile trade, either at wholesale or at retail, if he be indebted, though perfectly solvent and entirely honest, if he meets with an opportunity to sell his stock of goods, before he can effect such sale and give to the purchaser a clear and perfect title to the property which is the subject of the sale, must comply with all the regulations of this bill, some of which are onerous and all but prohibitive, while those engaged in other lines of business, although they may be indebted, are bound by no such conditions. Their hands are free. They can dispose of their property without notice to any one and without requiring of the purchaser anything except the payment of the consideration agreed upon. The merchant who happens to be in debt, must, after finding a probable buyer, wait at least five days and give notice to his creditors. He must require his purchaser to take an inventory of his entire stock, whether that is desirable or not; he must furnish such purchaser with a list of his creditors, their addresses and his indebtedness to each; his purchaser or himself must give notice to his creditors not only of the fact of the anticipated sale, but all its terms and conditions; and such purchaser finds his contract of purchase invalid if the list of creditors be incomplete, however honest the mistake therein; while the trader, the mechanic, the farmer, the professional man, the banker or the baker, whether he be in debt or not, without consulting any one but the buyer, and the merchant who is not in debt, may sell at will.

By confining the prohibitory terms of the statute to merchants and exempting all other persons, natural and artificial, from their operation; by declaring void the agreements of the merchant and leaving the same kind of contracts valid as to others; by imposing conditions on one class of citizens in their right to dispose of their property, while there is a total immunity from such restrictions as to all other classes, an unreasonable, unwarranted and unconstitutional classification of citizens is made.

In the light of what has already been said it is apparent that the provisions of the bill are obnoxious to those provisions of the State Constitution and of the Constitution of the United States which are designed to insure to the citizen the right to life, liberty, property and equality before the law and with which the theory of our government presumes all men to be endowed by nature.

Article 5 of the amendments to the Federal Constitution provides, among other things, that no citizen shall be deprived of life, liberty or property without due process of law.

Article 14 provides, among other things:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws."

Section 21 of Article 1 of the State Constitution provides that no man's property shall be taken by law without just compensation.

Section 23 provides that the General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.

These constitutional provisions are the supreme law of the State upon this subject. To that law all must yield obedience,—the executive, the legislative, and the judicial departments of the government, as well as every citizen from the highest to the lowest. In them liberty dwells and freedom has her habitation. They represent the essence of free government as established by our fathers and given to us in trust for our children. They constitute the law of the land, aye of the Indiana land, and as such they are sacred. Under their mandate no person can be deprived of life, liberty or property without due process of law. Under them every person is entitled to the equal protection of the law. Under them every one may acquire property, possess and protect it, as well as defend his life and liberty. Under them all these rights are the guaranteed, inherent and inalienable heritage of every citizen. And under them an enactment which deprives the citizen of his property or of any of the essential attributes of its ownership, or of any part of his personal liberty, is just as much inhibited as one which would deprive him of life.

Equality before the law is the cornerstone of the whole national fabric, and these provisions of the Constitution of Indiana are, as we have seen, but the reiteration of the provisions of the National Constitution. They require that all citizens in like conditions and

circumstances shall stand upon equality of right and privilege under the law.

One of the inherent rights of the citizen intended to be protected by these provisions of the Constitution of the State and Nation from encroachment by legislative enactment, as has been already suggested, is that of the acquisition, free use and enjoyment and the disposition of property. That this is true has been affirmed by our own Supreme Court on all occasions where the question has in any wise been presented.

Quoting from Judge Cooley, our Supreme Court has said in the case of Dixon v. Poe, 159 Ind. 497:

"To forbid an individual or a class the right to the acquisition or enjoyment of property in such manner as is permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their pursuit of happiness."

One of the chief and most valuable attributes of the ownership of property, is the right to dispose of it, and to take from the citizen this right, or to so trammel and hamper it as to substantially impair its use, is to take from the citizen his property as much as if it took from him the thing itself.

It has been well said:

"To take from property its chief element of value, and to deny to the citizen the right to use and transfer it in any proper and legitimate manner, is as much depriving him of his property as if the property itself were taken."
Third National Bank v. Devine Grocery Co., 97 Tenn. 611, (37 S. W. 390).

The effect of the measure under consideration is to restrict and burden the merchant's property in such a manner as to prevent its free transfer and a realization of its full value. It takes away one of the chief elements of its value, to wit, the right to use and legitimately dispose of it.

Speaking upon this question the Supreme Court of Utah, in the case already referred to herein, used this language:

"Property has some essential attributes without which we could not conceive it to be property. Among these are use, the enjoyment, susceptibility of purchase, sale, and of contracts in relation thereto. The taking away of one of the essential attributes may violate the constitutional guarantee that no person shall be deprived of his property without due process of law as clearly as in the case of physical taking without due process of law. An enactment, therefore, like the one in controversy, which deprives an owner of his liberty to sell his property, or contract in relation thereto, in the same manner as others engaged in the same business might lawfully do, invades his

rights guaranteed by the Constitution and cannot be upheld; and to prevent the free exchange, sale or disposition of property according to the immemorial usages of trade is to deprive it of one of its main attributes."

Our own Supreme Court has so clearly stated the law as applied to this class of legislation as to leave no room for doubt as to what the law is upon the subject in the State of Indiana.

In the case of Dixon v. Poe, supra, from which I have already quoted, the court holds an act void as obnoxious to the above provisions of the Constitution of the United States and of this State because the act imposed conditions upon a merchant in the redemption of his checks that were not imposed upon citizens engaged in other callings. And in the case of McKinster v. Sager, decided by our Supreme Court on the 29th day of December, 1904, and reported in vol. 72, page 51, of the N. E. Reporter, where a statute enacted upon the same subject and very similar in terms, was under consideration, the court held that the law was unconstitutional because of the unreasonable classification therein as to the remedy afforded the creditors of the debtor. The argument of the court and the reasons upon which the case was decided apply with equal force to the bill now under consideration. It is there said, quoting from an opinion in the 20 Mich. 452:

"But the discrimination by the State between different classes of occupations, and the favoring of one at the expense of the rest, whether that one be farming or banking, merchandising or milling, printing or railroading, is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in state government. When the door is once opened to it there is no line at which we can stop and say with confidence that thus far we may go with safety and propriety, but no further. Every honest employment is honorable. It is beneficial to the public. It deserves encouragement. The more successful we can make it, the more does it generally subserve the public good. But it is not the business of the State to make discriminations in favor of one class against another, or in favor of one employment against another. The State can have no favorites. Its business is to protect the industry of all and to give all the benefit of equal laws."

These expressions of our own court of last resort leave it clear to my mind what would be the fate of this measure were it to receive executive sanction.

I am not unmindful of the fact that in the State of Massachusetts a measure somewhat similar in terms to the one under consideration has received the doubting approval of the Supreme Court of that State, nor that a similar measure has been upheld in the State of Washington and in the State of Tennessee. The Tennessee statute was upheld by a divided opinion of the Supreme Court

of that State. An able dissenting opinion was delivered by one of the members of the court, in which the line of argument pursued was precisely the same as that followed by our own Supreme Court. If the case as to this measure stood upon the Tennessee decision alone, I would feel myself irresistibly impelled to follow the reasoning of the dissenting opinion.

The same question that is presented here was presented to the Supreme Court of the State of Ohio, also to the Supreme Court of the State of Utah. In each case a very able and exhaustive opinion was delivered by Shauck, judge, speaking for the Supreme Court of the State of Ohio, and by Bartch, judge, speaking for the Supreme Court of the State of Utah, in which these laws were held unconstitutional. In the Ohio case it is said:

"Applying the familiar and unquestioned rule that the validity of an act is to be determined by its operations, and not by its title or declared purpose, this act, under the guise of preventing fraud in such sales, prohibits them altogether, and thus places upon the enjoyment of property an important restriction which no public interest requires, and which the Constitution, therefore, forbids. One who challenges the soundness of this conclusion should be prepared to maintain the validity of an act expressly forbidding sales of stocks of merchandise in bulk. By the act the Legislature has attempted to discriminate unwarrantably among creditors and debtors. * * *.

"Although the act applies to all the creditors of the seller, it applies to those only who are creditors of the owner of a stock of merchandise, and thus an unreasonable burden is imposed upon a limited class of debtors for the supposed benefit of a limited class who are their creditors."

In the Utah case it is said:

"While it is within the province of the Legislature to prevent fraudulent sales as a protection to creditors, still, when it attempts to do this,—to remove one evil,—it must not so restrict individual rights and disturb industrial pursuits and usages as to cause a score of wrongs.

"We are of the opinion that the enactment in controversy abridges some of the inalienable rights of persons guaranteed by the Constitution; that it is not a proper exercise of the police power of the State; that it deprives property of one of its chief attributes, and some persons the liberty to dispose of property as others may; * * *; that it deprives the person to whom it applies of a right of property without due process of law; and that, therefore, it is null and void."

As we have seen, the views of the several courts as expressed in these cases are so clearly sustained by the general principles of law, and are so much in harmony with the decisions of our own Supreme Court, as to convince me that whatever the law may be held to be in the States of Massachusetts, Washington or Tennessee, that in the State of Indiana laws of this character cannot be upheld.

Because the bill arbitrarily despoils the citizen of his property without due process of law; discriminates between merchants and other classes of citizens in their right and power to dispose of their property; discriminates between solvent merchants who are indebted and merchants who are free from debt, in their right and power to dispose of property; and gives to citizens, other than merchants, privileges and immunities that are not enjoyed by merchants who stand upon the same footing as such other citizens, I am compelled to withhold executive approval from such measure.

If a measure were passed applying only to insolvent persons selling stocks of merchandise in bulk, I believe it would be a valid exercise of legislative power, and I would give it my approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 174.

MARCH 6, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 174 without my approval.

The bill provides for the extension of library privileges to counties and townships in which free public libraries may be located, upon the filing of notice by the managing board of any such library with the board of county commissioners of such county, or with the advisory board of any such township, as the case may be, and upon the acceptance by such respective boards of the conditions named in such notice, and the appropriation, out of the general fund of such county or township, of a sum equal to the fund which will be produced by a certain named rate of taxes upon the taxable property of said county or township, as the case may be, outside of such city where said library may be located, and in case of the county, outside of the limits of any township in the county then maintaining a free public library by a tax under existing laws.

Under the provisions of the bill all property within the limits of any city in such township where such library is located, is omitted from the tax levy required to be made by such township.

In case of the county, all property located within the limits of such city or within the limits of any township in which a free

library is maintained by taxation, is omitted from the tax levy required to be made by the county.

In other words, the bill provides for the laying of a township tax for library purposes that is not uniform throughout the townships, and from which certain property in certain portions of the township, that is, property within such city where such library is located, is exempt.

It also provides for the levying of a county tax for library purposes that is not uniform throughout the county, and from which property within such incorporated city where such library is situated, or within any township in such county which is maintaining a library by taxation, is exempt.

The taxing district of a township, for the purpose of laying a township tax, is the entire township. Any such tax so laid by such township must be laid upon all the property of the township.

The taxing district of a county, for the purpose of laying a county tax, is the entire county. It includes all townships and all cities within the borders of the county. Such a tax laid by such county must be laid upon all the property of the county.

Such a tax as the one authorized by the provisions of the measure under consideration, cannot be laid either by the township or the county.

The Constitution of the State, Article 10, Section 1, provides:

"The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation," * * *.

The above provision has received judicial construction, and its meaning relative to the question now under consideration is well-established.

In an early and well-considered case, it is said, in reference to this section:

"The section does not require that the rate of assessment shall be uniform and equal for all purposes throughout the State; and we think its meaning clearly is, that the rate of assessment and taxation must be uniform and equal throughout the locality in which the tax is levied. If the levy is for State purposes, then the rate must be uniform and equal in all parts of the State; and if the levy be for county purposes, the rate must be uniform and equal throughout the county in which the levy is made; and so in townships when the levy is for township or road purposes. It was simply intended that the uniformity and equality of rate should be co-extensive with the territory to which the tax applies. Taxes are public burdens, which should be borne by all, and it was evidently the object of the convention, in the adoption of this and other provisions of the Constitution, to devise a system

for the assessment and levy of taxes that would distribute these burdens among those liable to them, upon principles of uniformity, equality and justice. To this end the primary principle adopted is, that taxes shall be assessed on the property liable thereto according to its just value and by uniform and equal rate."

Bright v. McCullough, 27 Ind. 230.

In the course of the opinion in the above case the court quotes with approval the following from the opinion by Rainey, C. J., in the case of City of Zanesville v. Richards, 5 Ohio St. 589:

"Without express authority of law, no tax, either for state, county, township or corporation purposes, can be levied; and we see no reason to doubt that this section of the Constitution is equally applicable to, and furnishes the governing principles for, all laws authorizing taxes to be levied for either purpose. The great object of the provision was to secure equality and uniformity in the imposition of these public burdens. The convention was well aware that much the largest part would be required to answer the purpose of these local sub-divisions, and equally aware that it could only be levied as the General Assembly should provide. In establishing this principle of justice and equality, they have made it the fundamental rule upon which all such laws must be based; and its spirit and purpose can only be preserved by holding that it requires a uniform rate per cent. to be levied upon all property according to its true value in money, within the limits of the local sub-division for which the revenue is collected."

Again, it is said in the case of Bright v. McCullough, supra, in quoting from the opinion in the case of Exchange Bank of Columbus v. Hines, 3 Ohio St. 1:

"Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation. But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a state tax, it must be uniform over all the State; if a county, town or city tax, it must be uniform throughout the extent of the territory to which it is applicable."

The case of Bright v. McCullough, supra, has never to my knowledge been overruled, criticised or modified, but has been many times cited with approval by the Supreme Court of this State.

Henderson v. London, etc., Co., 135 Ind. 37;
Cleveland, etc., Co. v. Backus, 133 Ind. 535;
Pittsburg, etc., Co. v. Backus, 133 Ind. 647.

In the first of these cases the principle here under consideration is expressed in the following language:

"The taxing district of the State, wherein taxes are directed for the benefit of those serving the State, is the whole State. State taxes are not of

uniform and equal rate when they apply to a portion of a class only and omit a portion of the same class, and this is no less true because the classes may be divided by county lines."

In the case last cited, the following declaration is made:

"There is uniformity and equality of assessment and taxation when all the property is to be assessed at its true cash value, and the same rate is fixed on all property subject to assessment for the tax. If it be a tax for State purposes, the rate must be the same throughout the State; if for county purposes or township purposes, the same rule would apply."

The tax authorized to be levied by the county under the provisions of the measure returned herewith, is a county tax for library purposes, and the tax authorized thereby to be levied by the township, is a township tax for library purposes. The taxes paid under the county levy go into the general fund of the county, and those paid into the township levy go into the general fund of the township, and the sums paid to the library, for the maintenance of which such tax is levied, are required to be paid from the general fund of the county or of the township, as the case may be.

It has been said that the reason why the property in the city where the library is located is exempt from taxation by the county, is found in the fact that the common council of such city, under existing law, may levy a tax for the maintenance of such library upon the property within the city limits. It is also urged that a township that has within its borders a free library which it is maintaining by a tax levy upon the property of such township, ought to be exempt from the payment of the tax levied, for the maintenance of a library, by the county in which such township is located. It is further said that neither the property in such city nor the property in such township is in fact exempt from taxation for library purposes. This argument, however true it may be in fact, does not meet the constitutional objection. The city tax is laid by a different authority and is different in rate from the county tax, and the same is true of the township tax. In neither case would there be uniformity of rate.

I am in sympathy with the purpose sought to be effected by the provisions of the bill under consideration, but it is so clearly within the constitutional inhibition requiring a uniform rate of taxation that I am compelled to refuse it executive approval.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 226.

MARCH 6, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 226 without my approval, because of its defective title.

It purports to amend an act approved February 24, 1899, which act was an amendment of an act approved March 8, 1897.

The title of the act of 1897 is set out accurately and in full, but the title of the act sought to be amended, that is the act of 1899, is not set out nor even attempted to be set out.

Section 21, Article 4, of the Constitution provides:

"No act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length."

R. S. 1901, Sec. 117.

The only reference made to the act of 1899, this being the act which is sought to be amended, either in the title or in the body of the bill, follows the title of the act of 1897, as set out, and is as follows:

"And the act amendatory thereof, approved February 24, 1899, and declaring an emergency, the same being Section 8075a of the Revised Statutes of the State of Indiana of 1901."

In the case of Citizens, etc., Company v. Haugh, 142 Ind. 254, the date of the approval of an act is declared to be no part of its title. Therefore, the words in the title of the bill under consideration, "and the act amendatory thereof, approved February 24, 1899, and declaring an emergency, the same being Section 8075a of the Revised Statutes of the State of Indiana," are no part of the title of the act sought to be amended.

It has also been decided that where the title to an amendatory statute refers to and sets forth the title of an act which has theretofore been amended, and does not refer to or recite the title of such act as amended, a designation of the statute sought to be amended is insufficient, although the section attempted to be amended is referred to as being a designated section of the Revised Statutes of 1881.

Boreing v. State, 141 Ind. 640;
Feibleman v. State, 98 Ind. 516;
Linquest v. State, 153 Ind. 543.

In the last cited case the court announces the rule as follows:

"It is settled by the decisions of this court that, in the revision of an act or the amendment of a section, two things are required: (1) The title of the act to be amended must be referred to by setting it out; (2) The act as revised, or section as amended, must be set forth, and published at full length" * * *.

"When the act is identified in the manner required by the Constitution, and it is not certain what act was intended to be amended, the court will resort to means other than the title to determine what act was intended. But if the act is not identified in the manner required by the Constitution, the court cannot resort to other means of identification, although a resort to such other means would point out the act intended beyond any question."

The act of 1897 consisted of a single section other than an emergency clause. The act of 1899 amended that section. Therefore, the act of 1897 ceased upon amendment to exist. As the title to the bill under consideration now stands, it sets out the title to the act of 1897, and thereby seeks to amend an act not in existence.

An attempt to amend an act not in existence is not valid for any purpose.

Draper v. Falley, 38 Ind. 465;
Blackmore v. Dolan, 50 Ind. 194;
Feibleman v. State, 98 Ind. 516.

The purpose of the bill returned herewith is a proper one, and if the title were not fatally defective I would give it my approval. As it is, however, I can not do so.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 362.

March 6, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 362 without my approval.

The bill authorizes the common council of cities not operating under a special charter and the board of trustees of towns, where such cities and towns own their own system of water works, to order the extension of the water mains of such water works system and the laying of house connections thereto along, in and upon such streets as such council or such board of trustees may from time to time deem necessary, and provides that the cost of con-

structing and laying such water mains and the house connections thereto shall be assessed upon the property abutting upon the streets where said water mains are laid, in proportion to the benefits derived therefrom.

These provisions are so unfair and unjust to the citizens and taxpayers of such cities and towns living upon streets where such water mains may be laid, as to preclude executive approval.

Every water works system owned by any city or town in the State has been purchased or constructed at the expense of all the taxpayers in the city or town owning the same. Property owners living upon streets where no water mains are now located have contributed as much to the payment of the cost of constructing or purchasing such water works system, in proportion to the value of the property owned by them, as have any of the other citizens of such town or city. They have the same right to water privileges that such other citizens may have and upon the same terms. The bill under consideration ignores that right entirely, and vests the arbitrary power in the common council of a city or the board of trustees of a town to construct and lay such water mains upon any such street and to assess the entire cost thereof against such property owners without their consent and against their wishes. If such water mains are constructed and laid upon such streets, and the property owners thereon are compelled to pay special assessments to defray the expense of constructing and laying the same, they will be compelled to contribute in an unequal and unjust degree to the cost and maintenance of a system of water works which belongs to the whole people. Such system should be established from a fund derived from a uniform rate of taxation resting alike upon all citizens of the city or town, and not in part from a fund to which all citizens have contributed alike according to the value of the property owned by them, and in part from a special assessment resting upon a few of such taxpayers. The burden of the cost of constructing and maintaining such system rests unfairly upon the citizens whose property is especially assessed, to the extent of the special assessment laid. This I think ought not to be.

The power to construct and lay water mains upon any of the streets of any of such cities or towns, is an arbitrary power under the provisions of this measure, vested wholly in the discretion of the common council or the board of trustees of such city or town. The proceeding to construct and lay such water mains upon any such street is not required to be initiated by any persons owning property thereon. They have no choice in the premises. The im-

provement may be made against their wish and over their protest. It is theirs only to pay the unequal burden imposed.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 374.

March 6, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 374 without my approval.

The bill provides for the construction of court houses in all counties of the State having a population of not less than 20,870, nor more than 21,000. In effect, it divides the ninety-two counties of the State into three classes, viz.: those having a less population than 20,870—those having a population of more than 21,000—and those having a population between 20,870 and 21,000.

The provisions of the bill apply only to the last named class of counties. It will be noticed that the difference in population between the counties of the first class, having the maximum population, and those of the second class, having the minimum population, is only 130, and that the counties of the third class, and to which the provisions of the bill apply, must be found between that narrow limitation.

In terms the bill is general, but no one is deceived thereby. In effect, it is local and special, and applies to but one county in the State—Monroe, that being the only county in the State shown by the last United States census to have a population between 20,870 and 21,000. No other county in the State comes within the limitation named. In all such cases the subterfuge of arbitrary classification might as well be dispensed with, and the name of the county sought to be affected boldly written into the bill. The measure under consideration might as well have contained the name of Monroe County, and have been entitled, "An act concerning the construction of a court house in Monroe County." Its meaning would have been exactly the same, and, in addition, it would have been an honest declaration of its purpose. The ostrich that hides his head in the sand, believing his body to be thereby concealed, fools no one but himself.

That such acts are local and special in character has been de-

cided by the Supreme Court so often and so recently that the decisions ought to be fresh in the minds of even the laity.

In re Application of Bank of Commerce, 153 Ind. 474;
Board v. Spangler, 159 Ind. 579;
School City of Rushville v. Hays, 162 Ind. 198;
The Town of Longview v. City of Crawfordsville, No. 20,-274, handed down January 13, 1905.

In the second case cited above, an act of the General Assembly, approved March 4, 1899, making an arbitrary classification of counties between those having a population of 15,000 and 15,050, according to the last Federal census was under consideration. The court said:

"This court takes judicial notice of the population of the counties of this State according to the Federal census of 1890. It is, therefore, advised that the only county in this State that had a population between 15,000 and 15,050, according to the Federal census of 1890, was Owen County. As the population referred to in said act was to be determined according to a particular past census, so that other counties could not subsequently enter the class, it is apparent that by said act the General Assembly, in effect, sought to provide that the provisions of the general act of February 27, 1899, should not apply to certain described proceedings to improve gravel roads in the county of Owen. * * * The attempted exclusion of pending proceedings for the improvement of gravel roads in Owen County from the operation of the general law * * * was in effect an attempt to provide by a local law not alone for an issue of bonds, but for the levy of a tax that, under existing law, constitutes the means of retiring such bonds. We think that it was not competent for the General Assembly to make such exception. * * * As the subject of the legislation falls within Section 22, of Article 4, of the State Constitution, we hold that the proceedings could not be validated by any act that could properly be characterized as local or special."

The Sixty-third General Assembly enacted nine laws arbitrarily establishing classifications of counties and cities upon differences of population varying, as to the classes legislated for, from 5 to 1,000. In considering one of these acts in a recent case, the Supreme Court said:

"Its legal foundation is not more secure than if it had been declared to apply to all cities and towns bearing the name of Rushville, as shown by the last preceding census. The classification is entirely arbitrary and artificial, and the plain command of the Constitution cannot be evaded by so weak and transparent a device.

"Let it be supposed that the act of March 9, 1903, supra, is valid, what provision of the Constitution cannot be rendered nugatory by similar evasions. If cities and towns may be classified according to trifling differences in population, so may counties and townships. By means of statutes, general

in form, but local and special in purpose, resting entirely upon slight differences in population, every provision of Article 4, Section 22, of the Constitution may be successfully evaded.

"Inferior in dignity and force of obligation only to the Constitution of the United States and the acts of Congress and treaties made under it, the State Constitution is the supreme law of the Commonwealth. It is to be interpreted and applied in a reasonable manner; it is to be observed and obeyed, and not evaded and defeated by distinctions and classifications which rest upon no rational or natural basis, and which deceive no one. When it declares that the General Assembly shall not pass local or special laws providing for supporting common schools and for the preservation of school funds, its mandate cannot be defeated by creating a class of cities differing in no material respect from scores of others in the State. The mere convenience of local communities, the financial necessities of particular cities, the conflicting views of citizens on the subject of the necessity for the erection of school buildings, are not sufficient to authorize legislation which the Constitution prohibits. Attempted evasions of the Constitution, the object of which is to meet and overcome such local and special conditions, cannot be tolerated. A due regard for the highest interests of the citizens of the State requires that all constitutional limitations and restrictions shall be firmly and constantly enforced."

The School City of Rushville v. Hayes, 162 Ind. 198.

In the case of the Town of Longview v. City of Crawfordsville, supra, construing another act of the Sixty-third General Assembly, in a decision rendered as late as the 13th day of January, 1905, the same court said:

"In jurisdictions where classification is permitted by the organic law, it is settled that the same, in order to furnish a basis for legislation that will exempt it from the charge of being special, must be a classification which in the nature of things suggests and furnishes a reason for, and justifies the making of the class. The reason for the classification must inhere in the subject-matter, and the same must be natural, not artificial. Under this rule, neither mere isolation nor arbitrary selection is proper classification."

In the statute above referred to the classification made was based on a difference of 1,000 in population. The court held it to be an arbitrary classification, and in the course of its opinion said:

"Applying these tests, it is evident that the classification in said act is merely arbitrary and cannot relieve the same from the infirmity of being special and local. There is no reason inhering in the subject-matter of the act for giving the power mentioned therein to cities of a population between six and seven thousand according to the last preceding United States census, and not giving the same to the other cities in the State."

In the measure under consideration the classification of counties is based upon a difference in population of only 130, and is, therefore, clearly within the rule above declared.

There can be no doubt of the local and special character of this bill. That fact is established, and may as well be admitted. To admit the local and special character of the bill, however, is to admit its invalidity, if we keep in mind the fact that its purpose is the construction of a court house in Monroe County.

The Constitution provides:

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * Regulating county and township business."

Article 4, Section 22, State Constitution.

Constructing a court house is county business. That it is county business has been clearly and unequivocally decided by the Supreme Court in an able and well-considered opinion filed January 8, 1904.

Board v. State, 161 Ind. 618.

In the above case the question was fairly presented and pointedly decided. It involved the validity of an act providing for the change of the county seat in Newton County and the construction of a court house in said county. Speaking of the question presented the court said:

"The decision of the question involves the inquiry (1) is the building of a county court house for county purposes with county revenue county business * * *. If, when the Constitution was adopted, the building of a county court house, with county means, upon county grounds, for county purpurposes, was generally considered and treated over the State as county business, and was intended by the Convention to be embraced within the classification of county business, as contained in Section 22, Article 4, then it must be held that the Legislature had no power to pass a local or special law regulating the same. To regulate is to direct by rule or restriction. The phrase 'county business' has no prescribed or technical meaning, and the definition must be sought in the previous history and practices of the State."

After a careful and learned review of the history and practices of the State in this regard, including consideration and review of the debates in the Constitutional Convention upon the question, the court continues:

"From these considerations, and others that might be brought, we come unhesitatingly to the conclusion that the building of court houses in the several counties of the State was understood by the people and framers of the Constitution as being county business, and was intended by the latter to be embraced by the term as implied in Section 22, Article 4."

I am thoroughly convinced that the provisions of the bill under consideration, making an arbitrary classification of counties based

upon a difference of 130 in population, make it local and special in character.

I am equally well convinced that providing, as it does, for the construction of a court house, it is a measure to regulate county business, and is within the inhibition of Section 22, Article 4, of the Constitution.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 65.

MARCH 8, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I deposit herewith House Bill No. 65 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill concerns gravel and macadamized roads on township lines, and provides for the construction of such roads on petitions signed by a majority of the freeholders of the townships affected by the proposed road. The same subject-matter is covered by Senate Bill No. 77, which has this day received executive approval, except that in the Senate bill the question of constructing such roads on township lines is required to be submitted to the people of the townships affected at an election to be held for that purpose.

I believe the provisions of the Senate bill are better than the provisions of the bill herewith deposited. I therefore withhold executive approval from said House Bill No. 65.

Respectfully submitted,

J. FRANK HANLY,
Governor.

Senate Veto Messages, Sixty-Fifth General Assembly

SENATE BILL No. 110.

FEBRUARY 15, 1907.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 110, the same being a bill to amend section 470 of an act entitled "An act concerning public offenses," approved March 10, 1905, without my approval.

The section sought to be amended makes the visiting or frequenting of a house or houses of ill-fame or assignation by a male person, except as a physician, a misdemeanor and provides punishment by fine and imprisonment upon conviction.

The vice sought to be reached and restrained is one of the most hateful and demoralizing known to society. The section referred to is sought to be amended in two particulars. First: The punishment provided is changed from fine and imprisonment to fine or imprisonment, in the discretion of the court. It may be and perhaps is advisable to make this change. If this were the extent of the amendment I would have approved it. The other amendment sought, however, is of a different character. The statute now reads: "Whoever being a male person frequents or visits a house or houses of ill-fame or of assignation, except as a physician, * * * shall be fined," etc. The amendment adds an additional exception to the inhibition of the statute by inserting after the word "physician" the following words: "Or other persons upon legitimate business." The effect of this amendment would be to throw the burden of disproving the exception upon the State. This is well settled by judicial authority.

The following is a clear statement of the law applicable to the case:

"The law in relation to exceptions in a statute is, that if the exception be contained in a subsequent clause or statute, it is a matter of defense, and need not be negatived in the indictment; but if it be closely connected with the enacting clause, or if it be in the same clause of the act which creates an offense, it is necessary to show, by negative averment, that the defendant is not within the exception."

Russell v. State, 50 Ind. at 174;
Cleveland, etc., Railway Co. v. Gray, 148 Ind. at 275;
Chicago, etc., Railway Co. v. Vert, 24 Ind. App. at 80:
Turner v. State, 151 Ind. at 248.

Under the rule here declared it is clear that the effect of the exception of "other persons upon legitimate business" would be

to require the State to aver, in every affidavit or indictment charging the offense described in the section, and upon the trial to prove beyond a reasonable doubt, that the defendant was not visiting or frequenting the forbidden house upon legitimate business. Such a requirement would put an unnecessary burden upon the State in every such case. It would make the proof difficult in all cases and impossible in many. Efforts to make the proof in criminal cases more difficult are to be looked upon with concern and apprehension rather than approval.

Our criminal laws do not need amendment in this regard. This is especially true of the present statute. There is no need of the amendment. No person visiting any such house on any lawful mission is in danger of conviction under the present statute. Its effect would be nullification and not amendment.

For these reasons I am compelled to withhold executive approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

SENATE BILL No. 126.

FEBRUARY 15, 1907.

Mr. President and Gentlemen of the Senate:

Senate Bill No. 126 is herewith returned without executive approval.

The purpose of the bill is to authorize certain cities to make appropriations of money and to levy a special tax for the support of hospitals in certain instances named.

The title of the bill is defective, in that only one of these purposes, that of authorizing such cities to make appropriations of money for the support of such hospitals, is named. The other purpose, that of authorizing such cities to levy a tax for the support of such hospitals, is wholly omitted.

Section 19 of the Constitution requires the subject of every act to be expressed in the title and declares void so much of any act as is not expressed in the title.

R. S. 1901, Sec. 115.

Upon this subject the Supreme Court of the State, in a well-considered opinion, declared the rule to be as follows:

"If the subject is composed of two or more essential elements, the expression of one of such elements in the title would not suffice. The absence of one of such elements in the title would be as misleading, and might be as pernicious, as the evils sought to be obstructed by the Constitution. * * *

"In State v. Young, 47 Ind. 150, a test was prescribed for determining if the subject is expressed in the title. It was said, in speaking of that element of the subject claimed to be absent from the title: 'Suppose that there was no other provision in the act. * * * If the section could not thus stand alone under the title, it must fall.' We apprehend that this is always true where only a part of the subject is expressed, and that it is especially true where that part of the subject omitted from the title is not naturally or ordinarily connected with that part of the subject which is expressed in the title. * * *

"The requirement that the subject expressed should apprise the people of the subject of legislation, in order that an opportunity for a hearing or for petition may be had, is far from being complied with in the act before us. No notice whatever to those expected to contribute to such fund is given."

Henderson v. London, etc., Insurance Co., 135 Ind. 31.

The rule laid down in the above case is clearly applicable to the bill under consideration. Here the purpose to authorize cities to make appropriations is expressed in the title, but the purpose to authorize such cities to levy a tax is not expressed in the title, and no notice whatever to those who may be expected to pay such tax is given. The title to the bill relates solely to the making of appropraitions.

The purpose of the bill is an important one. Any law carrying in it authority to levy a tax upon the citizens is important, and every act having within it such purpose should clearly set that purpose out in the title.

I believe the bill is a meritorious one. If the title of the bill is amended and the bill re-enacted, I shall be glad to give it executive approval.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 249.

FEBRUARY 22, 1907.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 249 without executive approval.

The bill authorizes boards of school trustees in cities of the second class to issue, negotiate and sell bonds of the school city or corporation, for the purpose of procuring means "for school uses and purposes; to purchase real estate; to erect buildings and suitably equip them for use for school purposes, including the cost of lighting, heating and sanitation; also for the purpose of paying any sums due for buildings already erected; also to fund and pay any indebtedness of such school city or corporation"; also to empower such trustees to levy and collect taxes for the payment of such bonds.

The present statute, Section 5915v, R. S. 1901, Vol. 4, authorizes such boards to issue bonds for the purpose of procuring means to purchase grounds, erect school buildings and pay for the cost of repairing school buildings heretofore erected, limiting such indebtedness to two per cent. of the taxable property of the city, and the tax levy for their retirement to 25 cents on each 100 dollars of such taxable property. It further provides for the submission of the question of issuing the bonds to the qualified voters of the city in case the proposed issue exceeds three-fourths of one per cent. of the taxable property of the city.

The proposed bill repeals all laws in conflict with its provisions, and, if enacted, it will strike down all restrictions in the present law limiting the authority of such boards to issue bonds and to levy taxes for their payment.

At present the bill if enacted would affect but two cities, Evansville and Fort Wayne. Two other cities, however, Terre Haute and South Bend, will, no doubt, soon be included among the second class cities of the State, in which event the bill, if enacted, would apply to them.

It authorizes boards of school trustees to issue bonds and incur indebtedness and to levy taxes for the retirement of such bonds and the payment of such indebtedness without limitation and without the submission of the question in any case to the qualified voters of the city, except the provision that there shall not be issued and

outstanding at any one time more than $150,000.00 face value of such bonds. It provides that bonds issued shall not run for a greater period than ten years, and that they shall fall due in equal proportions each year after their date until the last one matures.

This limitation, however, is in effect no limitation at all, since any board of trustees who desire might issue $150,000.00 of such bonds to be paid in any number of years less than ten. They could all be made payable in one year, or they could be extended over a term of two, three, four or other number of years not more than ten; $150,000.00 of such bonds could be issued today to be paid and retired in a single year and a tax levied to retire them, or they could be issued to run a period of three years, payable one-third each year, and a tax levied to retire them. If issued for a year and a levy made to retire them, upon their payment another issue of $150,000.00 could be made for another year, or running over a period of two, three, four or five years up to ten years, as the board might elect, and a new issue made upon their payment.

Such a power is a dangerous one to confer upon the board of trustees of any school town. One board might administer it in good faith and with conservative care; the next one might abuse its power and the people of the city be helpless to stay its hand. In enacting this bill into law you legislate not for today and not for existing boards of trustees, but for other days and years to come and for other boards of trustees.

I know of no other statute upon this subject authorizing the boards of school trustees of any town or city, great or small, in all the State of Indiana, to incur indebtedness and levy taxes without limitation.

I can not give my approval to a bill the terms of which strike down existing limitations in this regard and which provide no restrictions to take the place of those stricken down.

The purpose of the bill, as I am advised, is to furnish relief to the city of Evansville, by conferring upon its board of trustees power to issue bonds to retire a present indebtedness. The relief desired is essential to the welfare of the schools of that city. The purpose of the bill is, therefore, a proper one, and if proper restrictions were thrown around the authority conferred upon the trustees, limiting their power to issue bonds and levy a tax for their retirement, I would approve it.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 128.

FEBRUARY 26, 1907.

Mr. President and Gentlemen of the Senate:

I return herewith, without executive approval, Senate Bill No. 128, the same being "An act to amend section 15 of an act entitled 'An act in relation to voluntary associations,' in force March 9, 1901, Acts 1901, page 289."

The bill purports to amend an existing statute, but there is no such act as that named in the title, to wit: "An act in relation to voluntary associations," in force March 9, 1901.

By reference to the session laws of 1901, page 289, this being the book and page referred to in the title of this bill, we find an act entitled "An act concerning the organization and perpetuity of voluntary associations, repealing all laws in conflict therewith, legalizing the organization of certain associations organized under former laws, and declaring an emergency." This act was approved March 9, 1901, and in all probability is the act sought to be amended by the present measure.

By comparison of the two titles, that of the amendatory act and that of the act sought to be amended, it will be seen that no substantial part of the title of the act sought to be amended is set out in the title of the amendatory act.

Section 21 of Article 4 of the Constitution, provides:

"No act shall ever be revised or amended by mere reference to the title; but the act revised or section amended shall be set forth and published at full length."

The most that can be said for the present bill is that it contains a mere reference to the title of the act sought to be amended. There is a total failure to set out the title.

In the case of O'Mara v. The Wabash Railroad Company, 150 Ind. at 650, the title of the amendatory act referred to the title of the act sought to be amended as "being an act concerning civil procedure," when the actual title of the act sought to be amended was "An act concerning proceedings in civil cases."

In this case the court said:

"The title of the act of 1897 seems to have been possibly intended to apply to either an original or an amendatory act, but the enacting clause and section so clearly give the act character as an amendatory act that an intention to enact an original statute is not probable. We see no escape from the con-

clusion that the act does not express the subject thereof in its title by reference to the act or the title of the act to be amended. It is therefore invalid."

O'Mara v. The Wabash Railroad Company, 150 Ind. at 650.

In another recent case the title of the amendatory act read as follows: "An act to amend section 359 of an act concerning trial by jury, in force September 19, 1881, the same being Section 525 of the Revised Statutes of 1881." The actual title of the act sought to be amended was "An act concerning proceedings in civil cases." The court held the reference in the title to Section 359 insufficient, saying:

"It will be observed that the amendatory act of 1891 does not refer to the title of the act to be amended by setting it out, as required by said Section 21 of Article 4 of the Constitution, but refers to the act to be amended as, 'An act concerning trial by jury,' which is not the title of the act in which said Section 359, *supra*, may be found. When the act or section to be amended is identified in the manner required by the Constitution, and it is not certain what act or section was amended, the court will resort to means other than the title to determine what act or section was amended. But if the act or section is not identified in the manner required by the Constitution, the court will not resort to such other means of identification, although the act intended would thereby be ascertained beyond question. It follows that as the title of said act of 1891, *supra*, fails to identify the section to be amended by setting the same out in the title thereof, as required by Section 21 of Article 4 of the Constitution, the same is unconstitutional and void."

Mankin v. Pennsylvania Co., 160 Ind. at 453.

In a yet more recent case the title of the amendatory act omitted from the title of the act sought to be amended the following words: "Providing for town, city and county boards of health, prescribing penalty for the violation of the provisions thereof." The title of the act sought to be amended was quite lengthy and was otherwise correctly set out in the title of the amendatory act, but the court held the omission of the words quoted to be fatal to the validity of the amendatory act, saying:

"It is doubtful if this title would be sufficient in an original act to support legislation concerning town, city, and county boards of health; and it is entirely clear that in the office of identifying a particular statute relating to town, city, and county boards, for purpose of amendment, under Article 4, Section 21, of the Constitution, it must be held inadequate. The absence of the omitted words from the title makes such a radical restriction and change in the general import of the title of the act of 1891 that we cannot attribute it to a clerical error, as is suggested."

Hendershot v. State, 162 Ind. at 72.

It has been uniformly held by the Supreme Court of this State that two things are required by the Constitution in the amendment of a section of an act:

"(1) The title of the act to be amended should be referred to by setting the same out in the title to the amendatory act; and (2) the section as amended should be set forth and published at full length."

Mankin v. Pennsylvania Co., 160 Ind. at 453.

The failure of the present bill to set out in the title any substantial part of the title of the act sought to be amended, brings it so clearly within the inhibition of the Constitution that the question does not admit of argument. I am, therefore, compelled to withhold my approval.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 227.

February 27, 1907.

Mr. President and Gentlemen of the Senate:

Senate Bill No. 227 is herewith returned without executive approval, because of its defective title. It is an amendatory act. It fails to correctly set out, either in the title or in the body of the bill, the title of the act it seeks to amend. It is therefore invalid.

In support of this position I beg to call attention to the authorities cited in the Executive message filed yesterday relating to Senate Bill No. 126. I believe the authorities there cited to be conclusive of this question.

The purposes of the bill are important and entirely proper and I am in full sympathy therewith. I beg, therefore, to urge the preparation and passage of a new and corrected bill.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 61.

FEBRUARY 27, 1907.

Mr. President and Gentlemen of the Senate:

Senate Bill No. 61, a bill "declaring the lien of all taxes upon real estate and limitation of said lien," is returned herewith without executive approval.

The effect of the bill, if it became a law, would be to divest real estate of all liens on account of taxes after ten years. Under existing law taxes are a lien upon real estate until paid. Such lien can be released only by payment.

I am thoroughly convinced of the necessity of the law as it is, and am unable to conceive of any ligitimate reason why the lien of the State for taxes should ever be divested except by payment. To do so would be to put a premium upon the evasion of the payment of taxes. It would be unfair to the State and unfair to every citizen who pays his taxes without evasion or delay. The man who owns property, who receives the benefits of organized government and the protection of its laws, and who accepts the privileges of citizenship, owes it to the State to pay all taxes lawfully levied. The fact that he has escaped such payment for ten years, either through his own connivance or the neglect of the public officials through whom the State alone can act, is an insufficient reason for divesting the real estate he owns, of liability. On the contrary, it is a cogent reason why the lien of the State should continue until actual payment is made. It will not do to say that such lien encumbers such person's real estate and hinders the sale thereof, for all this can be removed by the payment of the taxes which constitute the lien. The equality of taxation enjoined by the Constitution, the protection of the State's revenues, and the orderly and honest administration of its taxing laws preclude the Executive from giving his assent to this measure, and I venture to express the hope that these considerations are of such weight as to preclude the members of the General Assembly, upon further thought, from insisting upon its enactment.

Respectfully submitted,

J. FRANK HANLY,
Governor.

SENATE BILL No. 89.

MARCH 9, 1907.

Mr. President and Gentlemen of the Senate:

Senate Bill No. 89, a bill concerning life insurance, is hereby returned without executive approval. The bad in it so far outweighs the good that I can not give my assent to its enactment.

Early in the present administration events which are now familiar to all, and which I need not again detail, culminated in the enforced resignation of the Auditor of State and in an investigation of the affairs of the office of Auditor of State by a non-partisan commission, of high character and ability, appointed by the Executive. The work of this commission exposed a condition which startled and aroused the people of the entire State, and which justified a further examination of the insurance department of that office in its relations to and dealings with insurance affairs.

When the dominant political party of the State held its State convention last April the investigation of this department, though not then finished, had proceeded far enough to make it morally certain to the Executive and those familiar with the work of the commission that certain Indiana life insurance companies were mismanaging their affairs and systematically plundering their policy holders. These facts were such as to impress the representatives of that party, assembled in convention, with the need of additional insurance legislation, having for its purpose the reformation of the abuses then in practice. With this knowledge before it the convention made the following pledge to the people of the State:

"We are in favor of a law to further regulate the business of life insurance companies, the organization and business of fraternal benefit societies, mutual benefit associations and investment companies, both foreign and domestic, for the purpose of better protecting the policy holders therein. A law should be enacted that will designate and more closely restrict the kind and character of securities that may be deposited with the Auditor of State, limit the expense of such companies, societies and associations, and provide for complete publicity of their affairs."

The convention adjourned. The delegates thereof returned to their homes, and the people of the State were given to understand that the party, if successful at the polls, would redeem the pledge made.

Events of the preceding two years had been such as to center the campaign which followed upon the State administration. Na-

tional issues were but incidental. It was stated by all, friends and foes alike, that the party would necessarily stand or fall upon the record made, upon the things done, and the things promised to be done by the State administration. By the time the campaign really opened the work of the investigating committee was completed and the facts laid before the people.

The condition in relation to life insurance revealed by the report of the committee was unusual and startling. Certain recommendations, having for their purpose the accomplishment of the things pledged to the people by the dominant party in its platform, were made by the commission. Believing in the good faith, integrity and ability of the gentlemen who composed that commission, and knowing the care with which they had made the investigation and the long and sincere consideration they had given to the subject of insurance, the Executive took up these recommendations and presented them to the people of the State in connection with a frank and full discussion of insurance conditions from more than half a hundred platforms.

One of the things, and, in my judgment, the first and most essential thing, recommended by the committee was the establishment of a separate insurance department to be administered by an insurance commissioner who should be appointed by the Executive. That was logically and necessarily the first step toward reformation. The department in all its history had never been more than a neglected adjunct in the office of the Auditor. With a single exception, no Auditor in twenty years had been qualified to administer the insurance department, and with the same exception no one who had held the office in twenty years had administered the department with good faith or integrity. Throughout all the discussion, from the beginning to the end of the campaign, the people were assured that if a legislature were elected the majority of which should be composed of members of the dominant party a separate department of insurance would be established.

The present Auditor of State and many other of the present State officers were candidates before the people for election. They attended many of these public meetings, heard the pledge made in their behalf, applauded its utterance and gave the people to understand that they were in accord therewith. In many instances the Executive was appealed to by gentlemen now members of this General Assembly, and then candidates for election, to come into their districts and make the pledge in their behalf to their people.

The election was won by a most substantial plurality, largely,

I am compelled to believe, upon the issue raised and the promises made in this behalf. They were made by the Executive in good faith. He supposed the pledge was intended to be redeemed. Therefore, after further and most careful consideration of the rights of all the interested parties—insurance companies and policy holders—he recommended to this Assembly legislation which would have redeemed that pledge. Today, on the eve of your adjournment, he is compelled to say to you and to the people of the State, "The pledge is broken; faith has not been kept."

The bill I return to you provides for a department of insurance, but leaves it still an adjunct in the office of the Auditor of State, to be presided over nominally by the Auditor, but actually by a deputy with a salary so inconsequential as to preclude the securing of the services of a man calculated either by knowledge or experience to administer its affairs. The expense of the department will be fully $15,000 a year, but it will be administered in the same old way, with the same neglect, the same lack of initiative that has characterized its administration through former years. It is left to be the football of politics, its deputyships to be prizes to be handed out every two years by the successful nominee of the dominant party as a reward for personal political services.

A section of the bill requires an annual report to the Governor, but it gives him no power or authority to correct or to require the correction of any abuse disclosed. In this regard the bill utterly fails to keep the party's pledge. The department was retained as a bureau in the office of the Auditor of State at the behest and upon the orders of the very men whose acts it is the duty of the commissioner to investigate and supervise, and this, too, in the face of the fact that the deeds of a number of these men then being exposed were such as to shame the State and bring reproach upon every insurance company in the Commonwealth.

Our pledge was: "A law shall be enacted that will designate and more closely restrict the kind and character of securities that may be deposited with the Auditor of State." The hour of legislation has gone by, and that pledge is not redeemed. The terms of our bond also ran: "A law shall be enacted that will limit the expense of such companies, societies and associations." The day of adjournment is upon us, and that pledge is also unredeemed. The legislation you have passed, instead of providing for the limitation "of the expense of such companies, societies and associations," provides with scrupulous care that the commissioner shall have no power to supervise or correct abuses which are the offspring of ex-

isting unwise, and in many instances, unfair and fraudulent contracts. It is carefully provided, "That nothing in this act shall be construed to interfere in any manner with the execution, carrying out and fulfillment of the contracts of life insurance companies executed prior to the taking effect of this act."

What are these contracts that are so carefully preserved from supervision? They are special contracts made with favored policy holders, prominent personages of the different communities of the Commonwealth, in some instances State officers and members of the General Assembly—contracts which, in 1905, cost the State Life Insurance Company $136,523.84, and in 1906, $179,299.72, for which it received no service or thing of value. In this connection it is well to remember that from 89 per cent. to 98 per cent., and in some instances 100 per cent. of all the insurance written by some of the Indiana companies is of this character.

What are these contracts that are so carefully preserved? They are contracts with agency companies organized as "go betweens" between the insurance companies, their policy holders and the public, the terms of which are extortionate, and, in some instances, actually fraudulent. Every moral and prudential reason requires that an insurance company should retain direct control of its own agents; that there should be direct responsibilty of the agency force to the company itself, and that the company should be in a position to exercise the closest supervision over the work of its agents. Under the contracts so carefully preserved by this bill the agency force of every company is responsible to the agency company alone. The officers of the insurance companies are relieved from the work and responsibility of obtaining business. They are contracts which in many instances provide for the payment of 80 and 90 per cent. of the first premiums to the agency company, and for the payment of 7½ to 11 per cent. of all subsequent renewal premiums on the insurance written by such companies, and in one instance of 7½ per cent. of all renewal premiums upon the business in force within certain territory, composed of large and populous States, written prior to the organization of the company or the execution of the contract. Every such company is an open door to extravagance and fraud, and you were not wanting of evidence of this fact. A striking example was being laid bare, under executive direction, beneath the roof of this Capitol, even while you were passing the present emasculated and sexless measure.

As before suggested, our pledge to the people ran: "A law shall be enacted that will limit the expense of such companies, so-

cieties and associations." But all power of the commissioner to supervise or limit salaries is absent from the measure you have tendered the people. It is said, in justification, that the question of salaries of mutual life insurance companies is one for the policy holders of the company and not one with which the State may properly concern itself. This position, however, is untenable. A mutual insurance company is in the nature of a partnership. Profits and losses are to be shared alike by all their policy holders. Therefore, every policy holder has a direct and vital interest in the cost of the administration of the affairs of the company. It is not enough to say that if the individual policy holder is dissatisfied with extravagance and peculation in administration he may elect new officers or bring suit to restrain further dissipation of the company's funds. Every thoughtful man knows this to be impracticable. The policy holders of these companies, in many instances, are men of limited means. They are widely scattered throughout many States. They do not know, and in many instances have no means of knowing, the character of the administration. In every such instance it is the duty of the State to intervene. It has the legal power to intervene, and common justice and the welfare of the people impose upon it the obligation to do so.

An instance of this character well in point is afforded by the savings banks of the State. Under the law all savings banks are mutual. The profits made belong to the depositors. There is no capital stock. The depositors are, in many instances, people of small means, who save by mites, little by little. That these depositors may be protected, the law of the State, since March 7, 1873, has limited the salaries of the trustees and officers of every savings bank in the State. The reasons for the intervention of the State in limiting the salaries and expenses of the administration of mutual life insurance companies are stronger and more numerous than in case of savings banks. Their policy holders are far greater in number and more widely scattered in residence than are the depositors of savings banks, and have less opportunity to know the character of the administration of the companies. A savings bank operates within narrow limitations as to territory and patronage. An insurance company operates throughout the State, throughout the country.

You were tendered a measure giving the commissioner power to supervise these expenses. You struck it down. You took out of this bill every provision giving the commissioner authority of this

character. And this, too, at a time when you were being told by confessions wrung from the officers of a life insurance company, on the witness stand, under oath, that they for years had been drawing double, triple and sometimes quadruple salaries, aggregating in some instances more than $20,000 annually; at a time when you were being told by men on the witness stand, under oath, and at whose behest you struck out of the measure the provision authorizing the supervision of salaries and expenses of the administration of such companies, that they, in eight years, had drawn severally $116,660.25, $118,870, $117,852 and $78,809 in the way of salaries and compensations, and that together they had drawn in eight years, almost a half million dollars in this way.

Our pledge was to limit the expenses of the administration of these companies. In answer you tender a measure which has no limitation whatever upon administrative expenditures and which leaves open every door to extravagant salaries, extortionate contracts and fraudulent bargains by which the treasuries of Indiana companies have been depleted. By its enactment you break the pledge of a great party whose glory has been its redemption of the pledges made; break faith with the people whose rights are profoundly involved, and betray the interests of the widow and the orphan. To do this you turned down the recommendations of the commission which investigated the whole question with care and painstaking industry, executive suggestion oft repeated and insisted upon, and the report of your own committees, whose members had given the subject every consideration possible for many weeks.

No man in either chamber of this General Assembly more greatly desires effective legislation than I. No man has contributed more to that end, in proportion to his ability, than I have done. From the date the investigation of this question was begun to this good hour I have stood for such legislation, for the redemption of the party pledge and for the protection of the thousands of men and women who own policies in these companies. I can not now persuade myself that it is either wise or honest to sign this written evidence of broken faith.

As for myself, I prefer that the bond be returned to the people unfulfilled rather than to become a party to the enactment of a measure which is in itself a false pretense, whose purpose is to deceive and whose only service will be to furnish cover for the further plundering of the people. I believe it wiser and fairer to go back

to them, confess our failure and ask another letter of direction, than to seek to deceive them with the pending measure.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 298.

March 9, 1907.

Mr. President and Gentlemen of the Senate:

I return herewith, without my approval, Senate Bill No. 298, the same being a bill concerning sewers and drains in cities having a population of more than 16,000 and less than 20,000.

The bill in substance provides that all cities in this State having a population of not less than 16,000 and not more than 20,000, which shall have built a sewer or drain under any past, present or future law, and which shall be unable, for any reason, to pay its assessment, then, under the bill, the title to the sewer, as against the city, shall *vest in the contractor*, and that any such city shall have the power to grant a franchise to *such contractor* to operate the drain or sewer in the streets and alleys of the city; and that the city shall have power by contract to lease the sewer or drain, or otherwise provide for the use of the sewer or drain by the city "for the drainage of its streets, alleys and public grounds and other municipal purposes, upon such terms as may be agreed upon between such city and such contractor."

The bill is clearly within the inhibition of Section 68, Article 1, of the Constitution, forbidding the General Assembly to grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens. It provides for an arbitrary classification of cities and confers upon those within that class privileges denied to other cities similarly situated. The classification created is of cities having a population of not less than 16,000 nor more than 20,000 inhabitants, and can apply only to the cities of Lafayette, Logansport, Marion and Richmond.

The well settled rule of construction in this State is that where the Legislature undertakes to classify the objects or subjects upon or against which legislation shall operate, the classification must be natural and reasonable and must inhere in the subject matter thereof.

The last utterance of our Supreme Court upon this subject was handed down by Monks, Judge, in Case No. 20,849, the Bedford Quarries Co. v. Martin S. Bough, on March 1, 1907. In that case the court says:

"The Legislature may make classification for legislative purposes, but it must have some reasonable basis upon which to stand. It is evident that the differences which would serve for a classification for some purposes would furnish no reason for a classification for legislative purposes. Such legislation must not only operate equally upon all within the class, but the classification must furnish a reason for and justify the making of the class; that is, the reason for the classification must inhere in the subject-matter and rest upon some reason which is natural and substantial, and not artificial. Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all of the classes to which it is naturally related. Neither mere isolation nor arbitrary selection is proper classification."

Dickson v. Poe, 159 Ind. 492;
School City of Rushville v. Hayes, 162 Ind. 200;
Street v. Barney Elec. Supply Co., 160 Ind. 338;
Town of Longveiw v. City of Crawfordsville, 164 Ind. 671;
McKinster v. Sager, 163 Ind. 671;
Sellers v. Hayes, 163 Ind. 422.

In School City of Rushville v. Hayes (cited above), our Supreme Court quotes with approval from the Supreme Court of New Jersey, as follows:

"There must be substantial distinction having a reference to the subject-matter of the proposed legislation between the objects or places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as to in some reasonable degree, at least, justify or account for the restriction in the legislation."

In the case of the Town of Longview v. City of Crawfordsville (cited above), our Supreme Court quotes with approval from the Supreme Court of New Jersey, as follows:

"The rule is that in any classification for the purpose of a general law, all must be included and made subject to it, none omitted that stand upon the same footing regarding the subject of legislation."

And quoting again from the same court, the following language is approved:

"Interdicted local and special laws are all those that rest upon a false or defective classification. Their vice is that they do not embrace all the classes to which they are naturally related; they create preferences and establish inequalities; they apply to persons, things or places possessed of certain qualities or situations, and exclude from their effect other persons, things or places which are not dissimilar in these respects."

The difference of 4,000 in population, or the maximum limit of 20,000, or the minimum limit of 16,000, bears no relation whatever to the subject of legislation contained in this proposed act, and under the authorities cited and the uniform rule of construction throughout the entire country, the proposed law is invalid under our Constitution.

In addition to the fact that the proposed law is special legislation, and for that reason unconstitutional, the bill is subject to criticism on account of the fact that it seeks to provide a means whereby other provisions of the Constitution of the State may be evaded. Section 1, of Article XIII, of the Constitution of the State, prohibits municipal corporations from incurring an indebtedness in excess of two per centum of the value of its taxable property, and it is a fact, well known in connection with this proposed legislation, that the city of Longansport, undertaking to proceed under the laws of the State for the construction of sewers, overreached its authority under the Constitution to incur debts, and on account thereof was unable to pay the assessments properly chargeable to the city on account of the construction of sewers. And now it is proposed by this bill to give to the contractor, who knowingly entered into an invalid contract—one which could not be enforced —all the right and title which the city would otherwise have in the sewer contracted for, and to authorize the city to grant to the contractor a franchise to operate the sewer upon the streets and alleys and public places of the city, and to authorize the city to lease the same from the contractor. The purpose of the bill cannot be other than to give to the municipality the right to grant the franchise and to enter into a contract for the lease of the sewer, which would eventually pay the debt which is now condemned by the Constitution. It has repeatedly been held by the Supreme Court that cunningly devised schemes of this sort will not meet with judicial approval, although they may meet with the approval of the General Assembly.

In the case of Voss v. Waterloo Water Company, 163 Ind. 89, the Supreme Court of our State, in speaking of the authority of the town to grant a franchise to a water company to construct a water plant, and for the town to lease the same or pay water rents in such manner as to liquidate the indebtedness created for the purpose of constructing the plant, in a case where the town itself could not, on account of constitutional limitations, construct and own the plant, uses these words:

"The Waterloo Water Company is merely a dummy corporation, owned by the town, but making contracts and incurring liabilities which it is admitted the town cannot make or incur in its own name without violating the provisions of the Constitution restricting its power to become indebted. In other words, the town is attempting to do by a corporation practically owned by it what it has no power to do, and is prohibited from doing. Said arrangement is a palpable violation of said Article 13 of the Constitution, for what a town cannot do directly it cannot do indirectly through a dummy corporation controlled and practically owned by it. The Constitution cannot be evaded in this manner. * * * 'It is the duty of the judge to make such construction as shall suppress all evasions for the continuance of the mischief. To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do or avoid in an indirect or circuitous manner that which it has prohibited or enjoined. * * * When the acts of the parties are adopted for the purpose of effecting a thing which is prohibited, the parties have done that which they have purposely caused, though they may have done it indirectly. When the thing done is substantially that which was prohibited, it falls within the act, simply because, according to the true construction of the statute, it is the thing thereby prohibited. Whenever courts see such attempts at concealment, 'they brush away the cobweb varnish,' and show the transaction in its true light. They see things as ordinary men do, and see through them. Whatever might be the form or color of the transaction, the law looks to the substance of it. In all such cases it is, in truth, rather the particular transaction than the statute which is the subject of construction; and if it is found to be in substance within the statute, it is not suffered to escape from the operation of the law by means of the disguise under which its real character is masked."

In addition to the constitutional objects above noted, the proposed act is ill-advised and dangerous for many reasons and should not meet with executive approval, even though it might be valid if enacted. The bill provides that the title to the sewer shall vest in the *contractor*, and that a franchise may be granted to the *contractor*, and that the town may enter into a lease of the sewer with the *contractor*. It will be observed that there are no restrictions or limitations whatever in the proposed act to safeguard the public interests. A designing contractor might agree with the municipal authorities to construct a sewer for a much less price than for which any other individual would be willing to perform the work, knowing that under this law the city, not being able to pay for its proportion of the assessment, would be divested of all interest in the sewer when constructed, and that it would be compelled to grant him a franchise and enter into a contract with him for its lease. There is no provision in the proposed law as to how long the title to the sewer shall remain in the contractor, nor is there any provision whereby at any subsequent time the city may acquire

ownership in the property. Neither is there any provision in the bill as to what length of time the city may grant a franchise for its operation and use by the contractor, or for what length of time the city may enter into a contract for its use. In short, by the terms of the bill the man who builds a sewer under a void contract acquires a monopoly of sewer rights in the streets and alleys of the city where the sewer is constructed. By virtue of this bill he becomes master of the situation. The sewer belongs to him. There can be no competition in granting the franchise; no competition in entering into the lease for its use. A franchise granted for the use of the sewer constructed by virtue of this bill, or a lease entered into for the use of a sewer constructed by virtue of this bill, could be perpetual, without any power or authority in the municipality to get clear of the obligation or resume its functions as a municipal government.

While our Supreme Court may have never held that a perpetual franchise granted by a municipal government in this State is void, or that an exclusive privilege granted by a municipal government to a citizen under legislative sanction to exercise authority over the streets and alleys of the city is void, I am unwilling to agree that it is advisable that the Legislature should approve, at this time, any legislation which places a municipality of the State in the hands of a single individual, as this bill attempts to do.

The Supreme Court of the United States, in New Orleans Gas Company v. Louisiana Light Company, 115 U. S., page 667, quotes the following language with approval:

"No Legislature can bargain away the public health or public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing in its nature and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation and it cannot divest itself of the power to provide for them. For this purpose the largest legislative discretion is allowed, as the discretion cannot be parted with any more than the power itself."

In speaking of this general subject, Cooley, Judge, in the case of Gale v. Kalamazoo, 23d Mich. 344, says:

"If a municipal corporation can preclude itself in this manner from establishing markets whenever they may be thought desirable or abolishing them when thought undesirable, it must have the right also to agree that it will not open streets or grade or pave such as are open or introduce water for the supply of its citizens except from some specified source, or buy fire engines of any other than some stipulated kind, or contract for any public work except with persons named; and if it might do these things it is easy to perceive that

it might not be long before the incorporation itself, instead of being a convenience to its citizens, would have been used in various ways to compel them to submit to innumerable inconveniences and would itself constitute a public nuisance of the most serious and troublesome description. Individual citizens looking only to the furtherance of their private interest, might, in various directions, engage it in permanent contracts, which, while ostensibly for the public benefit, should impose obligations precluding further improvements and depriving the town prospectively of those advantages and conveniences which the municipality was created to supply, and without which it is worthless. For if the village might bind itself to one market house for ten years, it might do so for all time to come; and if it might agree that improvements and conveniences of one class ought to be confined by contract to one quarter of the town, a reckless or improvident board might agree with a greedy or unscrupulous proprietor of town lots, that all improvements of every description should be so located or made as to conduce to his benefit, irrespective to the general good. It is impossible to predicate resonableness of any contract by which the governing authority abdicates any of its legislative powers, and precludes itself from meeting in the proper way the emergencies that may arise. Those powers are conferred in order to be exercised again and again, as may be found needful or politic, and those who hold them in trust today are vested with discretion to circumscribe their limits or diminish their efficiency but must transmit them unimpaired to their successors. This is one of the fundamental maxims of government, and it is impossible that free government, with restrictions for the protection of individual or municipal rights, could exist without its recognition."

I am, therefore, obliged to withhold executive approval from the pending measure on account of its unconstitutionality and because of my belief that it contravenes sound public policy.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 370.

March 11, 1907.

Mr. President and Gentlemen of the Senate:

I return herewith, without my approval, Senate Bill No. 370, a bill to authorize cities and towns having a population between 20,000 and 35,000, according to the United States census of 1900, to pay each member of the veteran volunteer firemen association a pension of $3.00 per month.

The bill, in my judgment, is invalid. The population is based upon the census of 1900. It therefore creates a class of cities into which no other city can come, though it may attain the same popu-

lation and have every essential characteristic belonging to the class so created.

Speaking of a similar law, the Supreme Court has said:

"Counsel for appellants argue with much earnestness that the act in question must be regarded as special legislation, for the reason that, by the express provisions of its first section, it is limited in its application to cities only of 30,000 for the year 1870. Therefore, they insist that the city of Indianapolis is the only one in this State which, at the time of the passage of the act, had attained to the standard of population fixed by its provisions.

"Of this fact we have taken judicial notice, as all courts are required to take judicial knowledge of the census of the United States. It is contended that no matter how many cities of the State might, under the federal census of 1880 or 1890, or any other future census, have 30,000 or more inhabitants, the act in controversy would not be applicable to any of them, because they did not and could not in reason have such population according to the census of 1870. * * *

"Were it not for the express declaration in section one, which absolutely fixes the census of 1870, and confines it to that alone, as the one by which the population is to be determined, it might be viewed as one general in its operation, applying alike to all cities within the classification of 30,000 or more inhabitants. But this express declaration upon the part of the legislature would seem to countervail or destroy whatever general features the act possesses by restricting its operation to such cities as had the required population according to the census of 1870. Any and all other cities, which might by a future census be shown to be within the classification of 30,000 inhabitants or more, by this express provision of the statute would necessarily be excluded from its operation. That, under such circumstances, a law of this character must be regarded as special, and not general, legislation seems to be, according to the authorities, a well-settled proposition."

Being special legislation, I take it to be within the inhibition contained in Section 68, Article 1, of the State Constitution, forbidding the General Assembly to grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.

Respectfully submitted,

J Frank Hanly,
Governor.

SENATE BILL No. 9.

March 13, 1907.

Mr. President and Gentlemen of the Senate:

Senate Bill No. 9 is respectfully returned herewith without executive approval. The bill is an act to amend section 50 of an act of May 12, 1869, relating to the compensation of trustees of savings banks.

Under the present law such banks may compensate their trustees (other than officers of such savings banks or members of the financial committee) only "for special personal services beyond the ordinary duty of attending meetings and serving upon its committees." The present bill authorizes the compensation of such trustees who render personal services though such services consist only of attending meetings and serving upon its committees. Savings banks are not stock companies. They are mutual affairs. Salaries to officers and the expenses of administration ought to be closely limited. No difficulty in obtaining the services of efficient persons as trustees is experienced under the present law. The duties of such trustees are not arduous and unless they render some service other than the nominal service required in attending meetings and serving upon committees, compensation ought not to be authorized.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 432.

March 13, 1907.

Mr. President and Gentlemen of the Senate:

I return herewith without executive signature, Senate Bill No. 432, "fixing the compensation of the members of the common council of cities of the first class."

The measure provides for an increase in the salaries of the members of the common council of the city of Indianapolis from $200.00 to $900.00 per annum. I do not believe conditions warrant an increase of 450 per cent. in the salaries of these officials. The office of councilman was never intended to be a position of substantial profit. Its duties do not require daily application, either of time or attention. I recently had occasion to refuse ap-

proval to House Bill No. 359 to increase the salaries of members of the board of safety of the city of Indianapolis. The reasons given for executive action in that matter obtain with increased force in the present instance. I have since seen no reason to change the views there expressed, and I therefore withhold executive assent to the provisions of the present measure.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 484.

March 13, 1907.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 484 without executive approval.

The bill seeks to legalize and declares valid "all assessments of banks in this State made as provided by Section 59, Acts of 1891, approved March 6, 1891, upon blanks prescribed by the State Board of Tax Commissioners of the State of Indiana."

The act under which these assessments were made has been held unconstitutional and void by two successive Attorneys-General of the State, and I believe correctly so. The reasons upon which the opinions are based are constitutional ones. If such act is within the inhibitions of the Constitution it cannot be legalized by the General Assembly and any measure seeking to do so would be invalid for the same reasons that the act sought to be legalized is invalid.

If assessments made under such act are invalid because of its unconstitutionality, they cannot be legalized by any act of the General Assembly.

Believing that the banks in question were not lawfully assessed, that the act under which assessments were made is invalid and that such assessments are therefore invalid, and that the General Assembly has no authority to legalize an unconstitutional enactment or any proceedings thereunder, I am compelled to withhold my approval of this bill.

Respectfully submitted,

J. Frank Hanly,
Governor.

SENATE BILL No. 498.

March 13, 1907.

Mr. President and Gentlemen of the Senate:

Senate Bill No. 498 is respectfully returned herewith without executive approval.

The bill seeks to amend section 2 of the act regulating the practice of medicine, surgery and obstetrics, providing for the issuing of license to practice, for the appointment of a State Board of Medical Registration and Examination, and for the revocation of licenses to practice in certain instances.

The present law provides that a physician whose license has been revoked by the Board of Medical Registration and Examination shall not practice his profession pending an appeal from the decision of the board. The proposed amendment grants the right to such physician to engage in the practice of his profession pending the appeal.

I do not believe the change would be beneficial to the public interests. The present law imposes no hardship. Before the license of a physician can be revoked, charges must be filed with the board. The accused must be given a hearing. If, upon the hearing, the board finds him guilty of the charges made, it may revoke his license. From this judgment he may appeal to the circuit court, and from the judgment of that court to the Supreme Court of the State.

There is little danger of abuse under this law. The Board of Medical Registration and Examination would be slow to revoke the license of a fellow practitioner, except for substantial reason. If the amendment were made, physicians whose licenses should be revoked would be privileged to continue in practice until final decision in the Supreme Court, no matter how great the offense of which they were guilty, or how unfit they might be.

For these reasons I believe it best to withhold executive approval.

Respectfully submitted,

J. Frank Hanly,
Governor.

House Veto Messages, Sixty-Fifth General Assembly

HOUSE BILL No. 327.

FEBRUARY 1, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without my approval, House Enrolled Bill No. 327, the same being a bill for an act to amend sections 1 and 3 of an act to incorporate Young Men's Christian Associations organized in this State.

The bill is a meritorious one, and I have withheld approval therefrom solely on account of its failure to comply with the requirements of the State Constitution.

Section 19 of the Constitution requires the subject of every act to be expressed in the title and declares void so much of any act as is not expressed in the title.

R. S. 1901, Sec. 115.

The act sought to be amended is clearly valid. It applies to the incorporation of Young Men's Christian Associations organized in this State. By the amendment sought to be made in the present bill, the provisions of the act are made to include Young Women's Christian Associations organized in the State. It also provides: "That any Young Women's Christian Associations heretofore organized under and by virtue of said act, approved March 4, 1893, be and the same are hereby legalized and rendered valid and declared legally and regularly incorporated." Neither of these additional subjects or purposes is expressed in the title to the original act, and the title to the present act in this respect remains unchanged.

Speaking to this point the Supreme Court of the State has said:

"If the subject is composed of two or more essential elements, the expression of one of such elements in the title would not suffice. The absence of one of such elements in the title would be as misleading, and might be as pernicious, as the evils sought to be obstructed by the Constitution. The subject of this act, as we have indicated, is to gather funds from foreign insurance companies, and to dispose of such funds for the relief of firemen. The title expresses the first of these objects included within the subject, but wholly omits the other of such objects.

"In State v. Young, 47 Ind. 150, a test was prescribed for determining if the subject is expressed in the title. It was said, in speaking of that element of the subject claimed to be absent from the title: 'Suppose that there was no other provision in the act. * * * If the section could not thus stand alone

under the title, it must fall.' We apprehend that this is always true where only a part of the subject is expressed, and that it is especially true where that part of the subject omitted from the title is not naturally or ordinarily connected with that part of the subject which is expressed in the title.

"Omitting that part of the act relative to the bestowal of such fund upon firemen, the provision requiring such companies to contribute to such fund could not stand alone, under the title of the act, as the subject is expressed. The requirement that the subject expressed should apprise the people of the subject of legislation, in order that an opportunity for a hearing or for petition may he had, is far from being complied with in the act before us. No notice whatever to those expected to contribute to such fund is given."

Henderson v. London, etc., Insurance Company, 135 Ind. 31.

The title to the bill herewith returned relates solely to Young Men's Christian Associations, and does not include that part of the subject which relates to Young Women's Christian Associations, or that part which relates to the legalization of such incorporations as have been heretofore made. While the title to the act sought to be amended sufficiently covers the subject and purposes of that act, it does not sufficiently cover the subject and purposes of the act as it is sought to be amended. If the statute as amended contained only that portion which relates to Young Women's Christian Associations or which seek to legalize past organizations of such associations, the title would be clearly insufficient. It therefore fails to meet the constitutional requirement.

Section 21 of the Constitution also provides that "no act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length."

R. S. 1901, Sec. 117.

In a recent decision referring to this section of the Constitution, the Supreme Court said:

"It is settled by the decisions of this court that in the revision of an act or the amendment of a section, two things are required: (1) The title of the act to be amended must be referred to by setting it out; (2) the act as revised, or section as amended, must be set forth and published at length."

Lingquist v. State, 153 Ind. at 543.

In the present bill the title of the act sought to be amended is inaccurately set out, the word "estate" being interpolated therein.

In the light of these constitutional provisions, and in view of the defects in the present measure, I deem it best to withhold approval therefrom. The act relates to an important subject. The present law is free from defects. Its amendment should be equally so. I therefore suggest the enactment of a statute which shall be

so drawn as to avoid constitutional inhibitions If this is done I shall be glad to give executive approval thereto.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 230.

February 25, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill No. 230, the same being a bill "to enable owners of land bordering on Lake Michigan to acquire title to submerged lands belonging to Indiana," and lying in front of said abutting land and between the shore line of said lake and the dock or harbor line thereof now established or hereafter to be established by the Government of the United States.

The lands affected by this measure vary in width from a few rods to three-fourths of a mile.

The only requirements exacted of the owners of the lands described to obtain title to the submerged lands in question are, that they shall cause a survey and plat of such lands to be made by the county surveyor, showing the number of acres thereof and the location of the dock line, which survey and plat shall be filed with the Secretary of State, and that they pay to the State Treasurer $25.00 per acre for the acres shown in such plat. No other condition is imposed. The survey made, plat filed and $25.00 per acre paid, the State, through the Governor and Secretary of State, must execute a patent to the lands therein described, conveying to such owners the fee simple title thereto.

The legislation proposed is said to be necessary to the operation of a large number of industries either now removed or to be removed from the city of Chicago to the Indiana boundary of the lake. There is much merit in this contention. These industries are desirable. If established they will add millions of dollars to the taxable property of the State and furnish employment to thousands of laborers. This section of the State is destined to be a vast industrial center and to be peopled by a great population. Here industries can be established by the side of navigable waters with immediate access to water carriers of all draughts, lengths and breadths, without obstruction from bridges or other structures. I

am heartily in accord with the suggestion that the State should treat these industries with kindly consideration.

The present measure, however, I believe to be unfair to the State and calculated to ultimately defeat the very purpose it seeks to effectuate. Under its provisions any person owning lands abutting upon the lake may obtain title to the submerged lands lying in front of his lands and between the lake shore and the harbor line by merely causing a survey to be made and paying $25.00 per acre to the State for the lands described in such survey. He is not required to fill in these lands nor to improve them in any way. He simply causes the survey to be made, pays the stipulated price and takes his title. This puts it in the power of speculators to buy up the lands bordering on the most advantageous points of the lake front, cause the submerged lands in front to be surveyed and get title thereto by the payment of $25.00 per acre, and hold them indefinitely, or to compel those who seek to establish industries upon the lake front to pay extortionate prices therefor. Such an opportunity ought not to be given by legislation.

It is said that the United States Steel Company and other persons desiring to establish industries upon the lake shore, desire to fill these submerged lands out to the dock line that vast furnaces and other manufacturing establishments may be established thereon and in such proximity to the dock as to permit the unloading of ores and other cargoes at the furnace or factory doors.

This can be obtained with safety to the State and with like convenience to such persons without making these lands the toy of speculators. It should be provided that any person owning lands abutting upon the lake shore may have the submerged lands in front thereof lying between the shore line and the harbor line surveyed and upon the filing of the survey and the plat of such lands with the Secretary of State, he may receive authority from the State, issued by the Governor and the Secretary, to fill and improve the same, and upon the completion of such filling and improvement and the filing of satisfactory evidence that the same has been done, he may receive from the State a patent vesting in him the title to so much thereof as he may have filled and improved.

This, I believe, will meet every requirement of these industries and save the State its rights in other lands that are not filled and improved, and keep the lands that are not so used and are so saved, from the hands of speculators. I am sure the State having reserved the title to itself until the lands are filled and improved will deal more liberally and fairly with those seeking to establish

industries on the lake shore in the future than real estate speculators could be expected to do.

There is, however, doubt of the constitutionality of such legislation in the form of the present measure, and any bill drawn should be carefully drawn in the light of such objections and with a view of avoiding constitutional questions.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 134.

February 27, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill No. 134.

This bill seeks to amend the law relating to the organization and incorporation of loan and trust and safe deposit companies.

The present law authorizes the organization of such companies in cities of 50,000 inhabitants or over with a capital of $100,000; in cities under 50,000 and over 25,000 inhabitants a capital of $50,000 is required; in cities less than 25,000 inhabitants a capital of not less than $25,000.

The amendment proposed permits such companies to be organized in cities having a population of less than 15,000 with a capital stock of only $15,000. I believe $15,000 capital to be insufficient for any corporation possessing the powers and responsibilities authorized and devolved upon trust companies. There is grave question about the propriety of permitting even commercial banks to be organized with a capital as meager as $15,000, however small the community may be. When applied to trust companies the question becomes one of such grave import as to challenge the most thoughtful consideration.

These companies are the depositories of trust funds and savings accounts possessing more or less permanency of character. They may act as executors, administrators, trustees, receivers or assignees, and when so appointed serve without bond. In any such case the only security the beneficiaries of the trust have is the capital stock of the company, plus the statutory liability of the stockholders, which, in case of failure of the company, is usually greatly impaired by the insolvency of some of the stockholders.

It is not unusual for such companies, acting in the various capacities suggested, to have in charge estates and trusts of great value, or at least far beyond the nominal capital proposed in this bill.

In addition to the powers and functions already suggested, such companies are authorized by the law to execute surety bonds, and many of them are now doing so.

All these powers, privileges and functions will be devolved upon the companies to be created under the amendment here proposed. They are too great and too far-reaching and affect the interests of too many people to be devolved upon institutions or corporations possessing a nominal capital of only $15,000.00.

The minimum capital permitted under the present law is $25,000.00. So far as I am advised the present limitation works no hardship upon any community in the State. Wherever there is need of such an institution, sufficient capital can readily be found to meet the present requirement.

These considerations lead me to withhold my approval from the bill, and to express the hope, that upon reconsideration, the General Assembly will not insist upon its enactment.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 216.

February 27, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

House Bill No. 216, the same being a bill "to provide for the inspection and analysis of and to regulate the sale of concentrated commercial feeding stuff in the State of Indiana," is returned herewith without executive approval.

I am in accord with the general purpose of this bill and believe many of its provisions ought to be incorporated in the law, but the measure as drawn ought not to be enacted. Some of its provisions are unnecessary and would impose unjustifiable hardship upon many people of the State.

In effect it provides that before any person may sell or offer for sale any linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, maize feeds, starch feeds, sugar feeds, dried brewers' grains, malt sprouts, dried distillers' grains,

dried beet refuse, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn bran, wheat bran, wheat middlings, wheat shorts and other mill products, ground beef or fish scraps, dried blood, blood meals, bone meals, tankage, meat meals, slaughter house waste products, mixed feeds, clover meal, alfalfa meal and feeds, peavine meal, cotton seed meal, velvet bean meal, sucrene, mixed feeds and meals made from seeds or grains, and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, patented, proprietary or trade and market stock and poultry feeds, he shall file with the State chemist a statement that he desires to offer the same for sale in this State, with a certificate stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand or trade-mark under which the commodity will be sold, the names of the towns in Indiana where it will be offered for sale, the ingredients from which it is compounded, the minimum percentage of crude fat and crude proteine and the maximum percentage of crude fiber which such manufacturer guarantees such product to contain, and cause a tag or tablet to be attached to every one hundred pounds or fraction thereof of the product, containing the information above referred to, together with a stamp to be furnished by the State Chemist at a cost of $1.00 per hundred stamps. These stamps cannot be purchased in less quantities than 500.

These provisions apply to every miller and every farmer who sells or offers for sale corn feeds of any kind and would impose unusual and unnecessary restriction upon the sale of products that are well known and which are rarely, if ever, adulterated.

The provision that the State Chemist shall be notified of the towns in the State where such products will be offered for sale is a fair sample of the many unnecessary requirements of the measure.

It is provided that the money paid for the stamps required to be used shall be paid to the State Chemist and by him paid to the director of the Indiana Agricultural Experiment Station and by such director into the treasury of the Indiana Agricultural Experiment Station; it is also provided that the board of control of such experiment station may expend the same in necessary expenses incurred in carrying out the provisions of the bill and other expenses for the station. No accounting is required of the board of control to any department of the State government. All such fees when paid become public moneys, and their disbursement should only be made upon proper voucher and under provision that an

accounting shall be made either to the Auditor of State or to the Executive Department. Failure to provide for this is so important as to alone preclude executive approval of the present measure.

There is also a provision authorizing the State Chemist to adopt standards for all the feeds described in the bill. This I believe should not be left to his discretion. Standards of each of these feeds are readily obtained and if in purity and nutriment any of them measure up to such standard, it should be sufficient.

After enumerating all the feeds hereinbefore named, it is provided that "concentrated commercial feeding stuff" shall include "any other feeds which the State Chemist decides should be included in the class of concentrated commercial feeds." This is an unusual and dangerous power to confer upon any administrative officer. What feeds are within the law is made dependent upon his whim or will. It gives him a world-wide commission and lodges in his hands unwarranted and arbitrary power, which may be misused to the annoyance and disadvantage of many people.

As hereinbefore suggested, I am heartily in favor of legislation that will require all persons engaged in selling commercial feeds or compounds to give full information as to the purity and character of such feed where such persons are engaged in the sale of such products as a business, but the legislation should be drafted with care so that unreasonable restriction may not be imposed; that all fees collected by officers charged with the enforcement of the law shall be accounted for to the proper executive authority, and that the feeds included be definitely fixed by the law and not left to the will or whim of any administrative officer.

There is yet another and conclusive reason why executive approval should be withheld from this bill, found in the following provision:

"In all litigation arising from the purchase or sale of any concentrated commercial feeding suff, in which the composition of the same may be involved, a certified copy of the official analysis, signed by the State Chemist, shall be accepted as *conclusive* proof of the composition of such concentrated commercial feeding stuff."

The determination of what shall be conclusive proof of any essential fact in the trial of a cause before a judicial tribune is a judicial and not a legislative function. The Legislature cannot declare an act to be a crime, and then provide that a specific item of evidence shall be conclusive proof of guilt.

Under the above provision of this bill one charged with the violation of any of its provisions could introduce no evidence in

his own behalf where the issue involved the composition of any of the feeds named. The mere introduction of a certified copy of the State Chemist's analysis would end the case. The court could exercise no judicial discretion, but would be bound to find the defendant guilty whether the analysis of the State Chemist was in fact correct or not.

If the power to say what shall be conclusive evidence of any fact in issue in the trial of a cause were vested in the General Assembly, a co-ordinate branch of the government would be struck down and the judiciary become a machine without power to do more than register the legislative will.

Such statutes have, without exception, been held invalid by the Supreme Court of this State.

In an early case it is said:

"It has been held, and it would seem that the decision must be correct, that it is not competent for the legislative power to declare what shall be conclusive evidence of a fact."

Wantlan v. White, 19 Ind. at 472.

In another case it is said:

"The statute enacts that the deed shall be conclusive evidence of the facts recited. Now, we do not suppose the Legislature could make such an enactment."

White v. Flynn, 23 Ind. at 47.

The rule is again declared in a later case:

"Besides, it has several times been decided that the Legislature cannot declare what shall be conclusive evidence."

Scott v. Brackett, 89 Ind. at 420.

In another case the Court said:

"It is very doubtful whether the Legislature can enact a statute declaring what shall constitute conclusive evidence, but we do not find it necessary to make any decision upon that point."

Heagy v. State, 85 Ind. 262.

Speaking to the same point, in a later case, in construing section 1811, R. S. 1881, concerning prosecutions for obstructing a highway, it is said:

"This section should not be construed as undertaking to make such proof conclusive of the fact that the way alleged to have been obstructed is a public highway. The Legislature cannot thus make any item of evidence conclusive."

Johns v. State, 104 Ind. at 561.

In yet a later case the rule is restated as follows:

"If the controversy were one between individual citizens, it could be disposed of without difficulty, for it is well settled that the Legislature cannot declare that an official report or document shall be conclusive evidence of the matters contained in it."

Board v. State, 120 Ind. 282.

This decision relates to the official statement of county auditors as to the amount of school fund held in trust by the respective counties under the act of 1865 providing that such statement "shall be taken as conclusive evidence of the facts therein contained." The act was held unconstitutional.

Again, in a well-considered case, it is declared:

"A law which would in effect exclude the evidence of a party and thereby deny him the right to be heard, would deprive him of due process of law. A law which provides that certain facts are conclusive proof of guilt would be unconstitutional, as also would one which makes an act *prima facie* evidence of crime which has no relation to a criminal act, and no tendency whatever to establish a criminal act."

State v. Beach, 147 Ind. at 79.

It has been held competent for the General Assembly to declare what shall constitute prima facie evidence, but when it does this it reaches the limit of its authority in that direction.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 359.

February 27, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

House Bill No. 359, a bill to increase the salaries of the members of the Board of Safety of the city of Indianapolis, is herewith returned without executive approval.

Under the present law the salaries of the members of this board are placed at $600.00 per annum. This bill increases them to $1,200.00 per annum, an increase of 100 per cent. It may be that the present salaries are too low, but I am impressed with the conviction that the increase here provided for is unreasonable and unjustifiable from any proper point of view. The Board of Public Safety is one of a number of departments in every citw government, honorable and responsible in character, but never intended to be positions of substantial profit. The duties of the members of

this board are not of a continuous character. They do not require daily application of time or attention. While they may to some extent interrupt the business affairs of those who hold such positions, they do not preclude the incumbents from pursuing their usual vocations. The department is divided into and has jurisdiction over a number of minor departments, but each of these departments has an executive officer or chief whose duty it is to administer the affairs of his department, the board having only general supervision or direction. As a rule meetings are held only at fixed periods and are of brief duration. If membership on this board is attended with a salary of $100.00 per month it will become a prize for place hunters and cheap politicians—men whose qualifications and motives are, to say the least, subject to question and criticism. The present salary is not tempting from the standpoint of compensation. No business man of capacity accepts a place on this board because of the salary, nor would the increase of $600.00 a year be a substantial inducement to any such man to accept a position thereon. The increase, however, would be a standing temptation to unfit and incapable men. The city of Indianapolis has for years been able to fill these positions at the present salary. I am convinced it will be able to continue to fill them though the salary remains unchanged. Men of character and capacity will still continue to be willing to serve the city from civic pride and unselfish motives in the future as they have in the past. A trust so accepted is in safer hands and is better administered than it is or can be when accepted from sordid motives.

While the views here submitted are the personal views of the Executive, they are founded upon and supported by information received from the present Comptroller of the city of Indianapolis.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 344.

March 4, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

House Bill No. 344 is, in my judgment, unconstitutional, because of its failure to set out the title of the act sought to be amended. It is therefore returned without executive approval.

The title of the bill purports "to amend Section 36, Chapter 29, of the Acts of 1903, concerning taxing real estate incumbered by mortgage." In the body of the bill the act sought to be amended is referred to as follows: "Section 36, Chapter 29, of the Acts of 1903, of an act concerning the taxing of real estate incumbered by mortgage, and repealing all laws in conflict therewith, and declaring an emergency."

By reference to the session laws of 1903, page 49, we find Chapter 29, referred to in the title of the pending bill, but the title of the act there set out is not "An act concerning taxing real estate incumbered by mortgage"; nor is such title "An act concerning the taxing of real estate incumbered by mortgage, and repealing all laws in conflict therewith, and declaring an emergency." On the contrary, the title to the act contained in Chapter 29 of the session laws of 1903 is an unusually long and complex one, covering fully two pages of the volume in which it is found.

There is in this act a section 36 relating to the taxation of real estate incumbered by mortgage. It is evident that the purpose of this bill is the amendment of this section. The section sought to be amended, however, is itself an amendment of section one of an original act upon this subject, which became a law without the Governor's signature March 4, 1899, the title of which is "An act concerning the taxation of real estate incumbered by mortgage and declaring an emergency."

It will be observed that the present measure does not attempt to amend section one of this original act. On the contrary, it is quite clear that its purpose is the amendment of the amended section of said act. This being true, it is necessary to the validity of the bill that its title set forth the title of the amendatory act in full. Setting out the title to the original act is not sufficient.

It has been uniformly held by the Supreme Court, in cases involving the amendment of a section of an act, that "the title of the

act to be amended shall be referred to by setting the same out in the title to the amendatory act."

Mankin v. Pennsylvania Co., 160 Ind. at 453.

By comparing the two titles, that of the pending bill and that of the act sought to be amended, it will be seen that no substantial part of the title of the act sought to be amended is set out in the title of the pending measure. In fact, there is no attempt to do so. A title covering more than two pages of the session laws of 1903 can not be crowded into the seven words: "Concerning taxing real estate incumbered by mortgage," found in the title of the pending measure. Nor can such title be crowded into the words: "An act concerning taxing of real estate incumbered by mortgage, and repealing all laws in conflict therewith, and declaring an emergency," found in the body of the pending measure.

Section 21 of Article 4 of the Constitution, provides:

"No act shall ever be revised or amended by mere reference to the title; but the act revised or section amended shall be set forth and published at full length."

The most that can be said for the present bill is that it contains a mere reference to the title of the act sought to be amended. There is a total failure to set it out.

In the case of O'Mara v. The Wabash Railroad Company, 150 Ind. at 650, the title of the amendatory act referred to the title of the act sought to be amended as "being an act concerning civil procedure," when the actual title of the act sought to be amended was "An act concerning proceedings in civil cases."

In this case the Court said:

"The title of the act of 1897 seems to have been possibly intended to apply to either an original or an amendatory act, but the enacting clause and section so clearly give the act character as an amendatory act that an intention to enact an original statute is not probable. We see no escape from the conclusion that the act does not express the subject thereof in its title by reference to the act or the title of the act to be amended. It is threfore invalid."

O'Mara v. The Wabash Railroad Company, 150 Ind. at 650.

In another recent case the title of the amendatory act read as follows: "An act to amend Section 359 of an act concerning trial by jury, in force September 19, 1881, the same being Section 525 of the Revised Statutes of 1881." The actual title of the act sought to be amended was "An act concerning proceedings in civil cases." The Court held the reference in the title to Section 359 insufficient, saying:

"It will be observed that the amendatory act of 1891 does not refer to the title of the act to be amended by setting it out, as required by said Section 21 of Article 4 of the Constitution, but refers to the act to be amended as, 'An act concerning trial by jury,' which is not the title of the act in which said Section 359, *supra,* may be found. When the act or section to be amended is identified in the manner required by the Constitution, and it is not certain what act or section was amended, the court will resort to means other than the title to determine what act or section was amended. But if the title or section is not identified in the manner required by the Constitution, the court will not resort to such other means of identification, although the act intended would thereby be ascertained beyond question. It follows that as the title of said act of 1891, *supra,* fails to identify the section to be amended by setting the same out in the title thereof, as required by Section 21 of Article 4 of the Constitution, the same is unconstitutional and void."

Mankin v. Pennsylvania Co., 160 Ind. at 453.

In a yet more recent case the title of the amendatory act omitted from the title of the act sought to be amended the following words: "Providing for town, city and county boards of health, prescribing penalty for the violation of the provisions thereof." The title of the act sought to be amended was quite lengthy and was otherwise correctly set out in the title of the amendatory act, but the court held the ommission of the words quoted to be fatal to the validity of the amendatory act, saying:

"It is doubtful if this title would be sufficient in an original act to support legislation concerning town, city, and county boards of health; and it is entirely clear that in the office of identifying a particular statute relating to town, city, and county boards, for purpose of amendment, under Article 4, Section 21, of the Constitution, it must be held inadequate. The absence of the omitted words from the title makes such a radical restriction and change in the general import of the title of the act of 1891 that we cannot attribute it to a clerical error, as is suggested."

Hendershot v. State, 162 Ind. at 72.

The failure of the present bill to set out in the title any substantial part of the act sought to be amended, brings it so clearly within the inhibition of the Constitution that the question does not admit of argument. I am therefore compelled to withhold my approval.

Respectfully submitted,

J. Frank Hanly,

Governor.

HOUSE BILL No. 201.

MARCH 5, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 201 without executive approval.

The first section of the bill authorizes the assessment of the property of counties, townships, towns, cities and municipalities, for the cost of public improvements in proceedings for the construction of such improvements hereafter begun, and makes the same a lien upon the property of such municipalities.

There is doubt in my mind as to the propriety of a law creating a lien against any public property, but if this section of the bill stood alone I would not refuse approval.

The second section of the bill goes far beyond that purpose. It legalizes all payments heretofore made by any such municipalities in any such proceeding. It then goes yet a step further, and legalizes all assessments made in any such proceeding where payment has not been made, and makes the same a lien upon all public properties abutting any such improvement.

It is impossible for the Legislature or for the Executive to know the details of the many proceedings for the construction of such public improvements heretofore instituted. In the absence of such knowledge we can not judge of the merits of the claims growing out of such proceedings.

The bill exempts pending litigation, but I am advised that there are a number of instances in the State where disputes exist concerning the merits of some of these claims, in which litigation has not yet been commenced.

The General Assembly has no legal or moral right to pass upon the validity of such claims. The determination of such disputes is peculiarly within the jurisdiction of the judicial department and wholly outside the domain of the Legislature.

All such contracts were entered into by the persons holding them with full knowledge of the law as it at the time existed. Such persons made their contracts with full knowledge, and they now have no right to ask this General Assembly to make a new contract for them. Some of their claims may be meritorious; if so, the courts will so decide.

Validating acts should always be scanned with care, and should

receive favorable consideration only when it is clear that no substantial rights will be affected thereby.

There is, it seems to me, no process of reasoning by which an act can be justified which creates a lien upon public property because of a past transaction, where none exists by reason of the law now in force.

Very respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 79.

March 7, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I am unable to give executive approval to House Bill No. 79. I therefore respectfully return the same to you, together with my objections thereto.

The bill seeks to repeal the metropolitan police law, under which the police departments of the cities of Anderson, Elkhart, Elwood, Hammond, Jeffersonville, Kokomo, Lafayette, Logansport, Marion, Michigan City, Muncie, New Albany, Richmond and Vincennes are now administered. It divests the Governor of authority to appoint police commissioners for these cities, and devolves the power to make such appointments upon the mayors and common councils of such cities.

The advocates of the measure contend that the right of the city to self-government is fundamental and absolute; that the State has no right to interfere in its affairs; that to do so is to do violence to the spirit of our institutions, if not to the letter of the Constitution itself; that the people of each municipality know what they want, and are entitled to free rein to administer their own affairs, in their own way, and to suit their own desires; that the present law, in so far as it vests in the Chief Executive of the State the power to appoint members of the boards of police commissioners in the several cities named, invades this sacred and long-established principle and ought to be repealed.

Much else has been said and much noisy declamation indulged in, but this constitutes the only argument made in behalf of the bill worthy of respectful consideration. All else is beside the issue, and is unworthy of this forum.

This argument, however sincere its advocates may be and how-

ever eloquently it may be presented, is based upon an erroneous conception of both the spirit of our institutions and the letter of the Constitution.

Ours is neither a despotism nor a democracy, but a representative government. Our fathers never intended that it should be a despotism or a democracy. They intended that it should be a representative government, with barriers and limitations sufficient in number and in strength to protect us from the perils of both. In forming the National government they made it supreme in all matters vital to its own existence or affecting the interests of all people. In matters involving the interests of the people of the several States and relating exclusively to their own domestic affairs, the States were made sovereign. The National government reserves to itself the enforcement of its laws everywhere throughout its borders. That responsibility is never committed to the States. The time was when some of the people of the Union did not understand or accept this theory of the Federal government. Calhoun never understood it or accepted it, but Andrew Jackson did and had the courage to enforce it, and Abraham Lincoln understood it and enforced it at frightful cost of blood and treasure.

In forming our State government our fathers did not intend that it should be composed of "a coterie of independencies, with a body of local laws, like so many countries palatins," each sovereign within itself. They had before them the National Constitution and the Constitutions of many sister States. They understood the form and theory of free government as instituted upon this continent, and they made no such mistake as that. They made the government what they intended it to be, what it should be, aye, what it is—a single entity—a unity—sovereign throughout its borders on all subjects of common interest, taking care to provide in the fundamental law itself that its laws should run throughout its borders and should never be suspended except by authority of the General Assembly. They declared in that instrument that "No law shall be passed, the taking effect of which shall be made to depend upon any authority except" as therein provided. In framing the government they knew there were certain things which they could not trust to the choice of the several municipalities of the commonwealth they were creating, such as the levying and collection of the State's revenues, the establishment and preservation of the common school fund, the establishment of a uniform system of common schools, and the exercise of the police power.

They believed, without reservation, "that all power is inherent

in the people," and so declared. But they knew that many essential powers must be surrendered by them and delegated to the State they were creating to be exercised by it as a sovereign within certain defined and prescribed limitations, if a truly representative form of government was to be established. They therefore provided for departments of government, legislative, executive and judicial, made each co-ordinate and independent of the other, except as in the Constitution provided, and invested them with every power necessary to the accomplishment of the duties devolved upon them.

The government thus created was instituted "by the people of the State * * * for their peace, safety and well-being." Every power necessary to preserve this purpose was by them delegated to the government they created.

One of the fundamental and essential powers vested in the State is the right to enforce its laws everywhere throughout its borders, in every county, in every city, in every town, in every hamlet, and in every township. The right to enforce its laws carries with it the right to select all necessary instruments and means for their enforcement. This is fundamental.

It follows, therefore, logically and necessarily, that the law clothing the Chief Executive with the power to appoint police commissioners to administer the police departments of the cities of the State contravenes neither the letter of the Constitution nor the spirit of our institutions; but, on the contrary, it is clearly within the letter of the one and in harmony with the other.

Indeed, one of the two fundamental purposes for which municipal corporations are instituted is, that they "as state governmental agencies" may "assist the State in their localities in the administration and execution of such laws as pertain to the people of the State at large."

This is so clearly and forcefully put by Mr. Justice Hadley of the present Supreme Court, in an opinion passing upon the constitutionality of one of the metropolitan police acts, that I am impelled to submit what he says for your consideration:

"There are important powers delegated to municipalities which concern every citizen of the State, and for the proper exercise of which the State cannot abdicate responsibility by committing them to local officers.

"It is very clear from the tenor of the whole instrument that the Constitution makers never intended that the territorial divisions recognized—that is, counties, townships, and towns, should govern themselves, independently of State supervision or of State supremacy, but in every matter which affects the safety, morals, health, or general welfare of the people at large, or of a con-

siderable number of them, there is undoubtedly reserved in the State the power to supervise, control, and even coerce, local officers in the discharge of public duties, and even to send its own agents into any organized district, if necessary, to enforce a public right, or accomplish a public benefit. * * *

"The enforcement of the State's criminal and revenue laws are of equal importance to all. In all these, and kindred things, the setting up of corporation lines forms no barrier to the strong arm of the State in safeguarding every public interest."

State v. Fox, 158 Ind. at 136.

In another case involving the constitutionality of the metropolitan police act of 1891, Mr. Justice Elliott, speaking for the Supreme Court, said:

"The act here assailed * * * does not trench upon the right of local self-government. * * * In providing for the appointment of officers connected with the constabulary of the State, there is not an invasion of the right of local self-government, but simply the exercise of the power to provide for the selection of peace officers of the State."

State v. Kolsem, 130 Ind. at 437.

And finally, within the last thirty days, while the present law was being denounced upon the floor of this Assembly as unconstitutional and, therefore, an illegal invasion of popular rights, the same court, through Mr. Justice Gillett, handed down a decision, in which the constitutionality of the law is redeclared in the following decisive words:

"The maintenance of peace and quiet and the suppression of crime and immorality are matters of general interest, and to the attainment of these ends the cities and towns of the State are legally subject to its control.

"As the Commonwealth is a unity in respect to its interests in such matters, the regulation thereof is a proper subject of legislation. * * * Matters of general interest are not necessarily required to be submitted to the judgment and discretion of the people of the locality. * * * The essential elements of what is known as the metropolitan police system in the government of municipal corporations have been so often vindicated as against constitutional objections that the question should now be considered at rest."

Arnett v. State, No. 20,748.

The enforcement of the laws of the State vitally concerns all the people. This is as true of the laws touching public morals as it is of the laws relating to the greater crimes, such as murder, rape, arson or burglary.

Gambling, drunkenness, licentiousness and kindred crimes destroy public morals, degrade citizenship, impair the health of the people and lead to profligacy and dependency. And, in the end, the public purse is taxed either to support the victims of these vices as paupers or to punish them as felons. Taxation to meet

the expense of pauperism and crime falls upon all the people. The tendency of both is to destroy the "peace, safety and well-being of the people," to secure which the Constitution was adopted and this free government established. To say that the State may not legally or with propriety put its hand upon the causes which produce them, with a view of minimizing or entirely ending such causes, is to deny the State the power to preserve itself or to accomplish the purposes for which it was created.

While every community should govern itself, when it fails, or to the extent that it fails, to do so, the State has a right to interfere. Indeed, in any such case it becomes its solemn duty to intervene and end the violation of its laws.

That some of the cities now subject to the operations of the law sought to be repealed have signally failed in this regard, is a notorious fact, a part of the history of the State and of the times. In one city in particular, officials now in authority are themselves engaged in the retail sale of intoxicating liquors and are not infrequently violators of the law relating thereto. One of them is now running a dive known as the "Bucket of Blood," because of the many crimes there committed. Can it be said that the police department of such a city may be safely turned over to him and his associates? Has the State no concern in such case? Have the people of a city anywhere within the Commonwealth a right to daily and openly transgress the law and suspend its operation? If they do thus violate the law and suspend its operation, has the State no interest in the condition thus created? Is the State an impotent, helpless thing, compelled to sit supine while its laws are broken and its authority trampled under foot? These questions it seems to me suggest their own answers. Indeed, the doctrine embraced in a negative answer to any one of them is so monstrous as to be undebatable. There is, there can be, no escape from the conclusion that the whole people are interested in such matters and that all are profoundly and vitally concerned.

That this is true, I call to witness recent history. Last year the people of the whole State were concerned and shocked by the revelations made of conditions existing at French Lick and West Baden. These conditions were such as to shame the Commonwealth and bring upon it just criticism from the press, both at home and in sister States. The demand that these conditions should cease was general and imperative, and, in my judgment, properly so. The people of that community, however, preferred that such conditions continue. They were satisfied to keep the profit and the

shame that flowed from them. They were willing that the criminal laws relating thereto should continue to be suspended. But the State was not satisfied, and their fellow-citizens were not satisfied. And yet, if the doctrine contended for by the adherents of this bill is correct, either from the standpoint of law or of public policy, the people of that community had a right to say to the State and to their fellow-citizens, "Keep your hands off. We are entitled to govern ourselves. You shall not interfere. To do so is to violate the Constitution and invade the spirit of free institutions."

Again, a gambling establishment was instituted at Dearborn Park, in Lake County, within a stockade, in a rural community, where a thousand dissolute and profligate characters daily assembled in violation of the law. The place became notorious. The Executive called upon the local officials—the sheriff and the prosecuting attorney of Lake County—to enforce the law, but they would do nothing. Then, under a provision of the metropolitan police law authorizing the police department of a city to be used to suppress violations of the law anywhere within the boundaries of the county, the Executive directed the police department of the city of Hammond to be ready to swear in a sufficient number of special policemen to put an end to the gambling institution at Dearborn Park, and advised those who were conducting it that the violation of the law must cease, and that if the police officers were resisted the militia of the State would be sent to their support. This led to the immediate and unconditional abandonment of the stockade and ended the unlawful practices that had been conducted there. But under the doctrine of "home rule" contended for by the supporters of this bill the State had no right to interfere if the people of Lake County were content.

As before suggested, the Constitution provides that "the operation of the laws shall never be suspended, except by the authority of the General Assembly"; that "no law shall be passed, the taking effect of which shall be made to depend upon any authority except as provided in this Constitution." It will be observed that it nowhere appears in the Constitution that the citizens of any community may suspend the law or that its taking effect shall depend upon their will. The Supreme Court of the State has held the term "operation of the laws," as used in the Constitution, to mean the "taking effect and continuing in force" of the laws.

In that, the State, acting through the General Assembly, is sovereign. This is fundamental. It must needs be so.

That its laws may be enforced, the Constitution imposes upon

the Governor solemn care in that regard. Its words are: "He shall take care that the laws be faithfully executed." The present Executive has accepted these provisions of the Constitution in good faith. He has believed, and still believes, it was intended that he should. When the people become satisfied that that provision of the Constitution is a mistake, let them meet in their sovereign capacity, strike it from their organic law, and insert the contrary. Then the Executive will be free of responsibility.

Acting through the several police boards in the fourteen cities included in the existing law, the Executive has consistently sought to secure the law's substantial enforcement within their boundaries. In the last two years great progress has been made in this direction. Taken as a whole, these police departments have been better administered and the laws more impartially and consistently enforced than ever before in their history. The effect of the policy pursued in these cities has been beneficial throughout the State. It has acted as a call to cities not within the metropolitan police law to the better performance of official obligation and to the acceptance of higher ground in the administration of their police affairs. These facts are written in the history of the past two years, and no amount of invective, calumny or abuse can change them. They are a part of the history of the State. They are not to be reasoned away.

At such a time and under such circumstances, it is proposed to strike down the law that makes this possible; to turn these departments over to local influences whose only grievance against the law is that under it the laws of the State touching public morals have been enforced; to subject these departments to the temptations and exigencies of local politics; to put them up as prizes to be striven for by those who wish the law's lax enforcement or its entire suspension.

The matter of the repeal of this law is of wider and far greater significance than the simple repeal of a statute, and its consequences more vital. It is really a test of strength between the moral forces of society on the one side and the law defying forces of vice and crime on the other. Its repeal will mean a "wide-open" policy in these fourteen cities. Vice and evil, for a time repressed, will find in it warrant for unwonted excesses and will become more difficult of control and regulation. Cities not now under the law will be affected, and the ground gained in behalf of good morals and decent administration of government in the last two years will be largely lost.

The present law, in some form, has been upon the statute books of the State since 1883, a period of 24 years. It ought not now to be repealed for light or transient reasons. We have shown that it does not contravene the Constitution or violate the spirit of our institutions. The contention that it does is without foundation and has been used only to excite popular prejudice.

The shibboleths of "home rule" and "self-government" are alluring and seductive. They constitute an enticing battle-cry. They are specious calls to prejudices strong and long imbedded, and are often used to obscure a lack of merit and a wickedness of purpose which, if not concealed, would bring swift and sure defeat and condemnation. In the present instance they are but a pretense, a mask, a cloak, beneath which are marshaled the real enemies of free government in Indiana.

I freely grant the sincerity of those who believe in the mistaken doctrine that the existing law violates the spirit of our institutions. But these are few in number compared with those who are imbued with other purposes. Every brewery and distilling interest in the State is back of this bill; every gambler, every midnight marauder, every keeper of a saloon, of a brothel, of a wine-room; every frequenter of a bawdy house; all who are opposed to the just and fair enforcement of the laws touching public morals, or who claim for themselves the right to choose what laws they will obey. These have met in more than one city since this measure was introduced, in secret conclave, and there levied assessments and collected moneys with which to prosecute this fight. With the repeal of the present law they see open to them in these fourteen cities inviting fields, containing an aggregate population of 250,000 people, where the laws touching public morals will be either feebly enforced or their operation entirely suspended. They see opportunity for the return of slot machines, the re-establishment of wine-rooms, gambling joints and bawdy houses; the return of saloons with unclosed doors, where intoxicating liquors may be sold on Sundays, on legal holidays, at unlawful hours, to minors and to drunken men, without fear of punishment.

These represent the real enemies of the State. They are already ratifying the repeal of this statute with acclamations of approval and delight. The act, however, is not yet completed. There is still time for reconsideration. It is well that you stop and think before you take the final step; that you consider and make sure that the deed when done can be justified in character of intent and result; that it will stand the sober second thought of the public

after the excitement of the hour has passed away, the pressure of the moment has been lifted, and the passion engendered by the heat of debate has closed; that it will square itself with the crystallized and enduring judgment of the people whose servants you are.

If you repeal it, the responsibility must be yours and yours alone. I will bear no share of it. You may march with the enemies of the State if you like. You may, if you choose, make fellowship with the saloon-keeper, the brewer, the dive-keeper and the gambler, but I prefer to cast my lot with the law-abiding, with the friends of the home, of the family circle and of orderly government honestly administered.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 456.

March 7, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, unsigned and without my approval, House Bill No. 456, entitled, "A bill for an act entitled an act providing for the issuing of bonds and coupons of the State of Indiana for the liquidation and payment of the claim of the board of trustees for the Vincennes University against the State, in full and final settlement of said claim and all other demands."

I regret exceedingly that I am unable to give my assent to this legislation. Vincennes University is the oldest institution of learning in the State. Its career has been long and honorable. It was founded before the Commonwealth was organized. Its life has been one of vicissitudes. It has come up "through much tribulation." Its present trustees are and have long been my personal friends and supporters, and I would that I could give executive approval to the demand it makes. But, after long consideration and thrice-repeated investigation, I find my mind coerced to a different conclusion. The facts and the law compel adverse decision. I can not sign it without being false to my sense of duty and official obligation. I therefore return it. It is due your honorable body, the University and the public that I give the reasons which impel me to this action.

The bill provides for the issuing by the State of $120,548 of bonds, bearing 3 per cent. semi-annual interest, payable to "The

board of trustees for the Vincennes University" ten years from the date thereof. The alleged claim of the University grows out of transactions occurring more than a half-century ago.

In 1804 the United States Congress granted to the Territory of Indiana, for the use of a "seminary of learning," 23,040 acres of lands, which were subsequently located in Gibson County. In 1806 an act of the Territorial Legislature incorporated the University of Vincennes and named a board of trustees. This board, by the terms of the act of incorporation, was "authorized to sell, transfer, convey and dispose of any quantity not exceeding 4,000 acres of the lands" so granted "for the purpose of putting into immediate operation the State University, and to lease or rent the remaining part of said township to the best advantage for the use of the said public school or university."

The board of trustees named organized in 1807, and subsequently sold 4,000 acres of said lands and erected a building at Vincennes for the use of the University.

In 1824, by an act of the General Assembly, the University was "adopted as the county seminary of Knox County," and placed "under the direction and control of the board of trustees of said University."

The preamble of this act makes the following reference to the building theretofore erected by the board of trustees: "Said building is rapidly decaying for want of funds to repair the same," and the second section of the act provides that "the funds due the public seminary of Knox County be paid to said board of trustees for repair of buildings and to maintain school."

After the enactment of this law there is no further record of the meetings or proceedings of the board of trustees until after the enactment of a law in 1838 reviving such board. The preamble of this act recites that "it is reported that from neglect to supply the vacancies occasioned by death or removal from the State, in the board of trustees of said University, it is now doubted whether a lawful board of trustees can be assembled."

By a joint resolution of the General Assembly, approved January 22, 1820, a superintendent of the 19,040 acres of said lands remaining unsold was appointed and authorized to rent the same and to "collect all arrears of rent that may be due the State." So far as I have beene able to learn, this was the first act of the General Assembly asserting ownership of these lands on behalf of the State.

In 1822 an act was passed providing for the sale of the lands

and appointing a commissioner to superintend the same. In 1824 a further act was passed appointing a superintendent of said lands.

Under these acts the State took possession of the lands and sold from time to time 16,840 acres of the same, leaving 2,200 acres unsold and still in its possession. No protest or remonstrance by the board of trustees against these acts of the State are in evidence, and no action was taken by them to recover the lands sold until 1843, when suits were begun against the several purchasers thereof for their recovery.

These suits were the source of much contention and great excitement, and feeling among the defendants thereto became so high that in 1846 the trustees of the University importuned the General Assembly to pass, and finally secured the enactment of a law authorizing them to bring suit against the State "for the purpose of trying the right of the said board of trustees to said township of lands," in the Marion Circuit Court, giving the said court "full and complete jurisdiction to try said suit between the said parties," and that "the final decision of said action, whether in favor of or against said board of trustees, shall be final and conclusive in the premises, reserving, however, to each of the parties to said suit the right to appeal as in other cases," and providing "that if, upon the final hearing of said suit, the same shall be decided in favor of said board of trustees for the Vincennes University, upon said board of trustees relinquishing to the State, for the use and benefit of the purchasers thereof, so much of said township of land as the State hath sold, then, and in that case, there shall be set apart for said board of trustees, the funds arising from the sale of said township of lands, as also the amount yet due from the respective purchasers thereof."

The trustees of the University availed themselves of the right created by this act and began a suit in said court against the State, which tereminated in a judgment against the State May 21, 1849.

By this decree the University was given a judgment on account of principal and interest received by the State for such of said lands as were sold up to December 3, 1847, in the sum of $30,099.96, on account of moneys still due the State from purchasers of said land on December 3, 1847, $13,249.19; on account of interest on moneys held by the State from the date of filing the suit to May 21, 1849, $5,428.87; a total of $48,778.02, and the costs of the litigation.

This decree among other things provided "That on compliance

with the terms of the said act of the Legislature, that is so soon as the complainants shall file in the office of the Auditor of State a relinquishment, under their common seal, to the State of Indiana, for the use of the purchasers from the State of the lands in the said township, of and for all the right of the complainants of and to the lands so sold, then the said sum of $30,099.96 so paid into the treasury as aforesaid shall be forthwith set apart by the Auditor of State and Treasurer of State, and, with all the interest which from the date of this decree may accrue thereon, shall, by the said officers, be paid to the complainants. And then, also, the said officers shall transfer to the complainants the evidences or security for the said sum of $13,249.19 due as aforesaid on the 3d day of December, 1847, or, if any part thereof or any interest thereon shall have been paid into the State Treasury since the said 3d day of December, 1847, the said officers shall pay over the said money and transfer the balance as aforesaid.

"And it is further ordered, adjudged and decreed that on filing the relinquishment aforesaid, the complainants are entitled to have and receive from the said State the amount of interest aforesaid, to wit: The sum of $5,428.87, with interest thereon from this date until paid, to be paid in such manner as by law may be provided."

It is important at this point to give consideration to the fact that this decree and judgment of the Marion Circuit Court was a complete and final adjudication of the rights of both the State and the University as to all the lands sold prior to the beginning of the suit, December 3, 1847. The judgment required payment by the State of all money received on account of any such sales prior to said date, the turning over to the University of all securities for moneys due the State and unpaid on account of any such sales, and the payment of interest on all such moneys from the date of filing the suit to the hour of the decree. The law under which the suit was brought was more than fair; it was liberal in its provisions. The State, believing in good faith that it had legal right to sell these lands and that the title thereto was vested in it, appealed from the decree of the Marion Circuit Court to the Supreme Court of the State, and there obtained a reversal of such decree. From this judgment of reversal the University appealed to the Supreme Court of the United States, where, in 1855, the decision of the State Supreme Court was reversed, and the title to the lands in question held to be in the University.

The decision of the United States Supreme Court reversing

that of the State Supreme Court was by a divided court. The dissenting opinion was prepared by Chief Justice Taney, and appeals to me as being a sounder exposition of the law than the majority opinion. It is important here to give consideration to the fact that the question of law involved in the issue concerning the title of the lands was so close as to cause disinterested, impartial and able judges to entertain radical and irreconcilable opinions regarding it. In such a case, involving important interests, the State can not be censured by any just man for having stood upon what seemed to its officers to be its rights.

By the decision of the United States Supreme Court the case was remanded to the Supreme Court of the State, where the error of its former judgment was corrected and the judgment of the Marion Circuit Court affirmed.

The General Assembly of 1855 passed an act, approved February 13, 1855, providing for the settlement of this judgment. This act was passed at the request and in answer to the importunity of the University and its friends. This is evidenced by the preamble itself, which recites:

"Whereas, It is represented that, for the purpose of settling finally all of said litigation, as well as of assuring to the said Vincennes University a safe investment, the board of trustees thereof are willing to accept, in full satisfaction of all their claim to the said lands, and to the proceeds thereof, in pursuance of the said act and decree, State bonds to an amount equal to the amount which might be found due them, according to a fair and equitable construction of said act of January 17, 1846, that is to say, all the money yet due from the purchasers of said lands, and all the money paid into the treasury on account of the sales of said lands, and the interest which, under the laws of the State, has accrued thereon, with the costs of lawsuits and litigation," as the basis of such act.

The act itself provided that

"The Auditor and Treasurer of State forthwith proceed to ascertain the amount for principal and interest equitably due to the said trustees for the said Vincennes University, by virtue of said act of 1846, and of said decree in equity, and of the claim therein set up, having proper regard to the decision of the Supreme Court of the United States thereon, so that in no event the amount determined by them shall be more than that allowed by the said decree, with interest thereon and the costs, the said interest to be computed to December 31, 1854."

Section 2 of the act provided that

"Auditor and Treasurer shall cause to be prepared and issued to the said, the board of trustees for the Vincennes University, State bonds, signed by them as such Auditor and Treasurer, in sums of five and of one thousand dollars each, with a like bond for any fractional sum, payable, principal and

interest, to the said board of trustees, or bearer, at the State treasury; the principal at the pleasure of the State, after thirty years from the date, and the interest at the rate of 6 per cent. per year, payable semi-annually, on the first days of July and January hereafter. The said bonds shall bear date the first day of January, 1855."

Section 3 provided:

"The receipt of the said bonds by the said, the board of trustees of the Vincennes University shall be deemed and taken to be a release, in law and fact, by the said board, to the State and to all persons whatever, of said decree and of all right and claim on the part of said board to or on account of the lands in said Gibson Seminary township, sold by the State, and to all money being the proceeds thereof or interest thereon, and to all costs and damages therefor, as fully as a release, under their corporate seal, could in any manner operate."

Under the authority of this act the Auditor and Treasurer of State proceed to adjust this claim. The Auditor's report of 1855 contains the following reference to their acts in relation thereto:

"For the purpose of adjusting the claim of the Vincennes University against the State, on account of the appropriation of the proceeds of the Seminary township of Gibson County to the State University at Bloomington, the General Assembly passed an act, approved February 13, 1855, directing the Auditor and Treasurer of State to ascertain the amount equitably due to the trustees of the Vincennes University by virtue of a decree of the Marion Circuit Court, limiting the same to the amount of the judgment, interest and costs, and having ascertained the amount due to issue to the board of trustees of the State University (Vincennes University), in full payment of the same, State bonds bearing 6 per cent. interest, the principal payable in thirty years from date and interest payable semi-annually on the first days of July and January. The Auditor and Treasurer accordingly, as required by this act, investigated the subject and ascertained the amount due under the decree to be $66,585, for which amount bonds of the description aforesaid were issued and delivered to the parties claiming them under the law."

Auditor of State's report, 1855, page 17.

In this settlement the University participated, by its counsel, Samuel Judah, a lawyer of eminent ability, who had represented it throughout the litigation incident to this claim. Evidence of this fact is furnished by the record of the proceedings of the board of trustees itself, an entry therein, under date of May 19, 1855, containing the following:

"On motion of Samuel Judah, Resolved, That Mr. Judah forthwith settle with the Auditor and Treasurer of State on the part of this board for the amount due this board from the State, under the act of February 13, 1855."

From these facts it unquestionably appears that the amount of the decree of the Marion Circuit Court, with interest upon the same

to December 31, 1854, and the costs of the litigation, were the basis of this settlement. That was what the act of 1855 authorized as the maximum amount for which settlement should be made. It, therefore, follows that as to the lands sold by the State prior to December 3, 1847, the date of commencing the suit in the Marion Circuit Court, full and final settlement was made, after the rights of the parties had been ascertained by trial and decree. As between individuals such an adjudication and such a settlement would be conclusive and forever binding. I am unable to conceive any reason why it should not be equally conclusive and binding upon this University.

As to so much of the claim, settlement for which is provided for in this measure, as is based upon the lands sold by the State prior to the date named, I am in full accord with my predecessor, who, as a member of the commission especially appointed to investigate and pass upon the question, found himself impelled by sheer force of the law and facts in the case, to decide as follows:

"After making diligent search for historical data and weighing the matter at hand, I am of the opinion that the University has been fully compensated for the lands taken in hand and sold by the State, applying the proceeds for the purpose for which the township was set apart by the Federal Government, as well as making an accounting to the University of Vincennes for the full amount of the lands sold, plus interest thereon and court costs in addition thereto. * * * The State, as I have said, accounted to and paid over to them every dollar received from the sale of the lands, and I can not feel that there has been a dishonorable act on the part of the State. The State believed the title to the township of land was vested in the State, and it could make such disposition thereof as was thought best, keeping in view and carrying out the provisions of the Government in setting apart the land for the higher school of learning."

In this connection, it is urged that while there is no legal claim in behalf of the University against the State on account of the lands sold prior to December 3, 1847, and while the decree and settlement thereunder is conclusive and final in law, the settlement itself "was not a fair, honest or just settlement;" that it was "a settlement on the State's own terms, a stand-and-deliver settlement, without equity or justice." If this were true, it would not change the legal aspect of the case nor add to the authority of the General Assembly to incur a debt against the State. It has no authority to provide for the payment of a debt which has no legal existence. But the statement itself is without foundation. Both the act of 1846 and the act of 1855 were passed in answer to the demands and upon the importunity of the University.

The records of the University show that in 1843 the board of trustees entered into a contract with Mr. Judah, one of their number, and their counsel, by the terms of which he was to prosecute this claim, and evidence is not wanting that he was earnest and effective in his efforts to secure the passage of the act of 1846, authorizing the University to sue the State. December 17, 1854, the trustees adopted the following resolution:

"Resolved, That Samuel Judah, Thomas Bishop and A. T. Ellis be a committee with full power to make any arrangement they may think proper with the Legislature concerning the said suit and funds, and in case of the absence of either, or both Ellis and Bishop, from Indianapolis, Mr. Judah have all such power; and that the President sign a copy of this order:

"Ordered: That said committee, Judah, Ellis and Bishop, be authorized to use means, of the proportion of said funds as they may deem necessary to secure a settlement of these claims."

Subsequently, in a suit involving his fees for this service, Mr. Judah averred in an answer to the complaint of the trustees, that he used $4,500 of the funds of the University "in procuring the passage of the act of 1855 * * * and that he did so under and by virtue of the order of said" trustees. In their reply to this answer the trustees, to quote the language of the Supreme Court,

"Without directly admitting or denying that the expenditures so made were necessary for the purposes stated in the answer, averred that without the consent of Ellis and Bishop, Judah fraudulently and corruptly expended such sums in hiring persons to aid him (Judah) in influencing members of the Legislature and in bribing members to procure the passage of said act; * * * that the passage of said act was procured by the joint efforts of the friends of the State University and others who contributed as much as defendant to its passage."

This statement was made by the trustees when the facts were fresh in their minds, and solemnly written into their reply in their case against Mr. Judah. I cite it as a complete and final refutation of the charge that the State, in its sovereign capacity, imposed a harsh and undesired settlement upon the University. If their pleading is true, the representatives of the State were, by their agent, bribed and coerced into the passage of the law. It was of their seeking. Let it not be forgotten that the act of settlement "was procured by the joint efforts of the friends of the State University and others who contributed as much as defendant to its passage," and that the defendant to whom they refer was their agent and counsel.

It is also urged that the lands sold by the State prior to December 3, 1847, were of great value, and that the proceeds of such

sales, together with interest thereon, was not sufficient compensation to the University for such lands; that the University, because of the action of the State, was deprived of the use and rental of such lands for a term of years. This statement is also fallacious. The truth is that these lands were of little value; that they were sold by the State for what they were reasonably worth, and for aught that appears for as much as the University received for the 4,000 acres sold by it. The act authorizing the sale of the lands was passed in 1822. The finding of the Marion Circuit Court shows that the State received for them $43,348.15, an average of $2.57 per acre. Between the date of the organization of the board in 1807 and 1820, the trustees of the University memorialized Congress on at least three several occasions to be permitted to sell said lands. From one of these petitions (that of November 15, 1817), I submit the following:

"Your petitioners would further respectfully represent that with a view of obtaining an active fund for the benefit of the institution the board of trustees, conformably to the provisions of the act of incorporation, offered to lease, in quarter sections, the remaining part of the township. The country, however, must be settled and improvements considerably advanced before any reliance can be placed upon a fund derived from that source. Those possessing the means will purchase. Those confiding in the indulgence of the government will spread themselves along the frontiers on the public lands, and thousands now prefer the latter to a lease on liberal terms of the land appropriated for the use of the University. Few leases being taken, and believing the arrangement likely to prove unproductive, at least for many years, the board have, for the present, abandoned the measure."

From another petition, dated January 12, 1818, I submit the following:

"The trustees are also authorized to rent out or lease the remaining part of the township for the use of the said University. It appears, however, that from causes incidental to a new country, where the price of land is low and the quantity for settlement disproportionate to the population, that the trustees have not been able to make any advantageous disposition of the lands by granting leases, nor to derive effective resources from rents for the support of the seminary, and that the unfavorable prospect of their unproductiveness for years to come when disposed of in that way has induced the trustees for the present to abandon the measure."

From yet another petition, dated December 17, 1818, I submit the following evidence touching the rental value of these lands:

"It is also observable that this township of land is situated in the vicinity of the village of Princeton, and that on two of the quarter sections within it sawmills have been erected with no other means of supply but from the timber of the seminary lands, and that daily depredations are committed upon the

most valuable of this timber. Your memorialists need hardly suggest the idea that this circumstance will not only prevent an increase of the value of these lands, but must gradually diminish its value, a circumstance which the utmost vigilance of your memorialists will not be able to prevent."

The legislation now presented purports to be based, in part at least, upon a finding made by the Secretary, Auditor and Treasurer of State, as members of a commission appointed by the General Assembly of 1903 to make investigation of said claim. Such finding is set out in one of the whereases in the preamble to the bill. It is as follows:

"After a full consideration of this case, and in view of all the facts, we are convinced that this University has sustained losses and damages beyond any reparation that has been made by the State. We therefore recommend that the sum of $120,548 be appropriated to Vincennes University as a just and equitable settlement of this matter."

The report filed by the majority of said commission absolutely and wholly fails to set forth any tangible or specific basis for this finding.

Governor Durbin was a member of this commission. He participated in its deliberations. He was familiar with the arguments presented to the commission and with the discussion between its members. He could not concur in the finding of the majority of the commission, and filed a minority report February 13, 1905. From his report it becomes apparent that the report of the majority of the commission, though not disclosing that fact, is based in part upon the fact that Mr. Judah, counsel for the University, retained as his fee $25,000 of the proceeds of the bonds issued to the University in settlement of the judgment of the Marion Circuit Court.

The present Executive has personal knowledge, from conversations held with at least two members of the commission who signed the majority report, immediately after the filing of the same in January, 1905, that their report is based in part upon this attorney's fee. They so stated and sought to justify their finding in part upon that ground.

It may be true that Mr. Judah charged the University and received from it $25,000 for his services as its counsel in the litigation with the State concerning these lands. It may be that the fee charged was exorbitant. But with that we have nothing to do. The State is not bound, either in law or in equity, to pay the counsel fees of the University. The question of law involved in the issue between the University and the State, as hereinbefore suggested, was so close as to cause able jurists to disagree concerning

it. The State acted in good faith. It thought it was defending its own. And in such a case it is under no legal or moral obligation to pay the counsel fees of its adversary. This is especially true if, as stated by the trustees in their suit against Mr. Judah, he had used a portion of the funds so retained by him to corrupt the General Assembly of the State to secure the passage of the act of settlement.

There is yet another reason why so much of the claim as is based upon the sale of lands made prior to December 3, 1847, should not now be considered. The law under which the settlement was made especially provided that "the receipt of the said bonds by the said, the board of trustees for the Vincennes University, shall be deemed and taken to be a release, in law and fact, by the said board, to the State and to all persons whatever of said decree and of all right and claim on the part of said board to or on account of the lands in said Gibson, Seminary township, sold by the State, and to all money being the proceeds thereof or interest thereon, and to all costs and damages therefor, as fully as a release, under their corporate seal, could in any manner operate."

This law, as we have seen, was in fact the University's own creation. It accepted the terms of settlement there provided, and received the $66,585 worth of bonds in final and complete settlement. On the day it did that it finally and forever estopped itself from further claim against the State on account of the sale of all lands prior to December 3, 1847.

On the 3d day of December, 1847, there remained unsold of the lands granted to the University 2,200 acres, the University itself having sold 4,000 acres and the State 16,840 acres.

There appears to have been no effort on the part of the board of trustees to reopen this settlement for a period of forty years. The matter was presented to the General Assembly of 1895, and an appropriation of $15,000 was made as an item in the general appropriation bill, "in full settlement of all claims against the State." This money was paid to and received by Joseph L. Bayard, treasurer of the board of trustees of the University, under authority of the following resolution adopted by the board, April 1, 1895:

"Resolved, That Joseph L. Bayard, treasurer of the board of trustees of the Vincennes University, Vincennes, Ind., be and is hereby authorized and directed to receive and receipt for the $15,000 appropriated to the said board by the Legislature of Indiana at its last session, 1895, and for any and all warrants issued therefor, and that he notify the secretary and report to this board as soon as such payment is made."

The above resolution followed a report of a committee appointed by the board of trustees, in which the trustees were advised "that the acceptance by the University of the amount so appropriated can not prevent the University from presenting the balance of the claim for payment to a future Legislature, nor prohibit such Legislature from allowing and paying such further sum as may be justly owning to the University for the reason that the Legislature at one session can not bind nor control the action of a future session in matters of this kind."

October 31, 1895, Mr. Bayard receipted the State "in full settlement of all claims of Vincennes University against the State of Indiana."

After having accepted this appropriation made by the General Assembly upon the condition that it should be received by the board of trustees as full settlement of the claim, an effort was immediately set on foot to secure an additional appropriation, and in 1899 a bill providing for the issuance of $120,000 of bonds of the State to be turned over to the University, passed the General Assembly and was vetoed by Governor Mount, from whose message I submit the following:

"It will be seen that the State of Indiana, by act of the Legislature, paid in good faith all the money derived from the sale of these lands to a university of learning, and that in addition they paid Vincennes University the amount of the judgment aforesaid, which was, as shown by the act of the Legislature and by the receipts, to have been, and was understood to have been, a full settlement of all claims against the State.

"From this transaction it would appear that there remains no claim in equity or in law against the State of Indiana by reason of the sale of the aforesaid 16,845.95 acres. If there remains a claim against the State of Indiana it must be for 1,584.75 acres, as set out in the report of the Auditor of State, the value of which the commissioner placed at from 25 cents to 50 cents per acre.

"I have been unable to find what became of that land, for what it was sold, or what disposition was made of the money. For this 1,584.75 acres it would seem that the University has a claim, and how far the $15,000 voted by the General Assembly four years ago goes toward settling that claim, or whether it oversettles the claim, is a matter I do not know. Four years ago, when this money was appropriated, it was expressly stipulated in the appropriation that the payment of the $15,000 was to be a settlement in full of all claims against the State of Indiana growing out of the sale of the lands belonging to the University, and the receipt so stipulated. For the foregoing reasons I cannot approve this bill."

In 1901 a similar bill to that vetoed by Governor Mount in 1899 was introduced in the Senate, passed that body, went to the House, but was defeated in the House. In 1903 a similar bill was

introduced, but not passed. A concurrent resolution, however, appointed the Governor, Secretary, Auditor and Treasurer of State as a commission to investigate the claim and report to the Sixty-fourth General Assembly. That report I have heretofore adverted to. The Secretary, Auditor and Treasurer of State joined in a majority report, recommending the appropriation carried in the present bill. The finding of the majority of the commission does not disclose the basis upon which it is made, but the minority report filed by Governor Durbin discloses that one of the substantial elements entering into it was the 2,200 acres of land unsold at the time of the beginning of the suit against the State in the Marion Circuit Court in 1847.

As heretofore shown, another element entering into such finding was the counsel fee paid by the University to its attorney, Mr. Judah. These are the only two items which give even a semblance of foundation for the finding of the majority of said commission.

Governor Durbin, in the course of a separate report, speaking of so much of the claim as is based upon the 2,200 acres of land in question, said:

"I at one time during the consideration, felt the State should account for the 2,200 acres, and agreed with my associates therein, but further light being shed upon the matter, I am convinced the State should not be held to account for the neglect to look after and protect their own interests and property. A century has passed since the land was set apart by the Government and a half century since the settlement made upon the findings of the court. Naturally the question arises, and quickly so, why has the University permitted so much time to elapse without seeking to be reimbursed? Why did not the University take possession of the 2,200 acres? If it had been sold and not accounted for at the time of the settlement in 1855, why did the University not at that time ask for the proceeds turned over? If sold by the State at any time since 1855, why did not the University interpose an objection and stop the sales or ask for an accounting? It stands out conspicuously that the University has not used due diligence in looking after her own property and protecting her rights, and in this she should not ask the State to make good to her for any loss sustained. The representatives of the University have not traced the 2,200 acres to see what disposition has been made thereof, and displayed no disposition to assist the commission in ferreting out who sold them or if they were ever sold. * * * I sincerely wish I could take a stand for the claim and maintain it with suitable argument and facts, but I cannot."

It is due to Governor Durbin and to the then Secretary, Auditor and Treasurer of State to say that at the time of the filing of their report no definite information had been obtained as to what disposition had been made of the 2,200 acres of land in question.

Fortunately, we are now in possession of definite information. I am advised by the present Auditor of State, under date of February 18, 1907, that the State sold 2,141.75 acres of said lands between the 13th day of January, 1848, and the 9th day of November, 1864, and that it received therefor the sum of $1,547.30. This leaves but 58.25 acres of the entire congressional grant unaccounted for, and which in all probability have never been sold. The 2,200 acres remaining unsold in 1847 are situated in the bottoms of the Wabash and Patoka rivers, and it is entirely probable that in so large a tract so located, a shortage of 58.25 acres exists. I do not believe the University ever had either a legal or an equitable claim against the State for anything more than the State received for these lands $1,547.30, with interest thereon. Interest on this sum at 6 per cent. for fifty-two years amounts to $4,827.57, and the principal and interest aggregate $6,374.87.

We have already seen that in 1895 the University was paid $15,000. Interest on this sum at 6 per cent. for twelve years is $10,800. Principal and interest aggregate $25,800. This sum less the principal and interest of the money received from the sale of the 2,141.75 acres of land—$6,374.87—discloses that the State has paid the University for these lands, $18,425.32 more than was due it.

If it is contended that to the $1,547.30 received by the State from the sale of the 2,141.75 acres of land should be added compound interest, the University is still overpaid. Compound interest at 6 per cent. for fifty-two years on $1,547.30 is $30,444.46. The principal and interest aggregate $31,991.76. Compound interest for twelve years at 6 per cent. on the $15,000 paid the University in 1895 is $20,785.14. Principal and interest aggregate $35,-785.14. The difference between this sum and the proceeds received by the State for the lands in question compounded at 6 per cent. interest for fifty-two years is $3,792.38, and represents the amount the University has received in excess of what was due it.

It has been said that these lands were worth more than the State received for them. I have already adverted to this question, and have shown by evidence taken from petitions and memorials addressed to the Congress of the United States by the trustees of the University themselves that this is not true, and in addition to what I have hereinbefore said upon this subject, I submit that it is entirely probable that the 2,200 acres of land remaining unsold in 1847 from the 23,040 acres granted by Congress, was the least desirable of all the lands in the grant. With Government land on

every side purchasable at mere nominal prices, it is reasonably certain that the lands within this grant first sold were best in quality and that the poorest remained. The location of the 2,200 acres supports this view. They lie in the northwest corner of the township, in the Wabash and Patoka river bottoms. They were badly timbered and inundated, and the commmissioner reports their value at from 25 cents to 50 cents per acre. The State received an average of about 70 cents per acre.

I am advised through what I believe to be reliable sources that at the time the lands were sold they were marshy and wet the year around, a tangle of vines and timber, and that it was well worth them to reclaim them. I am also advised that two of the men who purchased a part of them after paying taxes on their purchase for years sold it for less than it cost them. These facts taken together make it morally certain that the State has paid and overpaid the University; that there remains no legal obligation. It is equally clear that there is no equitable or moral obligation that has not already been generously met and satisfied.

It, therefore, follows that the issuing of the $120,548 of bonds and their delivery to the trustees of the University provided for by the pending measure is a gift to the University outright and without consideration. As I shall hereafter show, the General Assembly has no authority under the Constitution to give away public moneys raised by tax levies upon the property of the people of the State either to individuals or to private corporations, however meritorious their purpose and however deserving they may be.

It is important in this connection to remember that this bill does not carry an appropriation of money. It provides for the creation of a bonded indebtedness against the State, through the issuing of its bonds, which are to be given away. This is clearly in contravention of Section 5 of Article 10, of the Constitution of the State, which provides:

"No law shall authorize any debt to be contracted on behalf of the State, except in the following cases: To meet casual deficits of the revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense."

Can it be said that the bonds provided for and the debt created by this bill are to meet casual deficits in the revenue? Can it be said that they are to pay the interest on the State debt? Can it be said they are to repel invasion, to suppress insurrection or to provide for the public defense? If not, the legislation is invalid.

It is not enough to say that the bonds are issued to liquidate a debt created by the measure which authorizes them. That could be said in any case.

The word "debt" as used in this section of the Constitution means a debt within legal contemplation, a valid existing obligation to pay, which is enforceable in law; something due from the State which it is bound to pay. Even the friends of the University admit that this claim is not a legal obligation; that it is not such a debt as could be enforced in the courts. The most they have been able to say in its behalf is that it is a "sentimental or moral obligation." To my mind it is clear that it is not even that; but if it were, it would not be a sufficient claim upon which to predicate the issuing of bonds under the above provision of the Constitution.

That the General Assembly has no constitutional power to make an appropriation of public funds raised by taxation for a private purpose is agreed by all authorities. In its last analysis this bill is an attempt to make an appropriation of public funds for a private purpose, and in effect to take the property of one citizen and bestow it upon a private corporation through the appropriation of public funds which are to be raised by taxation. Such an attempt is unconstitutional, and therefore invalid.

McClelland, etc., v. The State, 138 Ind. 321;
State, etc., v. Tappan, 29 Wis. 664;
People v. Supervisor, etc., 16 Mich. 253;
Bristol v. Johnson, 34 Mich. 123;
Hoagland v. City of Sacramento, 52 Cal. 142;
Lowell v. City of Boston, 111 Mass. 454;
Thorndyke v. Inhabitants of Camden, 82 Me. 39;
Cooley on Constitutional Limitations, pp. 332-341.

The passage of this law will be of no benefit to the University. Its provisions are invalid. It can only involve the University in losing litigation. Believing that the University has estopped itself by the two several settlements of its claim against the State from asking for further contribution from the State; that its claim has been already more than paid, and that the present attempt to compensate it further is an unconstitutional exercise of legislative authority, I am compelled to refuse executive approval.

J. Frank Hanly,
Governor.

HOUSE BILL No. 237.

MARCH 8, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill No. 237, relating to the establishment of flag stations on the line of steam railroads within the limits of towns or cities of more than 2,500 and less than 2,800 inhabitants and of more than 1,750 and less than 1,850 inhabitants.

The classification sought to be made is unreasonable and arbitrary. The act covers one of the subjects inhibited by Section 22, Article 4, of the Constitution.

The only basis for the classification is the difference in population of the towns sought to be classified. This difference is 300 in the first classification named and 100 in the second.

The Supreme Court of the State has held that cities and towns may be classified, under the Constitution, upon the basis of difference in population and that such laws applicable to a single class may be regarded as general in their character and not local or special. But they have recently held that such classification must be natural and reasonable and not arbitrary; that it must be founded upon real and substantial differences in the local situation and necessities of the classes of cities and towns to which it applies.

In a recent case it is said:

"Where such a classification excludes from its operations cities and towns differing in no material particular from those included in a class, the statute cannot be upheld."

School City of Rushville v. Hayes, 162 Ind. at 200.

The difference in population in the case cited was but 5, but the principle involved is the same as that presented in the bill returned herewith.

In a more recent case, where the basis of classification was a difference in population of a thousand, the reason for the rule is declared with clearness and force:

"Plainly, a law may be general in its provisions, and may apply to the whole of a group of objects having characteristics sufficiently marked and important to make them a class by themselves, and yet such law may be in contravention of this constitutional prohibition. Thus, a law enacting that in every city in the State in which there are ten churches there should be three commissioners of the water department with certain prescribed duties, would present a specimen of such a law, for it would sufficiently designate a class

of cities, and would embrace the whole of such class, and yet it does not seem to me that it could be sustained by the courts. If it could be so sanctioned, then the constitutional restriction would be of no avail, as there are few objects that cannot be arbitrarily associated, if all that is requisite for the purpose of legislation is to designate them by some quality, no matter what that may be, which will so distinguish them as to mark them as a distinct class. But the true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having a reference to the subject-matter of the proposed legislation, between the objects or places embraced in such legislation, and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree, at least, account for or justify the restriction of the legislation. Principles of this sort can be best elucidated by examples. I have already given a sample of a mere arbitrary classification, founded on no casual relation between the subject-matter of such legislation and the things so classified. A sample of the other, or legitimate kind, would be signified in a law that should give to all cities in the State situated on tide water the privilege of using such waters in connection with their sewers. In such an enactment but a part of the cities of the State would be embraced, but the classification would be lawful and proper, inasmuch as the places embraced would be possessed of a characteristic distinct from those possessed by the excluded places, such characteristic being of such a nature as to afford a reasonable ground for such special legislation. In the two classes of instances thus exemplified, the basis of the classification of the one would be by reference to marks of distinction having no connection with the substance of the supposed statute; in the other the opposite of this would obtain—so that, in the former, the classification would be formal and arbitrary; in the latter, substantial and springing out of the nature of the subject of this legislation.

"Applying these tests, it is evident that the classification in said act is merely arbitrary, and cannot relieve the same from the infirmity of being special and local. There is no reason inhering in the subject-matter of the act for giving the power mentioned therein to cities of a population of between 6,000 and 7,000 according to the last preceding United States census, and not giving the same to the other cities in the State."

These decisions are so decisive of the question here presented as to preclude my approval of this measure.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 286.

March 11, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 286 without executive approval.

It provides that highways on township, county and road district lines shall be apportioned between the trustees of townships or road districts separated by such lines, by giving to each of such trustees an equal one-half of such line of road. It then provides "that all persons living on or near such township, county or road district lines may be permitted to work their land and poll tax on such division line roads fronting their lands or as near their lands as practicable under the direction of the trustee in whose township such persons reside, and such trustee shall have jurisdiction over such division line roads whether the same be in his division or not, to the extent of working such taxes."

This provision impairs the division of such highways made in the first part of the proposed bill and divides the jurisdiction over the highways so apportioned between trustees of the two townships, and will lead to conflict of authority and much confusion. There is no especial necessity for legislation upon this subject, as the law already provides for a division of such highways between the trustees of the townships through which the same run, giving to each exclusive jurisdiction over the portion assigned to him.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 473.

March 11, 1907.

Hon. Fred A. Sims, Secretary of State, Indianapolis, Indiana:

Sir—I file herewith House Bill No. 473, without executive approval, together with my objections thereto, the House of Representatives having adjourned at the hour of 5:15 p. m., March 11, 1907, before the expiration of the three days allowed by the Constitution for executive consideration thereof.

Respectfully,

J. Frank Hanly,
Governor.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill No. 473.

The bill provides that "options and leases held by persons who are non-residents of the State, or by foreign corporations, or by persons for the use of such non-residents or foreign corporations, on real estate in this State," shall "be recorded in the recorder's office of the county in which such land is situate within thirty days from the time of the execution thereof, and all such options and leases that shall not be recorded within such time shall be void for any purpose whatever." Township assessors are authorized to list and appraise, for purposes of taxation, "all leases and options on real estate held by persons who are non-residents of said State, and leases and options held by foreign corporations, or for the use of such persons and corporations."

The leases and options referred to relate to leases and options of real estate taken "for the purpose of prospecting for, and the development and working of wells for gas, oil, mineral water, or minerals of whatever nature."

The bill contravenes Section 2 of Article IV of the Constitution of the United States, which provides that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." It also contravenes the Fourteenth Amendment to the Federal Constitution that "No State shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Under existing law in this State a resident owner of any instrument vesting in him any interest in real estate, is given forty-five days in which to file such instrument in the office of the recorder of the county where the land lies. If such instrument is never recorded, it remains a valid contract as between the grantor and grantee, and is only void as between the grantee and third parties acquiring interest in the land subsequent to its conveyance and the time limit for recording without notice.

The present bill requires non-residents to record such instruments within thirty days from the date thereof and declares all such as are not thus recorded to be void "for any purpose whatever."

This is clearly a discrimination in favor of resident citizens as

against the citizens of other States. This is equally true of those provisions of the bill which require the leases and options in question to be listed for taxation.

I am in accord with the evident purpose of the author of the bill to reach and tax the interests accruing to all persons, resident or non-resident, in real estate in Indiana, because of any such contracts. It can only be effectively reached, however, by a provision of law which shall require the taxation of such interest in real estate as is created by the instrument or instruments in question.

An ordinance of the city of Indianapolis licensing breweries, distilleries and their depots and agencies established in the city, with other wholesale dealers in malt liquors, but excepting from its operation residents of the city doing a wholesale business in bottled beer, was held void for discrimination by the Supreme Court of this State.

City of Indianapolis v. Bieler, 138 Ind. 30.

An act of the General Assembly providing that "It shall be unlawful for any person, association or corporation to nominate or appoint any person a trustee in any deed, mortgage, or other instrument in writing (except wills) for any purpose whatever, who shall not be, at the time, a bona fide resident of the State of Indiana; and it shall be unlawful for any person who is not a bona fide resident of the State, to act as such trustee," was held invalid, the court saying:

"Reluctant as we are to hold a statute regularly enacted by the General Assembly unconstitutional, we cannot avoid the conclusion that the act under consideration is in conflict with those provisions of the Constitution of the United States which guarantee to the citizens of each State, and of the United States, all the privileges and immunities of the citizens of the several States."

Roby v. Smith, 131 Ind. at 347.

The Supreme Court of the United States held invalid a statute of the State of Maryland, prohibiting persons, not permanent residents in that State, from selling, offering for sale or exposing for sale within a certain district of the State any goods whatever other than agricultural products and articles manufactured in the State, either by card, sample or other specimen, or by written or printed trade-list or catalogue, whether such person be the maker or manufacturer thereof or not, without first obtaining a license so to do. Speaking to the question raised by such act, the court said:

"Inasmuch as the Constitution provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several

States, it follows that the defendant might lawfully sell, or offer or expose for sale, within the district described in the indictment, any goods which the permanent residents of the State might sell, or offer or expose for sale in that district, without being subjected to any higher tax or excise than that exacted by law of such permanent residents."

Ward v. Maryland, 12 Wall. at 430.

Non-residents are for like reasons entitled to purchase leases and buy options on real estate in the State of Indiana, and to hold them subject to the same terms and conditions that residents of the State purchase and buy and hold them. Restrictions imposed upon non-residents in this behalf which are not imposed upon resident citizens, are clearly within the inhibition of the Constitution.

A statute of the State of Oregon, providing for the assessment of the interest vested in non-resident mortgages on account of mortgages taken upon real estate in such State, was held valid by the Supreme Court of the United States; but the decision is based upon the fact that the effort of the law was not the assessment of the mortgage or instrument, but the interest in the real estate vested by the instrument in the mortgagee, the Court saying:

"The result is that nothing is taxed but the real estate mortgaged, the interest of the mortgagee therein being taxed to him, and the rest to the mortgagor. There is no double taxation. Nor is any such discrimination made between mortgagors and mortgagees, or between resident and non-resident mortgagees, as to deny to the latter the equal protection of the laws."

Savings Society v. Multnomah Co., 169 U. S. at 425.

An act of the State of Texas, imposing an attorney's fee in addition to costs upon railway corporations omitting to pay certain claims within a certain time after presentation, applying to no other corporation or individuals, was held unconstitutional, Mr. Justice Brewer, in the course of the opinion handed down in the case, stating the rule as follows:

"The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. They cannot appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorneys' fees of the successful plaintiff; if it terminates in their favor, they recover no attorneys' fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorneys' fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do

not receive its equal protection. All this is obvious from a mere inspection of the statute."

Gulf, Colorado & Santa Fe Railway Co. v. Ellis, 165 U. S. at 150.

A Tennessee statute, giving preference to resident creditors as against non-resident creditors in case of insolvency of certain corporations was also declared invalid by the United States Supreme Court. After citing numerous decisions, it is said:

"If a State should attempt, by statute regulating the distribution of the property of insolvent individuals among their creditors, to give priority to the claims of such individual creditors as were citizens of that State over the claims of individual creditors, citizens of other States, such legislation would be repugnant to the Constitution upon the ground that it withheld from citizens of other States as such, and because they were such, privileges granted to the citizens of the State enacting it. * * *

"We hold such discrimination against citizens of other States to be repugnant to the second section of the fourth article of the Constitution of the United States."

Blake v. McClunk, 172 U. S. 252.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 5.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

House Bill No. 5, providing for changes of venue from police judges to justices of the peace, is herewith respectfully returned without executive approval.

The present law provides for a change of venue from the police judge. I know of no substantial reason why there should be provision for a change of venue from a police court to a justice court. The police court is a court of much wider and greater jurisdiction than a justice court. It has power to impose penalties and to render judgments which justices of the peace do not have. I doubt the propriety of a change of venue from a court of greater to a court of less jurisdiction. I believe the enactment of the present bill would seriously embarrass the administration of the criminal law in the cities of the State in many instances. The accused, in criminal cases, would take advantage of the law in order to escape the danger of substantial punishment.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 75.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I respectfully return herewith, without executive approval, House Bill No. 75, providing for the establishment and maintenance of county agricultural and domestic science schools.

As drawn, the bill applies only to counties having a population between 38,386 and 39,000, a difference of only 614. This is such a narrow, arbitrary and unreasonable classification as to make the bill purely local in character and to bring it within the inhibition of the Constitution.

Reasons and authorities in support of this position have been given in executive messages heretofore sent to the Sixty-fifth General Assembly relating to the disapproval of other special acts. For that reason they are not now reiterated.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 144.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill No. 144, to authorize and encourage the construction of levees and dykes and for the straightening and deepening the channels of rivers and the reclamation of wet and overflow lands by incorporated associations, and providing for the organization of such associations and prescribing their powers.

The law creates a system of drainage through the incorporation of associations, in the board of directors of which is vested, after the construction of the improvements provided for therein, the power to keep in repair such improvement and to levy an assessment upon the lands of the persons assessed for the construction of such improvement, for the purpose of meeting the expenses of such repair, and makes it the duty of the county auditor of any county in which any such lands are affected, to spread upon the tax duplicate such assessments when certified to him by the clerk of such association. These assessments become liens upon the lands

against which they are assessed. In so far as the act relates to assessments for repairs, it provides for no notice of such assessment to the owners of any lands assessed, and no provision is made for a hearing or for an appeal.

The levying and collection of such assessments would be the taking of property without due process of law. Notice and hearing, a day in court, are fundamental requisites in every law which provides for the levying of special assessments for the construction of improvements. Such assessments are justified only upon the grounds of benefits conferred upon the property assessed. Upon this question and all kindred questions, the statute to be valid must provide for notice and for an appeal and a hearing before some judicial tribunal. The utter failure of this statute in this regard makes it clearly unconstitutional.

Hille v. Neal, 32 Ind. 341;
Davis v. Lake Shore, etc., Ry. Co., 114 Ind. at 369.

In this case it is said, "Notice is an indispensable requisite to the validity of the proceedings."

In the case of Jordan v. Lewis, 115 Ind. at 492, it is said: "The Constitution sanctions no law under which a lien can be conclusively imposed upon property without first giving the owner notice, and affording him an opportunity to be heard in some tribunal competent to administer adequate relief."

See also
Kizer v. The Town of Winchester, 141 Ind. at 696.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 229.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I respectfully return herewith House Bill No. 229 without executive approval.

The bill relates to applications for a new trial in civil causes, and seeks to amend section 422 of an act concerning practice in civil causes, approved March 7, 1881.

The title, however, wholly fails to set out any part of the title

of the act sought to be amended. In fact, the title purports to be a title to a general bill, but the body of the bill clearly shows that the bill is wholly amendatory in character.

Section 19, Article IV, of the State Constitution, requires that the subject of an act shall be expressed in its title. The present bill, wholly failing in this regard, would be invalid if enacted.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 318.

MARCH 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 318 without executive approval.

The bill provides for the issuing of a State license to teachers having an average scholarship of not less than eighty-five per cent. in the branches of study on which such license is issued, who have taught one hundred months in the public schools of the State. The present law requires an average scholarship of not less than ninety per cent. in such branches of study.

The effect of the proposed change would be to lower the standard of scholarship required for such license. This ought not to be done. This is especially true at the present time. The legislation recently enacted makes better pay possible for the school teachers of the State. In exchange for this increased wage the State is entitled to higher standards and greater efficiency. I therefore withhold my approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 338.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I herewith respectfully return House Bill No. 338, relating to the compensation and prescribing the duties and fixing the fees to be charged by county sheriffs, without executive approval.

I believe the present law provides ample compensation for the services rendered by county sheriffs. Certain fees known as "in and out fees" authorized by law to be taxed by such officers, have been held to be the property of the respective counties. The matter, however, is still in litigation. The provisions of the present bill include these fees and make them the property of the sheriff. No such fees ought to be provided for in the statute, and I am fully convinced that where they are provided for they ought to be returned to the treasury of the county. The matter will probably be finally settled in the courts without great delay, and such fees may be construed to be the property of the sheriff. If so, there will be no need for this legislation even from the standpoint of the sheriff. If it is not decided that they are the property of the sheriff, I have no doubt whatever that the people of the State will be satisfied that they shall be returned to the several local treasuries.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 376.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill. No. 376. From a careful reading of the title of the bill and the wording of the context of the body thereof, it is evident that the intention of the General Assembly was to amend an "Act supplemental to an act entitled 'An act to authorize aid to the construction of railroads by counties and townships taking stock in and making donations to, railroad companies,'" approved May 12, 1869.

The words "An act supplemental to an act" are omitted from

the title, causing it to read "An act to amend section one of an act approved March 9, 1903, entitled 'An act to authorize aid to the construction of railroads,' " etc.

The effect of the omission is to amend the original act rather than the supplemental act. This defect I believe to be such as to invalidate the bill should it become a law, and certainly such as to prevent it from amending the section of the act really sought to be amended. I therefore decline to give it executive approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 393.

MARCH 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I respectfully return herewith, without executive signature, House Bill No. 393, "to repeal an act entitled an act concerning the payment of taxes assessed upon omitted property and providing the manner in which the costs of collecting the same shall be paid, approved February 17, 1905."

The act sought to be repealed authorizes boards of county commissioners in this State to "make contracts for the discovery of, and report for assessment and taxation, omitted property and cause the taxes to be collected upon the same," and to deduct "from the gross amount of said taxes so collected the total cost and expense of such investigation and collection."

Under the provisions of this act many contracts have been made by the several boards of commissioners of the State for the discovery and report and assessment of sequestered property which has for years escaped taxation. The aggregate amount of such property placed upon the tax duplicate in the last two years is very large. Evidence of the sequestration has not been readily found. It has been necessary to gather it from many and oftentimes distant sources. Little of the property thus discovered would ever have reached the tax duplicate but for these contracts and the work done under them. The man who reports his property and pays his taxes is entitled to have his neighbor do the same. The act of 1905 has resulted in compelling the payment of just taxes by many persons who have been evading the duty imposed upon them in this regard by the laws of the State.

I believe the act to be in the interests of equal taxation and of sound public policy. I therefore decline to assent to its repeal.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 443.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill No. 443, relating to circulating libraries "in any city of this State having a population of more than 20,000 as shown by the United States Census of A. D. 1900."

The limitation to the census of 1900 makes the bill clearly special, and brings it within the inhibition of the Constitution as heretofore shown in other executive messages filed with the respective houses of the present General Assembly, and withholding executive approval from measures attempting to make similar classifications.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 518.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 518 without executive approval.

The bill relates to the raising of funds for the purchase of school sites and the erection of buildings thereon in towns having a population of not more than 500, according to the last preceding United States census.

The classification made is narrow, arbitrary and unreasonable. The bill is clearly local and special, and within the inhibition of Section 22, Article IV, of the State Constitution. Reasons and authorities supporting this view have been given at greater length in executive messages relating to the disapproval of other local

and special measures, sent to each House of the General Assembly from time to time during its late session, and for that reason they are not now reiterated.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 541.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 541 without executive approval.

This bill is invalid. It is local and special legislation, affecting taxes levied and collected "for the purpose of building a county line gravel road between Hobart Township, in Lake County, and Portage Township, in Porter County, Indiana, said road not being built because the law was declared illegal," and is inhibited by Section 22 of Article 4 of the State Constitution. It applies to Lake County only by name and to a specific township in said county. The precise question involved is decided in the case of Board v. Spangler, 159 Ind. at page 582, in which it is declared:

> "The attempts to validate the contracts and the assessment of taxes to pay the bonds upon their maturity were aborted because of the special and local character of the act."

In this case the Legislature sought to except Owen County from a gravel road act. The county was not specifically named as in this instance, but the exception included counties having between 15,000 and 15,050 inhabitants. The court held the classification was so narrow as to apply only to Owen County, and that it was invalid for that reason.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 540.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, unsigned, House Bill No. 540, the same being a bill to authorize and empower the auditor and treasurer of Lake County, Indiana, "to divert and apply and pay" certain gravel road taxes levied and collected in said county and now in the hands of the treasurer thereof "toward the building of the Swanson et al., gravel road," in Hobart Township, in said county.

The preamble recites that the taxes were levied and collected to pay the bonds issued for the construction of a public gravel road in Hobart Township, known as the Swanson et al., road, and that "said road was not built at said time owing to some illegality in regard to the bonds issued therefor, which prevented them from selling"; and that "said road was again voted for and carried in 1906, and bonds therefor were issued and sold, and said road is now in process of construction in said township."

This statute is in violation of Section 22 of Article 4 of the State Constitution. It applies to Lake County and Hobart Township by name. It is therefore clearly local. Under the authority cited in the message of disapproval of House Bill No. 541, I am compelled to withhold executive approval.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 555.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I herewith respectfully return House Bill No. 555, entitled "An act for the protection of the sources of supply of water furnished and used by any municipality and the inhabitants thereof, providing a penalty for its violation, and declaring an emergency," without executive approval.

The bill makes it "unlawful for any person, firm or corporation to dig, construct, maintain and operate any well or wells in this State within three thousand feet of any well or wells now or hereafter constructed, maintained and operated by any municipal

water works plant or by any person, firm or corporation holding the right or privilege to operate a system of water works in and actually engaged in furnishing water to and for any incorporated city or town and the inhabitants thereof," except "for household or agricultural purposes or for use in manufacturing or operating any railroad where the same does not interfere with the supply of such water works system."

I doubt both the constitutionality and the propriety of these provisions, and therefore withhold from them my approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 602.

MARCH 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 602, "An act concerning the vacation of plat or plats and any part thereof," without executive approval.

The title of the bill is defective. I have already signed Senate Bill No. 133 covering the same subject.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 603.

MARCH 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

House Bill No. 603 is herewith returned without executive signature.

The title of the act seeks to amend Sections 1 and 6 and to repeal Section 2 of an act concerning drilling, operating, maintaining and abandoning gas and oil wells, approved March 7, 1903.

The body of the act amends Section 3 of the act of March 7, 1903. This is not mentioned in the title. A supplemental section creating certain misdemeanors and prescribing punishment therefor is added in the body of the bill, and no mention of this is made in the title.

The Constitution (Section 19 of Article IV) requires that the subject-matter of an act shall be expressed in its title. The proposed bill fails to comply with this requirement and is, therefore, invalid.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 629.

MARCH 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

House Bill No. 629, entitled "An act retaliatory and reciprocal concerning life insurance companies," is herewith returned without executive approval.

The retaliatory provisions of the bill are unnecessary and uncalled for. The present law provides for reciprocal insurance fees, and its terms are sufficiently broad to cover every legitimate interest either of the State or of its insurance companies. As a rule, retaliatory legislation of any kind as between the several States of the Union is unwise and not in accord with sound public policy. The examinations of a number of insurance departments consist simply in a comparison of totals with no expert analysis of the minutiæ of detail that enter into the accountings of insurance companies, and I do not believe the insurance departments of other States can justly be required to accept the certificate of the department of this State as conclusive evidence, nor do I believe failure to accept such certificate can justly be made the ground of refusal to permit companies of such States to do business in the State of Indiana.

The commissioner of each individual State should be free to make such examination of the affairs of any company asking admission to his State, as shall seem to him necessary to a full understanding of its affairs. This is especially true as to the amount and character of its resources, and the extent of its liabilities, and the integrity of its administration.

Believing the present law to be ample in this respect and its provisions to be fairer and wiser than the provisions of this bill, I feel it my duty to withhold executive approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 663.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 663 without executive approval.

The bill relates to fees of county clerks, and provides that all fees collected from the county treasury as named therein shall be the property of such clerks. I believe this to be the law now under the decisions of the Supreme Court of the State.

The bill also provides that compensation for making copies of papers and pleadings required of the clerk of the circuit court, except the certificate fee, shall belong to the clerk. These fees under the present law belong to the county, and are required to be paid into its treasury. The provision seems to me a wise and a proper one. The several county clerks of the State are well paid under the provisions of existing statute, and I do not believe their compensation ought to be augmented. Recent legislation has all tended toward the elimination of the fee system. It has been sought to put all officers upon fixed salaries. This tendency is a proper one. No backward step should be taken. I therefore deem it my duty to withhold executive approval from the present measure.

Respectfully submitted,

J. Frank Hanly,
Governor.

HOUSE BILL No. 679.

March 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill No. 679, amending Sections 1 and 4 of the State tax levy act, approved March 4, 1905.

By the provisions of that act the State sinking fund levy of three cents was transferred to the general fund levy, thereby raising such levy to 12 cents for the years 1905, 1906 and 1907. The evident intention of the General Assembly, in passing the present bill, was to leave such levy undisturbed. It fails, however, to carry out its intention. It seeks to amend the section of the act of 1905 making the levy for the years 1907 and 1908, but the amended section relates only to the year 1909. The effect of this would be

to strike down the levy as fixed in the act of 1905 and leave no levy whatever for the general fund for the year 1908. I am therefore compelled to withhold executive approval.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 711.

MARCH 13, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith, without executive approval, House Bill No. 711, providing "that any person having the ownership of real estate liable for taxation within the State of Indiana, and being indebted in any sum, secured by mortgage upon real estate, may have the amount of such mortgage indebtedness, not exceeding $1,200.00, existing and unpaid upon the first day of March of any year, deducted from the assessed valuation of the mortgage premises for that year * * * provided that no deduction shall be allowed greater than one-half of such assessed valuation of said real estate."

The present law exempts $700.00. Under it last year $48,048,455 of property was omitted from taxation. The present bill increases the exemption to $1,200.00. Based on the exemption of last year, it would mean an increased exemption of $35,000,000, or a total of more than $83,000,000.

The statute has led to widespread abuse throughout the State. Many fictitious mortgages have been executed and placed of record for the purpose of securing this exemption—mortgages from husband to wife, wife to husband, father to son, son to father, have been frequent. These facts are familiar to the taxing officers of the State, and especially to the members of the State Board of Tax Commissioners. If the present bill were to become a law, it would but increase the temptation in this behalf. A limit to mortgage exemptions must be reached somewhere, unless the General Assembly intends to provide for the exemption of the mortgage indebtedness of all the citizens of the State, whatever its magnitude.

Believing that this limit should not exceed the sum named in the present statute, I cannot assent to its increase.

Respectfully submitted,

J. FRANK HANLY,
Governor.

HOUSE BILL No. 633.

MARCH 16, 1907.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 633 without executive approval.

The title of the bill reads as follows: "An act concerning the government of school cities having more than 25,000 and less than 36,500 population, according to the last preceding United States census, and matters connected therewith, and declaring an emergency."

The body of the act, however, provides: "That all school cities of this State which have a population of more than 25,000 and not less than 36,500 inhabitants, as shown by the last preceding United States census, shall be governed by the provisions of this act."

It was evidently intended that the bill should apply to cities having a population of not less than 25,000 and not more than 36,500 inhabitants. The words of classification, however, used in the body of the act make it apply only to cities having 36,500 or more inhabitants. This includes all the large cities of the State—a thing that, in my judgment, was not intended by the Legislature, and of which the people of these cities had no notice.

The error seems to have crept into the bill upon enrollment. I am not opposed to the provisions of the bill, and if it applied to the class of cities to which it was intended to apply, I should be inclined to give it my approval. I do not believe I am justified, however, under the circumstances, in signing it.

Respectfully submitted,

J. FRANK HANLY,
Governor.

Senate Veto Message, Special Session of Sixty-Fifth General Assembly

SENATE ENROLLED ACT No. 561.

OCTOBER 5, 1908.

Mr. President and Gentlemen of the Senate:

I find Senate Enrolled Act No. 561, the same being "An act to amend Section 2 of an act entitled 'An act concerning coal mines, and to provide for the health and safety of persons employed in coal mines, and matters connected therewith, and providing penalties, and repealing all laws in conflict therewith,' approved March 9, 1907," to be in every substantial particular identical with House Enrolled Act No. 374.

I have signed said House act. I therefore withhold executive signature from said Senate act, as no particular purpose could be effected by two identical acts upon the same subject.

Respectfully submitted,

J. FRANK HANLY,
Governor.

Proclamations

ARBOR DAY

ARBOR DAY, 1905.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

The planting of trees is a public benefaction. Whosoever plants one makes the earth more habitable and a happier place in which to dwell, and thereby earns the grateful praise of coming generations.

Believing that systematic and persistent effort will restore in some measure the all but inexhaustible and limitless forest which once covered the larger portion of the area of this Commonwealth, but which is now gone; and in conformity to a law solemnly enacted and approved, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate and proclaim Friday, April 21, and Friday, October 20, 1905, as Arbor Days, to be observed throughout the State by the planting of trees and shrubs upon the grounds about all public buildings and public institutions and upon the public highways, as well as upon grounds about private homes, for their adornment and beautification.

Each of said days is hereby designated and set apart as a day of rest and celebration by all the people.

Those in charge of the schools of the State, whether public or private, are hereby recommended and urged to observe each of said days, in so far as the same may be practicable, by public exercises of a character calculated to teach their respective pupils the wisdom and necessity of the planting, the culture and the care of trees.

By so doing we will add to the beauty, the wealth and the resources of the State and to our own culture and happiness.

Done at the Capitol of Indiana, in the City of Indianapolis, this first day of April, in the year of our Lord, nineteen hundred and five, in the year of the Independence of the United States the 129th and of the State of Indiana the 89th.

J. FRANK HANLY,
Governor of Indiana.

[SEAL.]

By the Governor:

DANIEL E. STORMS,
Secretary of State.

ARBOR DAY, 1906.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

In accordance with custom, and in the interest of forestry cultivation, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate and proclaim Friday, April 27, and Friday, October 26, 1906, as Arbor Days, and earnestly recommend that each of said days be observed by the people throughout the State as a day of rest and celebration; that these days be characterized by the planting of trees and shrubs upon the grounds about public buildings and public institutions, upon public highways and about private homes.

It is further recommended to those in charge of the schools of the State, both public and private, that each of said days be observed, as far as practicable, by public exercises of a character calculated to impress their respective pupils with the wisdom and necessity of the planting, the culture and the care of trees.

Let us add to the beauty and the adornment of our public grounds, our public highways and our own homes by a general observance of the recommendations herein made, that those who come after us may inherit a land of tree and shrub, of flower and fruit.

Done at the Capitol of Indiana, in the City of Indianapolis, this 18th day of April, in the year of our Lord, nineteen hundred and six, in the year of the Independence of the United States the 130th and of the State of Indiana the 90th.

J. FRANK HANLY,
Governor of Indiana.

[SEAL.]

By the Governor:

FRED A. SIMS,
Secretary of State.

ARBOR DAY, 1907.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

The mysteries of the changing seasons are about us. Budding foliage, bursting flowers and fragrant blossoms are everywhere. The air is vibrant with the babble of many waters and with the cries and songs of nestling birds. April—changing, fickle, winsome April—sits again "At the loom of Spring," weaving of air and sunlight and of dew and shower a thousand "wonder fabrics." Unseen but vital and mysterious forces are revivifying the earth and calling unto us to join in Nature's annual triumph over death.

To this call we can make no more appropriate answer than to set apart a day for the celebration of the return of this glad new season, and for the planting of trees and shrubs. Every tree planted makes the earth more habitable and a happier place in which to dwell. It adds, also, to the material welfare of the State.

Therefore, in accordance with precedent and custom, and in keeping with the moving and impelling forces about us, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate, set apart and proclaim Friday, April 26, and Friday, October 25, 1907, as Arbor Days, and recommend that each of said days be observed by the people of the Commonwealth as a day of rest and celebration; that the ceremonies incident to the celebration of these days be characterized by the planting of trees and shrubs upon the grounds about public buildings and public institutions, upon the public highways and about private homes; that those in charge of the benevolent institutions of the State give recognition to these days by fitting observance, and that the schools, public and private, observe them, as far as practicable, by public exercises of such a character as will give the children of the State a better understanding and a higher appreciation of tree and bird life.

Let this be done in the interest of forestry cultivation, and with a view to adding to the beauty and the wealth and resources of the State, and to our own culture and happiness and the culture and happiness of our children. To him who understands the life of tree and bird and the lessons taught by them "The whispering

grove a holy temple is," and every bird that has the gift of song, God's messenger.

Done at the Capitol of Indiana, in the City of Indianapolis, this sixteenth day of April, in the year of our Lord, nineteen hundred and seven, in the year of the Independence of the United States the 131st and of the State of Indiana the 91st.

J. Frank Hanly,
Governor of Indiana.

[SEAL.]

By the Governor:

Fred A. Sims,
Secretary of State.

ARBOR DAY, 1908.

United States of America, State of Indiana,
Executive Department.

A Proclamation:

One October morning fifteen hundred years ago the people—men, women and children—of the little Swiss town of Brugg marched to the forest and each digged up a young tree and transplanted it to the village commons. The trees grew and in after years made happy the children of those who planted them.

In 1872 this ancient act of tree planting was repeated by the people of an American commonwealth—Nebraska. Since then it has become an annual event throughout the Union. In our own State both law and custom sanction the setting apart of two days for this purpose each year, one in the Spring and one in the Autumn.

Therefore, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate and proclaim Friday, April 24, and Friday, October 23, 1908, as Arbor Days, and recommend that they be observed as such by the people of this Commonwealth.

For more than a century we have been a tree-destroying people. We have denuded the land, impoverished ourselves and dissipated the patrimony of our children. By planting trees and shrubs on grounds about public buildings, schoolhouses, colleges and state institutions, upon public highways, along streams and

public parks and on village commons, on farms, in gardens and about country homesteads, we shall in part atone for the waste of the past and make some provision for the needs of the future.

The need in this direction for sytematic, well-directed effort is imperative. A treeless land is a desolate land, exposed to extremes of heat and cold, of flood and drought.

Nature's grandeur finds its highest expression in

"A living monumental tree,
True type of immortality";

"A nobler object than a king in his coronation robes."

Beauty, strength and majesty all are there. Its drapery of green, murmuring leaves and whispering boughs invite both youth and age, the one to "love's millennial morn"; the other to rest in solemn contemplation. Religion, poetry and history consecrate and hallow it as though it were a temple. Amid its clustering foliage the "low love language" of birds is heard, and "soft, soul-like sounds" that catch and hold the ear.

Within its cooling shadows lowing, gentle herds of kine seek content and ease, and tired and weary laborers find repose. Beneath its spreading, wind-tossed branches light-hearted, care-free children laugh and romp.

The observance of these days is helpful now to us, but in keeping them we look beyond the present to future ages. We plant not for ourselves, but for posterity.

Let us cease to be a tree-destroying people and become a tree-planting, tree-preserving people. Let those in charge of the educational and benevolent institutions of the State give fitting recognition to these days; let all schools, public and private, observe them. Let memorial trees be planted in memory of the Nation's departed great, and forests started to adorn and enrich the land.

Done at the Capitol of Indiana, in the City of Indianapolis, this 13th day of April, in the year of our Lord, nineteen hundred and eight, in the year of the Independence of the United States the 132d, and in the year of the admission of the State of Indiana the 92d.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Fred A. Sims,
Secretary of State.

MEMORIAL DAY

MEMORIAL DAY, 1905.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

In pursuance of established custom, in obedience to formal legislative enactment, in memory of past sacrifices and in acknowledgment of exalted services unselfishly rendered, I, J. Frank Hanly, Governor of the State of Indiana, do hereby appoint, set apart and proclaim Tuesday, the thirtieth day of May, 1905, as Memorial Day.

And I also do hereby sincerely recommend that the day be devoutly observed throughout the State by all the people in commemoration of the devotion, the valor and achievements of our soldier dead, wheresoever and in whatsoever war they fell and wheresoever they may rest.

They are dead. The inanimate soil of a continent, the multiplying sands of the islands of the seas, and the solemn waters of the great deep cover their silent forms, but their memories still live and are ever present in the thought and heart of a virile and a mighty people, and their souls still go marching on, inspiring and impelling us, their countrymen, to acts of patriotism, to love of country and to obedience to its laws.

They are dead. They died for the rights of man. They died for free institutions. They died to preserve the solidarity of the Nation. They died for liberty buttressed by law.

And now, lest we forget the things for which they died, let us every one desist from our several occupations on this day. Let business cease. Let public offices be closed. Let us devote the day to sacred memories and consecrate it to holy purposes. Let it be a day of tribute to the dead and a day of honor to the living. Let music and song, oratory and flowers, testify the sincerity of our gratitude and bespeak the constancy of our love. Let the flag, beneath whose folds they marched to death and glory, be seen at half mast on every public building and about the portals of every

private home. Let the children participate in the public ceremonies of the day. Let them learn from what we say and do and from the sincerity of our devotion the value of free institutions and of the goodly land in which they live, and which is soon to be given into their keeping.

Let the thoughtless, the careless and the gay refrain from frivolous and noisy amusements and pastimes and give one day to the consideration of the verities of life and its obligations.

Let the unworthy and the dissolute remember the day and infract not the law.

Let us all, everywhere and everyone, come with clean hands and pure hearts, and in shoes of sandalwood make public acknowledgment of the debt of gratitude we owe them, and in the presence of one another let each renew his high resolve to preserve the inheritance they have left us.

Such an observance of the day as is herein recommended will do more than honor the dead—it will be helpful to the living, it will lift us to higher citizenship, and will go far toward vindicating the right of popular government to endure.

Done at the Capitol in Indianapolis, and given under my hand and the Great Seal of the State, this 12th day of May, in the year of our Lord, nineteen hundred and five, in the year of the Independence of the United States the 129th, and in the year of the admission of the State of Indiana the 89th.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Daniel E. Storms,
Secretary of State.

MEMORIAL DAY, 1906.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

In the name of our soldier dead, in acknowledgement of their transcendent service, and in memory of their exalted devotion and unexampled sacrifices, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate and set apart Wednesday, the thirtieth day of May, 1906, as Memorial Day.

It is fitting that we pause in the glad springtime, when the earth is filled with the laughter of children, with the songs of birds and the murmur of hurrying waters, and beautified by flower and vine and shrub and tree and field and sky, and turn for one day from the varied cares and complex activities of our daily lives, to count again the cost of freedom and recall the valor of those who saved the land and kept the flag.

Let us make this the holiest day in the calendar of all the years —sacred as the cause for which they died. Let toil be discontinued. Let business cease. Let all public offices be closed. Let the flag be seen everywhere—at half-mast from public buildings, State, county, town and city; wrapped about the portals of our homes, and planted upon every mound beneath which a soldier sleeps. Let the people assemble in church and cemetery, and with music, oratory and song pay tribute to their memory. Let affection's grateful tears embalm anew

"The turf that wraps their clay,"

and gentle, tender hands spread wide the floral evidences of our love.

Let us so keep this day that the surviving comrades of our dead may know we do not forget; that our children may be assured of the sincerity of our devotion, and that our young men and women may be reimpressed with the value of free institutions and the sacredness of obligations by them about to be assumed.

Standing at the chancel of memory's holy shrine, let us renew the covenant made with Lincoln at Gettysburg, "That these dead shall not have died in vain—that this Nation, under God, shall have a new birth of freedom,"—a "new birth" more glorious and abiding even than the old.

That the day be a Memorial Day in spirit and in truth, I urge that all the people refrain from frivolous and noisy amusements, and that none infract the law.

Done at the Capitol in Indianapolis, and given under my hand and the Great Seal of the State, this 16th day of May, in the year of our Lord, nineteen hundred and six, in the year of the Independence of the United States the 130th, and in the year of the admission of the State of Indiana the 90th.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Fred A. Sims,
Secretary of State.

MEMORIAL DAY, 1907.

United States of America, State of Indiana,
Executive Department.

A Proclamation:

Since the Civil War a generation has been born and reared and is now nearing the zenith of its power.

This generation will soon govern the country—make its laws and interpret and execute them and administer its affairs.

The beneficiaries of one hundred and thirty years of unexampled sacrifices, transcendent services and exalted devotion, love of country and of freedom and thankfulness to those who founded and to those who preserved the government, should impel us to make acknowledgment of our obligation, give expression to our gratitude and renew the covenants of our citizenship.

Moved by this thought, in compliment to the living soldiery of the Republic, and pursuant to custom grown sacred as the love we bear the martyred dead, I, J. Frank Hanly, Governor the State of Indiana, do hereby designate and set apart Thursday, May 30, 1907, as Memorial Day, and proclaim the same a legal holiday throughout said State.

Universal observation of the day is recommended and urged. Public offices should be closed. Business should be suspended and

toil discontinued. Frivolous and noisy amusements should be avoided and the law respected.

In the National cemeteries near the great battlefields of the Southland and about the prison at Andersonville, where gaunt and ghastly famine stalked and disease and thirst made death a welcome visitor, there—over the graves of all, even of the unknown—the forget-me-nots are in bloom today in annual commemoration of their exalted sacrifice. And there each recurring Spring above their formless dust they spread their fragrance sweet as silence.

These, all these, gave their lives, and the unknown ones gave in addition their identity forever, that "Government of the people, for the people and by the people might not perish from the earth." We, their children, can not forget them. We can not forget what they did. Nor can we forget why they did it. We can not be less mindful than the flowers.

Of all the brave and gallant hosts who have marched to battle in Freedom's cause on this continent and who have died amid its carnage or in the peace of the intervening years there remains to us nothing visible—nothing that the sense of sight or touch can comprehend—save narrow graves in scattered cemeteries. Since these are all we have let us seek them out on this day wheresoever they may be and leave upon them some tribute of our love—a wreath, a flower, a flag. Let these graves be to us as so many holy shrines at whose portals our own lives shall be consecrated. Let no idle ceremony there be heard or held. Let neither music, song nor spoken word give voice or tongue to aught but the heart's resolves. The dead may not hear; they may not know; it may be that they will sleep on unconscious alike of both our tribute and our presence. But *we* shall hear and we shall know, and our children shall hear and know, and we and they shall be lifted thereby to higher citizenship and our feet turned into holier ways.

Done at the Capitol in Indianapolis, and given under my hand and the Great Seal of the State, this 18th day of May, in the year of our Lord, nineteen hundred and seven, in the year of the Independence of the United States the 131st, and in the year of the admission of the State of Indiana the 91st.

J. Frank Hanly,
Governor of Indiana.

[SEAL.]

By the Governor:

Fred A. Sims,
Secretary of State.

MEMORIAL DAY, 1908.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

In obedience to the will of the people of this free Commonwealth as expressed in legal enactment and by long established precedent; moved by gratitude and affection and impelled by reverential memories of the Nation's soldier dead, I, J. Frank Hanly, Governor of the State of Indiana, do hereby set apart and proclaim Saturday, May 30th, 1908, a Memorial Day, to be observed in their honor, and declare the same to be a lawful holiday throughout the boundaries of said State.

A grateful Nation cannot forget its defenders, nor the lovers of liberty cease to remember them that saved the temple of Freedom from destruction.

They gathered up, each for himself, "all the cherished purposes of life—its aims and ambitions, its dearest affections—and flung all, with life itself, into the scale of battle." They died in defense of the rights and liberties of mankind and they should share for all time in the glory of the cause for which they died. Their valor immortalized the Nation, their sacrifice ennobled the race. For four years they and their comrades, from Sumter to Appomattox, became

"The pillar of the people's hope,
The center of the world's desire."

Their faith was flawless, their consecration unselfish and entire, their daring heroic, their courage sublime. But for them Liberty would have here no habitation, Freedom no temple. Grateful observance of this day is both our duty and our privilege. Their graves billow every battle-field, and make shrines of many places. Let us turn with tenderness to the passionless mounds that hold their mortal dust—in cemetery, churchyard, lonely lawn, far distant grove, and national field. Let none be forgotten or overlooked. Let even the unknown be remembered. Let their sepulchers, however humble and wherever found, be to us so many baptismal fonts at which to renew our faith in the cause they defended, and to rededicate ourselves to the service of the government they preserved.

Let us on this day above all others respect the law and obey its mandates. Let us not desecrate the hour with frivolous and noisy amusements. Let the ceremonies held be the expression of the heart's sincere affection. Let the occasion be marked with song and speech and flower and by the silence which alone can characterize the feelings of the soul in its highest hours—a tribute more eloquent than speech can ever be.

Done at the Capitol in Indianapolis, and given under my hand and the Great Seal of the State, this 19th day of May, in the year of our Lord, nineteenth hundred and eight, in the year of the Independence of the United States the one hundred and thirty-second, and in the year of the admission of the State of Indiana the ninety-second.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Fred A. Sims,
Secretary of State.

LABOR DAY

LABOR DAY, 1905.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

By virtue of the authority vested in me by law, and in conformity with long established custom and formal legislative enactment, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate and set apart Monday, September fourth, one thousand nine hundred and five, as Labor Day, and I do hereby further proclaim the same as a special holiday and recommend that it be observed as such, not only by those who toil, but by men and women everywhere throughout the State, whatever their field of labor or their occupation.

This Nation, with all it represents or is, is labor's contribution to the present sum of human peace and happiness. Within little more than a hundred years, with the aid of her twin servants, capital and science, she carved it out of the depths of primeval forests and the solitudes of pathless prairies; bridged its streams, revealed the hidden treasures of its fields and mines, builded its villages and towns, established its cities, reared within its borders homes innumerable, and bound them all into one with belts of steel and endless threads of wire. Through the divine ministry of toil the fullness of the land is ours. We live in favored times. The elements of the soil, of the air, and of the sky, and the seasons themselves have conspired with labor to make this a year of immeasurable plenty throughout the Nation and especially within our own goodly Commonwealth.

It is therefore meet and proper that we set apart this day to celebrate labor's triumphs and to do honor to her children.

Therefore, let the flag—emblem of law and order, and of the equality of our citizenship—be publicly displayed. Let public and private business be suspended as far as may be consistent with necessity, and especially let those, so far as practicable, who labor with their hands be released from the performance of their daily

tasks in order that they may have one day free from toil and care. Let the spirit of the occasion be such as becomes a glad and joyous celebration of the mighty force that has made us great both as a State and as a Nation, and upon which depends the prosperity and happiness of our posterity.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol in the city of Indianapolis, this twenty-eighth day of August, in the year of our Lord, one thousand nine hundred and five, of the Independence of the United States the one hundred and thirtieth, and of the admission of the State of Indiana the eighty-ninth.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Daniel E. Storms,
Secretary of State.

LABOR DAY, 1906.

United States of America, State of Indiana,
Executive Department.

A Proclamation:

It is meet and fitting that a people who believe in the dignity and sovereignty of labor, in its wholesomeness, and in the glory of its opportunity, should pause in the rush of affairs, once each year, to give formal expression to such belief, and to make public acknowledgment of the great part the toilers of the land have borne in the reclamation of a continent and in the upbuilding of the Nation.

Therefore, I, J. Frank Hanly, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby designate and set apart Monday, September 3, 1906, as Labor Day, and do also further appoint and proclaim the same as a holiday within the State of Indiana, and do recommend that it be observed and celebrated as such by all citizens of the State wherever they may be and whatever their form of toil or occupation.

Let the flag—emblem of liberty, equality and opportunity—be everywhere displayed. Let all public and private business be

suspended, so far as necessity may permit, that all may join in the celebration of labor's achievements and of the honorable estate it has attained in this free land.

In Testimony Whereof, I have hereunto set may hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol in the City of Indianapolis, this twenty-seventh day of August, in the year of our Lord, nineteen hundred and six, in the year of the Independence of the United States the 131st, and in the year of the admission of the State of Indiana the 91st.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Fred A. Sims,
Secretary of State.

LABOR DAY, 1907.

United States of America, State of Indiana,
Executive Department.

A Proclamation:

By virtue of the authority vested in me as Governor of the state of Indiana, I, J. Frank Hanly, do hereby designate, set apart and proclaim Monday, September 2, 1907, as Labor Day, and I do hereby further declare the same a legal holiday and recommend its observance as such by all the people of the Commonwealth.

It is meet and proper that this day should be set apart by the Executive and observed by the people. Custom and law contemplate its recognition, and duty and privilege prompt its observance. Labor is the bedrock of our greatness as a State and the foundation of our civilization. Willingly undertaken and rightly understood, it is a boon and not a burden; a blessing and not a curse. It ennobles and exalts him who performs it, gladdens the heart, stirs the soul with the exaltation of achievement, and makes consecrated citizenship a possibility. He who has never known the joy of creative toil is indeed unfortunate. The man who toils, without bitterness, to build a home for those dependent upon him, where family altars may be erected and into which the love of wife and child may come to sweeten and inspire his life, is an asset

of incomparable value to any people, and especially so to a free, self-governing people. His well-being and happiness make for the advancement and security of all we most love, and should constitute our first concern.

That all should share in the annual celebration of labor's worth and accomplishments is, therefore, but the recognition of a high and an admitted obligation and the exercise of a grateful privilege. In this spirit then let the day be celebrated. Let all public offices, state, county and municipal, be closed and all labor be suspended wherever possible. Let tasks and burdens be laid aside and the day be given over to rejoicing, to rest and to thoughtful, sane consideration of how the toiler's present high estate may be yet further advanced.

The law forbids the sale on this day of intoxicating liquors to be used as a beverage. It is important that its mandate should be obeyed. First, because it is the law's word; second, that the ceremonies of the day may not be marred, but may be suited to the presence of women and children.

Done at the Capitol in Indianapolis, and given under my hand and the Great Seal of the State, this 24th day of August, in the year of our Lord, nineteen hundred and seven, in the year of the Independence of the United States the 131st, and in the year of the admission of the State of Indiana the 91st.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Fred A. Sims,
Secretary of State.

LABOR DAY, 1908.

United States of America, State of Indiana,
Executive Department.

A Proclamation:

In recognition of the sovereignty of Toil and of Labor's incomparable contribution to the welfare and happiness of the people of this Commonwealth, I, J. Frank Hanly, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby

set apart and proclaim Monday, September 7, 1908, as Labor Day, and do hereby constitute and declare the same a legal holiday throughout the confines of said State and recommend its fitting observance by all citizens everywhere.

Labor is the one source of wealth. The genius both of production and of commerce is in it. Through it the mastery of Nature's forces is attained, and the utilization of her resources acquired. Without it science and invention could achieve no triumphs. It is the foundation of society; the inspiration of government; the bulwark of civic order. It is more than the law of life. It is life itself. It is God-appointed.

Let all public offices be closed and all private business wherever possible be suspended. Let us keep the day here set apart in appreciation of Labor's worth, and in commemoration of its victories.

The women and the children of the Commonwealth are of right entitled to share in the ceremonies and recreations of the day without disturbance by brawl or carousal. To that end, and to the end that the peace may not be broken, and that order may be maintained, the sale of intoxicating liquors is inhibited by law on this day. Civic duty demands respect for and obedience to this mandate of the law by every citizen—its enforcement by every executive officer. Let none forget. Let all remember. In such observance and in such obedience alone can the cause in whose name and for whose benefit the day is set apart find fitting recognition.

Done at the Capitol in Indianapolis, and given under my hand and the Great Seal of the State, this 18th day of August, in the year of our Lord, nineteen hundred and eight, in the year of the Independence of the United States the one hundred and thirty-third, and in the year of the admission of the State of Indiana the ninety-second.

J. Frank Hanly,
Governor of Indiana.

[SEAL.]

By the Governor:

Fred A. Sims,
Secretary of State.

THANKSGIVING DAY

THANKSGIVING DAY, 1905.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

In accordance with the proclamation and recommendation of the President of the United States, duly made and published, appointing a day of national thanksgiving to be observed by the people of the Nation; in conformity with sacred tradition and with hallowed, revered and long established custom; in continuance of a practice both beautiful and wise, and in acknowledgment of high and holy obligation to the Giver of all Good, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate and set apart Thursday, the thirtieth day of this November, as Thanksgiving Day, to be observed by the people of the State of Indiana.

From the day of its founding to the present hour, this Nation has been led by the providences and the wisdom of Almighty God. For one hundred and thirty years it has been protected by His care and followed by His mercies. Periods of adversity have sometimes fallen upon us, but these have been shortened, their vicissitudes minimized and their rigors softened by His gracious favor and infinite tenderness. More largely than in any other land, our way has fallen "beside the still waters" and through "green pastures." We have sorrowed, and He has comforted us. We have sinned, and He has forgiven us. Our annals are replete with His goodness and His mercy.

The closing days of a most memorable year are quickly passing. A few weeks and they will have gone into history. It is therefore meet that we pause ere they are gone to consider the richness of the largess they have brought to us. Our harvests have been unusually abundant. Our granaries are full. The fruits of successful and peaceful toil are about us. Factory, shop, field and mine have contributed shares rich and full. Trade and commerce have registered increasing volume and augmented profit. Our material prosperity is without parallel. The social, intellectual and moral

life of the Nation has been strengthened and enriched. The public conscience has been stirred and quickened. Civic conditions have improved. Respect for the law has daily deepened in our thoughts and hearts. Citizenship has been exalted, and the land kept as our fathers left it—the habitation of liberty.

Believing that the spirit of thankfulness and of gratitude is already present in every heart, and that it awaits only an opportunity for expression, I recommend that all usual avocations be suspended on this day, that pause be made in our secular pursuits, that we assemble in our several places of worship and there make due and grateful acknowledgment of the beneficence of our Heavenly Father to us as a people, whether of State or of Nation, and that with contrite hearts and penitential souls we seek forgiveness at His chancels for past faults and follies and make humble and sincere supplication for future guidance and deliverance.

Let the arrogance of prosperity give place to the humility of dependence, and the meanness of self to the altruism of the gospel of the Christ. Let this be a day of prayer, of praise and of thanksgiving. Let it be characterized by a revival of love of country and of fraternal affection, by the reunion of families and of kindred, and by the renewal of confidence in one another. Let it be marked by ready benevolence to the homeless, by kindly and simple charity to the suffering and needy, and by Christian ministry to the sorrowful. Let us especially remember with gracious tenderness the little ones whose lives are pinched by poverty by them unearned, and saddened by neglect by them unmerited, that they too may look up and be glad.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol in the City of Indianapolis, this fifteenth day of November, in the year of our Lord, nineteen hundred and five, in the year of the Independence of the United States the 130th, and in the year of the admission of the State of Indiana the 89th.

J. Frank Hanly,
Governor of Indiana.

By the Governor:

Daniel E. Storms,
Secretary of State.

THANKSGIVING DAY, 1906.

UNITED STATES OF AMERICA, STATE OF INDIANA,
EXECUTIVE DEPARTMENT.

A Proclamation:

Presidential proclamation, duly made and published; tradition, old and hallowed; custom, revered and long-established; gratitude, sincere and deep; and obligation, high and holy, impel me on behalf and in the name of the people of this goodly Commonwealth, to appoint and designate a day for prayer, for praise and for thanksgiving to Almighty God, in recognition of the protecting care and the manifold mercies which He has vouchsafed to us as a people, in both State and Nation.

The annals of the passing year are replete with His goodness and with His gracious favor. We can not turn their pages and remain insensible to the wisdom of His ways nor indifferent to the tenderness of His love. We have prospered in material things beyond all precedent. We have written a story of accumulated gain without parrallel in the life of any people. The fatness of Earth's most favored land is ours. It has filled our needs and made us rich beyond compare. The fruits of successful and peaceful toil, of field and harvest, and the products of shop, of factory and of mine, of commerce and of the sea are about us everywhere. Granary, bin and storeroom are big with plenty.

These are good to possess and to have, and for them we ought to be, and are, profoundly grateful. But there is more than these to stir our gratitude and to inspire our praise: Unequaled wealth has not despoiled us of moral worth, nor the arrogance of riches displaced the humility of dependence so essential to the soul-life of a free people. The altruism of the Savior's Gospel rises in our hearts triumphant over the passions and meanness of self. We are still God's children. He is still "Our Father." Belief in Him, and sense of obligation to our fellows, and a purpose to honor Him through service to them have enabled us in some measure to prove our faith by our deeds. We have wrought in fear and in trembling, but we have wrought, and with quickened conscience. New ideals have been born, and new conceptions of civic duty—ideals and conceptions which promise much for future progress. Better

civic conditions have not only been aspired to, but have been obtained. And as was said last year, it may still be said: "Respect for the law has daily deepened in our hearts. Citizenship has been exalted and the land kept as our fathers left it—the habitation of liberty."

Adversities have befallen and vicissitudes come upon us, but they have not destroyed nor overcome us. We have risen from among them disciplined and chastened and purer and stronger than before. Sufficient unto our needs have been His grace and His guidance. Our burdens have been heavy, but we have been given strength to bear them. Our grief has been sore and profound and we have sometimes been distraught, but in Him we have found consolation and comfort. Our sins have been many, but as often as we have come to Him with contrite hearts and penitential souls, His forgiveness has been full and free. These things claim our profoundest appreciation and sincerest acknowledgment.

Therefore, I, J. Frank Hanly, Governor of the State of Indiana, do hereby set apart and proclaim Thursday, the twenty-ninth day of this November, as Thanksgiving Day, to be observed by the people throughout the State.

Let all usual avocations and secular pursuits be suspended. Let us repair to our several and accustomed places of worship and fill the day with praise, with song, with prayer and with thanksgiving, and with kindly word and generous deed rekindle the memories of country and of home. Let us renew the ties of family and of kindred and welcome to our firesides the absent ones returned, and there give them new assurance of the love we bear them. Let us remember the homeless and the needy—those who are in want—and fail not in ministry to the broken-hearted.

Let us be especially thoughtful of childhood. Some of the little ones among us will be hungry—for these let us find food; some will be cold—for these let us bring clothing; others will be sad of heart from unmerited neglect—for these let us have a gracious tenderness and a touch of sympathy that will satisfy heart-hunger, recall a smile to thin, wan lips and bring the laughter back to careworn eyes. Let us do this in remembrance of Him, and in the doing of it we and our posterity shall be blest.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol in the city of Indianapolis, this twelfth day of November, in the year of our Lord, nineteen hundred and six, in the year of the

Independence of the United States the 131st, and in the year of the admission of the State of Indiana the 90th.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Fred A. Sims,
Secretary of State.

THANKSGIVING DAY, 1907.

United States of America, State of Indiana,
Executive Department.

A Proclamation:

The absence of the growth and bloom of spring; the fading glow of summer; the ripened fields of corn, wide-spreading and harvest-waiting; the departing glory of forest and of woodland; the veiled skies of autumn and the chill of lengthening nights all remind us of the approaching end of another year and recall to our minds a custom old as the Commonwealth in which we live, and sacred as the memory of the men who founded it.

In deference to this custom, in conformity with the proclamation of the President of the United States, and in humble recognition and grateful acknowledgment of the goodness and mercy of Almighty God, I, J. Frank Hanly, Governor of the State of Indiana, do hereby desginate, set apart and proclaim Thursday, the twenty-eighth day of this November, as a Day of Praise and Thanksgiving, and as a legal holiday throughout said State, and do hereby recommend its observance as such by all the inhabitants thereof.

The sons and daughters of Indiana have much today to stir their gratitude and to impel its public acknowledgment. The plentiful goodness of our Heavenly Father is about us everywhere, and the evidences of His gracious tenderness are written in a thousand indelible forms throughout the annals of the passing year.

Seed-time and harvest have again been ours. The earth has been lavish in the production of all things essential to our sustenance. The bounties of Nature—prodigal in number and gener-

ous in value, enough and to spare—are saved and stored. Material prosperity—industrial and commercial—has reached and gone beyond the tide of other years. Sickness and disease have fallen upon us only in normal measure, and pestilence and scourge not at all. Affliction and destitution consequent upon our own weaknesses and follies have been minimized. Our citizenship is intelligent, liberty-loving, God-fearing and law-abiding; our people, strong, constant and resolute. The splendor of our institutions remains undimmed. The heritage of the past is still secure. The advantages and duties of the present are more generally and more clearly seen and understood, and the possibilities of the future more widely and sincerely believed in than in recent days. The public conscience has continued to be, and still is, stirred and quickened. Civic concepts are higher and clearer. Moral worth is more keenly appreciated, and wrongdoing—public and private—and social weaknesses of every kind more deeply deplored.

And yet, with all this true, we have sinned and do still sin. Our faults are still grievous, our follies still many—so grievous and so many indeed as to humble us and bring us to God's chancels in repentance and in supplication for forgiveness.

Let us on this day pause in our pursuit of wealth and in our struggle for gain and meet in devout assemblages in our accustomed and several places of worship and there renew the faith of our fathers, and in humility and in gratitude unite in meditation and in prayer, and join in services of song, of praise and of thanksgiving. Let us consecrate ourselves anew and rededicate our lives to the practice of the holy teachings of the Christ, to obedience to the laws of our country and to the defense of its institutions.

Let the day be characterized by deeds of charity and of kindness, to the end that he who has, shall share with him who has not. In glad gatherings around domestic altars and about family firesides, let us renew past friendships and sweeten and strengthen the ties of kindred, of home and of family. Let passion be stilled. Let malice, feuds and hatred be forgotten, the memory of wrongs be blotted out, and forgiveness be in every heart and upon every lip. Let us become during this day one people without differences of sect or creed or party, and amid it all let us remember the children of village, of countryside and of city with gentle word and kindly deed, and by acknowledgment of our dependence upon the Great Father's love and guidance teach them the comeliness of humility, the sublimity of Christian faith.

It Witness Whereof, I have hereunto set my hand and caused

to be affixed the Great Seal of the State of Indiana, at the Capitol in the city of Indianapolis, this eleventh day of November, in the year of our Lord, nineteen hundred and seven, in the year of the Independence of the United States the 132d, and in the year of the admission of the State of Indiana the 91st.

J. Frank Hanly,
Governor of Indiana.

[seal.]

By the Governor:

Fred A. Sims,
Secretary of State.

THANKSGIVING DAY, 1908.

United States of America, State of Indiana,
Executive Department.

A Proclamation:

On Thursday, the 26th day of November, 1908, a day designated and set apart by the President of the United States for that purpose, the people of this land, stirred by high impulse and united by common intent, will pause in the stress and hurry of their busy, complex life, turn aside from the paths of trade and traffic, gather around family altars and about public chancels, and there make grateful and sincere acknowledgment of the tender mercies and the unfailing care of the Infinite Father.

Believing that the people of the State of Indiana desire to share in the observance of the day, in its ceremonies, in its reunions, its renewal of family ties, its joys and its benefits, I, J. Frank Hanly, as Governor of the Commonwealth, do also designate and set said day apart as a day of Praise, of Prayer and of Thanksgiving, and do hereby declare it to be a legal holiday throughout said State.

The year now closing has been crowned with goodness. Material possessions have increased. Riches have multiplied. Seedtime and harvest have been ours. "The pastures are clothed with flocks and the valleys are covered over with corn." "The earth is full of the goodness of the Lord." He has shown us His ways. He has led us into the knowledge of His truth, and has made the light of His countenance to shine upon us. He has saved us and

blessed our inheritance and has taught us the value of integrity and uprightness.

We have not always understood. Our ways have not always been His ways. But we are finite and He is infinite. We see but dimly, are sometimes impatient and often mistake both time and place. But He sees clearly, is never in a hurry and His purposes do not fail. His "counsels standeth forever," His "thoughts to all generations." Time and place are always His.

Therefore, let us publish His mercies "with the voice of thanksgiving and tell of His wondrous works." With "broken and contrite hearts" let us confess our sins. Let us pray that our hearts may not henceforth turn back, nor our steps depart from the paths He has set for them. Let us trust Him even as our fathers trusted Him. Let us "depart from evil and do good."

Done at the Capitol in Indianapolis, and given under my hand and the Great Seal of the State, this 13th day of November, in the year of our Lord, nineteen hundred and eight, in the year of the Independence of the United States the 133d, and in the year of the admission of the State of Indiana the 92d.

J. Frank Hanly,
Governor of Indiana.

[SEAL.]

By the Governor:

Fred A. Sims,
Secretary of State.

Declaring the Acts of the General Assembly to be in Force and Effect

DECLARING THE ACTS OF THE SIXTY-FOURTH GENERAL ASSEMBLY TO BE IN FORCE AND EFFECT.

A Proclamation

By the Governor declaring the acts of the Sixty-fourth General Assembly of the State of Indiana to be in force and effect from and after the hour of two o'clock and thirty minutes, p. m., of the fifteenth day of April, 1905.

WHEREAS, The clerks of the several circuit courts in the State of Indiana have transmitted to the Secretary of State their respective certificates, stating the time when the acts of the Sixty-fourth General Assembly of said State, passed at the regular session thereof, were received; and,

WHEREAS, By the aforesaid certificates, it appears that the final distribution and receipt of such acts took place on the fifteenth day of April, 1905, at the hour of 2:30 o'clock p. m., in the office of the clerk of Madison County, in said State; and,

WHEREAS, A certificate of said facts of distribution and receipt of said acts was filed in the Executive Office of the State of Indiana at the hour of four o'clock p. m. of said fifteenth day of April, 1905, by the Honorable the Secretary of State of said State; now,

Therefore, I, J. Frank Hanly, Governor of the State of Indiana, in accordance with said facts as set forth in said receipts of said several clerks and in said certificate of the said the Secretary of State, and in conformity with the provisions of the Constitution and the requirements of the statute in such cases made and provided, do hereby make proclamation announcing the above date and time, to wit:

The 15th day of April, 1905, at the hour of 2:30 o'clock p. m. as the date at which the latest receipt and distribution of said acts took place with said several clerks of said circuit courts, and declaring said distribution of said acts to have been completed at

said hour of said day, and proclaiming all such laws published and circulated in the several counties of the State by proper authority, to be now in full force and effect.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol in the city of Indianapolis, this fifteenth day of April, in the year of our Lord, nineteen hundred and five, of the State the 89th, and of the United States the 129th.

J. Frank Hanly,
Governor of Indiana.

[SEAL.]

By the Governor:

Daniel E. Storms,
Secretary of State.

DECLARING THE ACTS OF THE SIXTY-FIFTH GENERAL ASSEMBLY TO BE IN FORCE AND EFFECT.

A Proclamation

By the Governor declaring the acts of the Sixty-fifth General Assembly of the State of Indiana to be in force and effect from and after the hour of twelve o'clock noon of the 10th day of April, A. D. 1907.

Whereas, The clerks of the several circuit courts in the State of Indiana, have transmitted to the Secretary of State their respective certificates, stating the time when the acts of the Sixty-fifth General Assembly of said State, passed at the regular session thereof, were received; and

Whereas, By the aforesaid certificates, it appears that the final distribution and receipt of such acts took place on the 9th day of April, 1907, at the hour of 8:30 o'clock a. m., in the office of the clerk of Madison County in said State; and

Whereas, A certificate of said facts of distribution and receipt of said acts was filed in the Executive Office of the State of Indiana at the hour of 10 o'clock of said 9th day of April, 1907, by the Honorable, the Secretary of State of said State; now,

Therefore, I, J. Frank Hanly, Governor of the State of Indiana, in accordance with said facts as set forth in said receipts of said several clerks and in said certificate of the said the Secretary

of State, and in conformity with the provisions of the Constitution and the requirements of the statute in such cases made and provided, do hereby make proclamation announcing the above date and time, to wit:

The 9th day of April, 1907, at the hour of 8:30 o'clock a. m. as the date at which the latest receipt and distribution of said acts took place with said several clerks of said circuit courts, and declaring said distribution of said acts to have been completed at said hour of said day, and proclaiming all such laws published and circulated in the several counties of the State by proper authority to be in full force and effect from and after the hour of twelve o'clock, noon, the 10th day of April, 1907.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State, at the Capitol in the city of Indianapolis, this 9th day of April, in the year of our Lord, 1907, in the year of the Independence of the United States the 131st, and in the year of the admission of the State of Indiana the 91st.

J. Frank Hanly,
Governor of Indiana.

[SEAL.]

By the Governor:

Fred A. Sims,
Secretary of State.

DECLARING THE ACTS OF THE SPECIAL SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY TO BE IN FORCE AND EFFECT.

A Proclamation

By the Governor of the State of Indiana declaring the acts of the Sixty-fifth General Assembly of the State of Indiana, enacted at the Special Session thereof, convened on the 18th day of September, A. D. 1908, to be in force and effect from and after the hour of 10:45 o'clock a. m., of the 20th day of November, A. D. 1908.

Whereas, The Clerks of the several circuit courts in the State of Indiana have transmitted to the Secretary of State their respective certificates, stating the time when the acts of the Sixty-fifth General Assembly of the State of Indiana, enacted at the Special

Session thereof, convened on the 18th day of September, A. D. 1908, were received; and,

WHEREAS, By the aforesaid certificates it appears that the final distribution and the receipt of such acts took place on the 20th day of November, A. D. 1908, at the hour of 10:45 o'clock a. m., in the office of the clerk of the Circuit Court of Wells County, in said State; and,

WHEREAS, Certificate of said facts of distribution and receipt of said acts was filed in the Executive Office of the State of Indiana at the hour of 2:00 o'clock p. m., of the 23d day of November, A. D. 1908, by the Honorable the Secretary of State for said State; now,

Therefore, I, J. Frank Hanly, Governor of the State of Indiana, in accordance with said facts as set forth in said receipts of said several clerks and in said certificate of said Secretary of State, and in conformity with the provisions of the Constitution and the requirements of the statutes in such case made and provided, do now hereby make proclamation announcing the above date and time, to wit:

The 20th day of November, A. D. 1908, at the hour of 10:45 o'clock a. m., as the date at which the latest receipt and distribution of said acts took place with said several clerks of said circuit courts, and declaring said distribution of said acts to have been completed at said hour on said day, and proclaiming all such laws published and circulated in the several counties of the State by proper authority, to be in full force and effect from and after the hour of 10:45 o'clock a. m., the 20th day of November, A. D. 1908.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State, at the Capitol, in the city of Indianapolis, this 23d day of November, in the year of our Lord, 1908; in the year of the Independence of the United States the 133d; and in the year of the admission of the State of Indiana the 92d.

J. FRANK HANLY,
Governor of Indiana.

[SEAL.]

By the Governor:

FRED A. SIMS,
Secretary of State.

Special Proclamations.

REQUESTING CONTRIBUTIONS TO SAN FRANCISCO EARTHQUAKE RELIEF FUND.

April 20, 1906.

To the People of Indiana:

A calamity so appalling and awful as to beggar description has befallen the prosperous and happy people of a sister State. The splendid and magnificent city of San Francisco lies in ruins, a charred mass of smoldering embers. Men and women who yesterday were possessed of affluence and wealth, are today homeless and in want of bread, and little children, unused to exposure or want, are shelterless and hungry. These stricken people are our people. They are bound to us by the ties of commerce, of affection and of blood. Except as we share their misfortune, we have not been harmed by the disaster that has come to them. We are rich and able to give. Let us, therefore, make willing, generous and quick response, remembering that in giving to them we are but giving to our own, and are but bearing an honorable share in a Nation's contribution.

J. Frank Hanly,
Governor of the State of Indiana.

TELEGRAM SENT TO THE GOVERNOR OF CALIFORNIA.

Indianapolis, Indiana, April 20, 1906.

Hon. Geo. C. Pardee, Governor of the State of California, Sacramento, California:

In the name of the people of Indiana, I send you and your stricken people sincere sympathy, and beg to offer every material assistance within the power of the generous citizen of this Commonwealth.

J. Frank Hanly,
Governor of the State of Indiana.

REWARD OFFERED FOR THE ARREST OF OSCAR A. BAKER.

WHEREAS, During the session of the late General Assembly of the State of Indiana, it was openly alleged, upon the floor of the House of Representatives, that one Oscar A. Baker had attempted to bribe a member of that body; and

WHEREAS, An indictment has been found by the grand jury of Marion County and returned to the Criminal Court of said county, charging said Baker with said offense; and

WHEREAS, Said Baker, immediately after the exposure of his said offense in said House of Representatives and before he could be apprehended, fled the State of Indiana and has since remained and is now a fugitive from justice; and

WHEREAS, The said General Assembly, by an act duly passed and approved March 7, 1905, made an appropriation of public funds to be expended under the direction of the Governor, for the purpose of the investigation, apprehension, arrest and prosecution of any person or persons charged with the crime of bribery of any member, officer or employe of said General Assembly; said appropriation being in the following language:

"For the use of the State of Indiana, to be expended under the direction of the Governor, the sum of five thousand dollars is hereby appropriated, and the same or so much thereof as may be necessary is made available for the purpose of the investigation, apprehension, arrest and prosecution of any person or persons that may be charged with the crime of bribery of any member, officer or employe of the Sixty-Fourth General Assembly of the State of Indiana";

AND WHEREAS, The said Baker is still unapprehended:

Now, Therefore, I, J. Frank Hanly, Governor of the State of Indiana, in accordance with the foregoing facts and in conformity with the provisions of said act of said General Assembly, and by virtue of the authority thereby vested in me, do now hereby offer a reward of Three Thousand Dollars for the apprehension, arrest and return of said Baker to the custody of the sheriff of Marion County, in the State of Indiana. Said reward to be paid under and pursuant to the provisions of said act of the General Assembly, to any person or persons, upon the apprehension, arrest and return of said Baker by him or them into the custody of said sheriff as an officer of said court. The said reward shall be and is in lieu

of any and all other rewards offered for the apprehension, arrest and return of said Baker by or to any officer or person.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol in the city of Indianapolis, this 5th day of June, in the year of our Lord, 1906, in the year of the Independence of the United States the 130th, and in the year of the admission of the State of Indiana the 90th.

J. Frank Hanly,
Governor of Indiana.

[SEAL.]

By the Governor:

Fred A. Sims,
Secretary of State.

DESIGNATING SITE FOR A CAMP OF MILITARY INSTRUCTION FOR THE INDIANA NATIONAL GUARD.

By virtue of the authority vested in me by law, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate the grounds of the United States Military Reservation, known as Fort Benjamin Harrison, in Marion County, Indiana, as a site for a camp of military instruction for the Indiana National Guard, from the hour of twelve o'clock, noon, instant, until the fifteenth day of October, 1906.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the city of Indianapolis, this eighth day of August, in the year of our Lord, 1906, in the year of the Independence of the United States the 131st, and in the year of the admission of the State of Indiana the 90th.

J. Frank Hanly,
Governor of Indiana.

[SEAL.]

By the Governor:

Fred A. Sims,
Secretary of State.

INDIANA VILLAGE FOR EPILEPTICS.

WHEREAS, Section 12 of an act "authorizing and providing for the establishment and organization of the Indiana Village for Epileptics," approved March 6, 1905, provides that "When a sufficient number of buildings shall have been completed and equipped for the admission of patients, the Governor shall be advised of the fact, and shall thereupon issue a proclamation to that effect"; and

WHEREAS, I have been advised by the Board of Trustees of the Indiana Village for Epileptics that a sufficient number of buildings have been completed and equipped for the admission of patients, and that the same are now ready for the reception of patients as provided by said section and by Section 11 of said act:

Therefore, I, J. Frank Hanly, by virtue of the authority vested in me as the Governor of the State of Indiana, do hereby proclaim said Indiana Village for Epileptics to be sufficiently completed and equipped for the admission of patients, and the same is hereby declared open to the admission of the same, according to the terms and provisions of said act.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana. Done at the Capitol, in the city of Indianapolis, this 19th day of August, in the year of our Lord, 1907, in the year of the Independence of the United States the 131st, and in the year of the admission of the State of Indiana the 91st.

J. FRANK HANLY,
Governor of the State of Indiana.

By the Governor:

FRED A. SIMS,
Secretary of State.

DECLARING MARTIAL LAW IN THE CITY OF MUNCIE, DELAWARE COUNTY, INDIANA.

WHEREAS, There has existed for three days and does now exist within the city limits of Muncie, Delaware County, State of Indiana, and the immediate environments thereof, a state of riot and lawless insurrection against the laws of the State of Indiana, involving frequent and continuing breaches of the peace, the destruction of property and personal injury to many peaceable and law-abiding citizens; and,

WHEREAS, For said period there has existed and now exists in said city a certain class of individuals who have been and are disregarding the laws of said State, and are offering violence to property and the citizens of said city and vicinity; and,

WHEREAS, There have been and are upon said streets lawless assemblages, aided by and under the direction of vicious and lawless persons; and,

WHEREAS, From time to time within said period property has been destroyed and citizens assaulted; and,

WHEREAS, Threats, intimidations and violence are daily and frequently resorted to by said lawless class of individuals; and,

WHEREAS, The civil authorities of said city and county, by reason of such lawlessness, such acts of violence and such disturbances, have been and are unable to cope with or control conditions therein; and,

WHEREAS, The law-abiding citizens of said county, assembled in public meeting, have passed the following resolution and request:

"*Resolved*, That on account of the exhausted condition of the officials, they having been on duty for several days, and their inability to procure more help, it is the sense of this meeting that said officials are not able to cope with the conditions that exist, and that the Governor, through his representative, General Perry, be asked to bring troops here tomorrow morning to control the situation," and,

WHEREAS, The sheriff of said county, the mayor of said city and the superintendent of police thereof and the members of the Metropolitan Police Board have certified to me the following statement of fact and request:

"In view of the fact that the city of Muncie, Delaware County, State of Indiana, is threatened with mob violence, and that said city has for three days been in a state of riot and lawlessness, and

the Board of Metropolitan Police Commissioners and the superintendent of police of said city, and the sheriff of Delaware County have for three days done all in their power to control the riotous element and restore law and order within said city, said officers have reported through the mayor that they have not been and are not now and will not be able to prevent further unlawful acts of lawlessness, and restore order and control the law-breaking element, and said law-breaking element has disregarded the proclamation of the mayor of said city to desist and refrain from unlawful acts injurious to life and property, and it is necessary in our judgment that the state militia be sent to said city to restore law and order, the persons whose names are hereunto affixed respectfully request that you send to said city the state militia to quell and suppress said unlawful acts and protect life and property," and,

WHEREAS, The Constitution of the State constitutes the Governor thereof the highest executive authority therein, and provides that "he shall take care that the laws be faithfully executed";

Now, therefore, I, J. Frank Hanly, Governor of the State of Indiana and commander-in-chief of the military forces thereof, by virtue of the authority vested in me by the Constitution of said State, do hereby proclaim and declare said city and its immediate environments to be in a state of riot and insurrection against the laws of the Commonwealth, and do hereby proclaim martial law throughout said city and throughout the territory adjacent thereto and within a distance of four miles from the Court House in said city, and do hereby command all turbulent and disorderly persons to immediately disperse and retire peaceably to their respective homes and hereafter submit themselves to the lawfully constituted authorities of said county and city, and hereby do invoke the aid and co-operation of all good citizens of said county and city to uphold the law and preserve the public peace.

In Testimony Whereof, I have hereunto set my hand as Governor of said State and commander-in-chief of the military forces thereof, and caused to be affixed the Great Seal of the State, at the Capitol, in the city of Indianapolis, on this, the 4th day of January, 1908.

J. FRANK HANLY,
Governor of the State of Indiana and
Commander-in-chief of its military forces.

By the Governor:

FRED A. SIMS,
Secretary of State.

ORDER TO GENERAL McKEE.

INDIANAPOLIS, IND., January 4, 1908.

To Major-General William J. McKee, Commanding Provisional Brigade, Indiana National Guard:

Sir—You are hereby advised that I have this day issued a proclamation placing the city of Muncie and its immediate environment under martial law, copy of which proclamation is attached hereto for your information and guidance.

You are hereby ordered to take command of said city and district, and the troops now there assembled or which shall hereafter be there assembled, for the purpose of carrying out the intent of said proclamation, subject to the limitations and within the lines hereinafter stated.

I am sending you Hon. Henry M. Dowling, Assistant Attorney-General of the State, who will act as your legal adviser.

All civil officers, constables, sheriffs, marshals and other police officers shall be permitted accustomed and necessary arms. No other person will be permitted to carry dangerous weapons of any kind, either concealed or unconcealed.

The persons and property of all law-abiding citizens will be protected.

All persons who have heretofore engaged in or supported the lawless acts against persons or property, or who have given aid and comfort to the persons committing any of such acts, who shall return to peaceful occupations and preserve quiet and order, holding no further communications of any kind with the lawless person or persons, will not be disturbed in person or property by the military forces, except where the exigencies of the public service may render it necessary.

All rights of property of whatever kind will be held inviolate, subject to law. All persons in the district are required to pursue their usual avocations. All shops and places of business (except those hereinafter mentioned) are to be kept open in the usual manner as in time of peace.

All saloons and places where intoxicating liquors are sold at retail as a beverage, will be closed and kept closed until further orders.

Violations of State and Federal law, disorders and disturbances of the peace, and interference with the military forces, will be re-

ferred to a proper authority for trial and punishment. Misdemeanors will be subject to the civil authority, if it chooses to act. Civil causes will await the ordinary tribunals.

All law-abiding citizens will render aid in restoring civil government and in maintaining the peace.

All assemblages of persons in streets or highways, either by day or by night, tend to disorder, and are forbidden. Vagrancy and loitering upon the streets will not be tolerated.

I direct that martial law hereby established be administered by you with mildness and gentleness, but that it be vigorously done when occasion demands.

You will call to your aid the mayor of said city, the sheriff of Delaware County and his legally constituted deputies, the chief of police and all members of the Metropolitan Police Board and the Metropolitan Police force, and insist upon their counsel, advice and active co-operation, making such use of them and of their kindly offices as in the exercise of sound judgment shall seem to be necessary.

You will, by proclamation or otherwise, acquaint the citizens of said city and district with the scope and intent of this order, and your purpose to act thereunder.

J. Frank Hanly,

Governor of the State of Indiana, and Commander-in-Chief of its Military Forces.

DECLARING CORRECTIONAL DEPARTMENT OF THE INDIANA WOMEN'S PRISON OPEN FOR THE RECEPTION OF PERSONS DULY COMMITTED THERETO.

WHEREAS, I have been advised by the Board of Trustees of the Indiana Women's Prison that the correctional department of said prison, provided for by an act of the General Assembly, approved March 9, 1907, has been completed and is now ready to receive inmates.

Therefore, I, J. Frank Hanly, Governor of the State of Indiana, by virtue of the authority vested in me by said act of the General Assembly, do now hereby proclaim said correctional department of said Women's Prison to be open for the reception of all persons duly committed thereto by duly constituted authority under the provisions of said act.

Said act will be construed by the Executive Department to provide for the acceptance of only such persons as shall be duly committed to such correctional department subsequent to the date of this proclamation.

In Witness Whereof, I have hereunto set my hand as Governor of said State, and caused to be affixed the Great Seal, of the State, at the Capitol, in the city of Indianapolis, this 10th day of January, 1908.

J. FRANK HANLY,
Governor of the State of Indiana.

Attest:
FRED A. SIMS,
Secretary of State.

ENDING MARTIAL LAW IN THE CITY OF MUNCIE, DELAWARE COUNTY, INDIANA.

WHEREAS, Riot and lawless insurrection against the laws of the State of Indiana in the city of Muncie and in the territory defined in the executive proclamation declaring martial law in said city and district, dated the 4th day of January, 1908, have ceased, and peace and order have been restored to said city and district, now,

Therefore, I, J. Frank Hanly, Governor of the State of Indiana and commander-in-chief of the military forces of said State,

by virtue of the authority vested in me by the constitution of said State, do hereby declare said city and its immediate environment, as defined in said proclamation, to be in a state of peace and tranquility and martial law therein to be at an end from this date.

In Testimony Whereof, I have hereunto set my hand as Governor of said State and commander-in-chief of the military forces therein, and caused to be affixed the great seal of the State, at the Capitol, in the city of Indianapolis, on this 13th day of January, 1908.

J. Frank Hanly,

Governor of the State of Indiana, and Commander-in-Chief of its Military Forces.

By the Governor:

Fred A. Sims,

Secretary of State.

ORDER TO GENERAL McKEE.

Major-General William J. McKee, Commanding Indiana National Guard:

Sir—You are hereby advised that I have this day issued a proclamation, as Governor of the State of Indiana and commander-in-chief of its military forces, declaring martial law at an end in the city of Muncie and throughout the district defined by executive proclamation of the 4th inst.

You are hereby ordered to turn over the government and control of said city to the duly constituted civil authorities thereof, and to make known by proclamation or otherwise the fact that martial law has ceased within said city and district.

You will, however, remain in said city with such troops as in your judgment will be necessary for the purpose of assisting the civil authorities in maintaining peace and order, and in the enforcement of the law throughout said city and said district.

You will advise with the said civil authorities from time to time as the exigencies of the case may require, and hold the troops under your command in readiness to render every necessary assistance to such authorities in the maintenance of peace and order, and the enforcement of the law, until in your judgment, such authorities no longer need military assistance.

J. Frank Hanly,

Governor of the State of Indiana, and Commander-in-Chief of its Military Forces.

DEATH OF GROVER CLEVELAND.

Grover Cleveland, twice President of the United States, is dead. As an executive, he governed wisely and strongly. As a citizen he loved his country and was ever loyal to his conception of its best and highest interests.

In deference to the sentiment of all the people of this Commonwealth, without regard to party affiliation, and in respect to his memory, to the exalted office he held and the great public service he rendered, I hereby direct that the flag on the Capitol building be lowered to half mast for a period of thirty days from the date of his death, and recommend that all public offices of the State be closed on the day of his funeral.

Done at the Capitol, in the city of Indianapolis, this 25th day of June, in the year of our Lord, 1908.

J. Frank Hanly,
Governor of the State of Indiana.

BARRING DISEASED CATTLE FROM THE STATE OF INDIANA.

Whereas, Tuberculosis among cattle in the several States of the American Union is becoming prevalent, the percentage in some cases being quite high, and no area being entirely free from the infection; and,

Whereas, Said disease is increasing, particularly among dairy cattle; and,

Whereas, Several of the States require that dairy and breeding cattle be free from tuberculosis when shipped into their territory for dairy or breeding purposes; and,

Whereas, Dairy and breeding cattle affected by said disease are being shipped into the State of Indiana, and in some instances where persons shipping them knew they were so affected; now,

Therefore, In order to prevent the spread of said disease, I, J. Frank Hanly, Governor of the State of Indiana, by virtue of the authority vested in me by the laws of said State, do hereby require and proclaim that all cattle brought into the State of Indiana for either dairy or breeding purposes shall be accompanied by a certificate from the authorities of the State from which they are shipped, showing their freedom from tuberculosis and other

contagious diseases; the terms of said certificate to be such as shall be required and prescribed by the State Veterinarian of the said State of Indiana.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the city of Indianapolis, this 9th day of July, in the year of our Lord, 1908, in the year of the independence of the United States the 133d, and in the year of the admission of the State of Indiana the 92d.

J. Frank Hanly,
Governor of the State of Indiana.

By the Governor:

Fred A. Sims,
Secretary of State.

CONVENING THE GENERAL ASSEMBLY OF THE STATE OF INDIANA IN SPECIAL SESSION.

Executive Department of the State of Indiana.

The Constitution of the State devolves upon the Governor the duty of calling a special session of the General Assembly whenever in his opinion "the public welfare shall require it."

In my opinion the public welfare does now require a special session of the General Assembly of the State of Indiana.

Therefore, I, J. Frank Hanly, by virtue of the authority so conferred upon me as Governor of said State, do hereby call upon the General Assembly of the State of Indiana to convene in special session on Friday, September 18, A. D. 1908, at the hour of 10 o'clock a. m.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the city of Indianapolis, this 4th day of September, in the year of our Lord 1908, in the year of the Independence of the United States the 133d, and in the year of the admission of the State of Indiana the 92d.

J. Frank Hanly,
Governor of the State of Indiana.

By the Governor:

Fred A. Sims,
Secretary of State.

REASONS FOR CONVENING GENERAL ASSEMBLY IN SPECIAL SESSION.

The Constitution imposes upon the Governor the duty of convening the General Assembly in special session whenever, in his opinion, the welfare of the State requires it. The responsibility of decision rests solely with the Governor. He must assume it alone. No one else can share it. It is indivisible.

I have called others into consultation, most of whom, I am frank to say, have advised against the calling of an extra session at this time, but I have not been impressed with their reasoning. They are sincere, but they are not able to view the matter from the standpoint of responsibility occupied by the Executive.

In my opinion, conditions now exist which necessitate a special session of the Sixty-fifth General Assembly. So believing, I have issued a proclamation calling upon it to assemble.

The condition of the specific appropriations made at the late session of the General Assembly alone necessitates and justifies my action.

Specific appropriations were made at the late session as follows:

Indiana University—Power plant, $56,350; stacks and equipment of library, $25,000; addition to Maxwell Hall, $18,125.

State Normal School—Library, $99,970.

Purdue University—Agricultural Experiment Station building, $100,000.

State Soldiers' Home—Hospital, $50,000; remodeling old hospital, $15,000.

Girls' School—One new cottage, $25,000.

Southeastern Hospital for the Insane—Eighteen buildings, equipment, etc., $559,377.82.

School for the Deaf—Boys' and girls' dormitories, equipment, etc., $367,272.

Andersonville Monument—$10,000.

Lew Wallace Statue—$5,000.

Vicksburg Monument—$38,000.

These appropriations became available on the first day of October of last year, 1907. Ordinarily they would have remained available for at least two years. By Section 5 of the act of 1907, fixing the fiscal year and providing for the covering of unexpended appropriations into the general fund of the treasury, it is made the duty of the Treasurer of State "biennially, at the end of the fiscal year immediately preceding each regular session of the General Assembly, to cover and transfer into the general fund

of the treasury the unexpended balances of all specific appropriation except such as shall have been made available beyond said time by the act appropriating the same."

CONDITION IMPOSSIBLE TO MEET.

Under this statute all balances of the above appropriations unexpended on the 30th inst. will lapse. The fact that these appropriations were not available until the 1st of last October and lapse on the 30th of September of this year creates a condition which it has been physically impossible to meet.

The following unexpended balances of these several appropriations will lapse unless reappropriated:

Purdue University	$21,480 00
State Normal School	87,096 29
Girls' School	17,982 75
School for the Deaf	225,107 37
Southeastern Hospital for the Insane	500,936 37

Substantially all of the appropriations for the Vicksburg and Andersonville monuments and the Lew Wallace statue are unexpended and will lapse.

Many of these buildings are well under way. The walls of some are up. Some are ready for roofing. Roofs are on others, but the interiors are unfinished. Those who hold contracts for the construction of these buildings have proceeded in good faith, believing the appropriation made could be had. They can not proceed with the buildings without payment until the regular session of the next General Assembly in January. That will come in midwinter. I can not consent that hundreds of thousands of dollars of valuable buildings shall stand in their present unfinished condition until next year. There is ample money in the treasury to meet all these obligations, there being at the present time $896,180.76 available, with the November revenues yet to be received.

By recent legislation the Girls' School and the Women's Prison were separated, the school removed to a site near Clermont, and the Women's Prison remodeled and a portion of the building converted into a workhouse for women. The cost of the administration of the separate institutions has been of necessity greater than the administration of the single institution. The appropriation made for the maintenance of each has been wholly insufficient to meet the new conditions.

I have paid out of the Governor's emergency contingent fund, for the maintenance of the Girl's School, up to Aug. 1, $8,944.45.

August and September bills for maintenance are yet to be met. Up to September 1 I have paid out of the Governor's Emergency Contingent Fund, for maintenance of the Women's Prison, $3,236.58, with September bills for maintenance still to be met. The appropriation made for the Boys' School was last year insufficient and is again insufficient this year. Bills for maintenance for August are submitted to me unpaid, aggregating $3,153.65, with September bill for maintenance still to be met. The exigencies of the other institutions have from time to time drawn upon the emergency contingent fund during the fiscal year until it is now practically exhausted. The maintenance appropriations for these institutions, which become available on October 1, can not be used under the law to meet the unpaid accounts of such institutions for the present fiscal year. There has not been extravagance in the management of these three institutions. The year has been a hard one in all the institutions. Provisions have been high. In most cases unusually so. Gardens, upon which some of them depend very largely for sustenance during the summer, because of the intense and long-continued drought, have been wholly inadequate to meet their needs. The inmates must be fed.

NIGHT RIDERS CAUSE ALARM.

In the early spring numerous raids were made in the part of the State bordering upon the Ohio River by so-called "night riders," resulting in the destruction of a number of tobacco beds where young plants were being grown preparatory to transplanting in the fields, and many threatening letters written warning tobacco growers of personal violence and burning of property. I have done what I could, under the limited authority conferred upon the Governor by law and with the meager funds in my hands, to apprehend these persons and protect the persons and property of citizens in that section of the State.

In a few weeks the tobacco crop will be cut and housed in sheds and barns. Many threatening letters are again being received warning tobacco growers not to cut their crops at peril of the destruction of crop and barns by fire. The conditions in Kentucky during the last year, one-third of the State being in anarchy, with neither life nor property secure; the conditions along the Ohio River in Ohio, where, in the last six months, the State has been compelled to maintain a military patrol at a cost of $40,000, and the threats now being made to repeat these crimes in Indiana, impel me to the action I have taken, in the hope that the

General Assembly will give such executive authority and place such funds at executive disposal as shall be necessary to meet what may become at any moment a grave situation.

The protection of property and its peaceful enjoyment and the preservation of the lives of its citizens are among the primal reasons for the maintenance of any government. I can not consent that the Government of this Commonwealth shall fail in this behalf.

FAVORS REPEAL VINCENNES BILL.

At the late General Assembly a bill providing for the issuing of $120,548 of bonds to the trustees of Vincennes University and creating a State debt, principal and interest, of more than $156,000, was passed and presented to the Executive for signature. After the most painstaking examination of all the facts in the case I became thoroughly convinced that the claim had no foundation either legal or moral. This view was shared by both the preceding Governors. I vetoed the bill, setting out fully the facts. It was passed over executive veto. The bonds were prepared and presented to me for signature. I took them and locked them up, and refused to sign them. At the time I vetoed this measure I believed it clearly unconstitutional and pointed out its invalidity. My judgment has since been confirmed by the legal opinion of eminent counsel, after full examination of the question. I shall ask the General Assembly to repeal this statute. If it will do so it will save the State enough money to pay the expenses of the session four times over.

COUNTY LOCAL OPTION URGED.

Three years and a half ago I recommended to the General Assembly, and it passed a law giving a majority of the legal voters of a township or city ward the right to remonstrate against the traffic in intoxicating liquors at retail, and making it unlawful for the board of county commissioners, after the filing of such a remonstrance, to grant a license to any person within such territory for a period of two years. Under this law 830 townships in Indiana have inhibited this traffic. More than 1,600,000 of our people live in this territory. Public sentiment has been created in behalf of this law and public opinion has advanced under the demonstration of the benefits derived from the inhibition of the dram shop in these communities until, today, the people of the State would, in my judgment, overwhelmingly favor the enactment of a county local option law that shall preserve without impairment the

present remonstrance law and be additional and supplementary thereto.

Personally, I am so fully persuaded of the moral, economic and financial value of such legislation that I shall recommend and earnestly insist upon the enactment of such a measure.

J. Frank Hanly,
Governor.

REQUESTING CONTRIBUTIONS TO THE ITALIAN EARTHQUAKE RELIEF FUND.

The story of an earthquake disaster, widespread and far-reaching, involving hundreds of thousands of men, women and children, in the distant Island of Sicily, comes to us with such authenticity and with such detail of death, of suffering, and of want, as to touch the hearts of men the world around.

The need is so urgent and so great that the people of Italy can not meet it alone. They must have the assistance of all peoples. The emergency is such that I hereby proclaim their need, and call upon the people of Indiana to contribute to a fund for the relief of the stricken but surviving inhabitants of the unfortunate Island, and ask them to act quickly and generously. That the funds contributed may be effectively handled and promptly forwarded, I recommend that they be sent to the Indiana Red Cross Society, Indianapolis, Indiana, in care of the Treasurer of said Society, Mr. James W. Lilly, Indianapolis, Indiana.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the City of Indianapolis, this 4th day of January, in the year of our Lord, 1909, in the year of the Independence of the United States the 133d, and of the admission of the State of Indiana the 93d.

J. Frank Hanly,
Governor of the State of Indiana.

By the Governor:

Fred A. Sims,
Secretary of State.

Miscellaneous

EXECUTIVE ORDER.

IN THE MATTER OF THE INVESTIGATION OF THE OFFICE OF THE AUDITOR OF STATE.

I, J. Frank Hanly, Governor of the State of Indiana, do now find that an emergency exists for an examination of the office of Auditor of State during the term of David E. Sherrick, late Auditor of State, from January 26, 1903, to September 14, 1905, and that the same shall be conducted under executive authority. Said emergency exists on account of the defalcation of said David E. Sherrick, and the unknown condition of the fiscal and insurance affairs of said office under his control during said term.

Therefore, I do hereby designate and appoint James W. Noel, of the city of Indianapolis, and William B. Durborow, of the town of Williamsport, Indiana, to make such examination and investigation under the terms and authority of the following order of appointment this day issued to them:

To Hon. James W. Noel and Hon. William B. Durborow:
Gentlemen:

WHEREAS, David E. Sherrick, late Auditor of State of the State of Indiana, by his own confession in writing made to me as Governor of the State of Indiana, has diverted to his own use the sum of $145,000 of the funds of the State coming into his hands as such Auditor; and

WHEREAS, The said David E. Sherrick did, at my request, resign his office on account thereof on the 14th day of September, 1905; and,

WHEREAS, On account of the magnitude of the business transacted by said Sherrick as such Auditor, and the important and vital relations such office has with all the fiscal affairs of the State and the several county governments, and its relation to and control over the insurance companies doing business in the State, and the banks, savings institutions, trust companies and building and loan associations doing business in the State, it is essential that the exact condition of said office and of its several departments during the term of said Auditor and his acts in connection therewith be ascertained and be made known in some authoritative manner; and,

WHEREAS, An emergency exists, because of said conditions, which requires all the affairs of such office and of its several de-

partments from January 26, 1903, to September 14, 1905, to be examined and investigated under executive authority.

I do now hereby select and appoint you to perform that duty in connection with Hon. Warren Bigler, the present Auditor of the State of Indiana, who will join you in your labors and in your report.

You will, therefore, proceed at once to make such examination of said office and of each of its several departments. You may meet upon your own adjournment, if you do not thereby unnecessarily delay said examination and investigation and the report of your proceedings and findings relative thereto.

You will include in your investigation and report all the business of such office for such time, including methods of keeping the books and conducting the affairs of said office, the finances thereof, the sufficiency and solvency of such securities there on deposit, as are required by law, the dealings of the office with the State treasury, and the correct statement of the balance due from said David E. Sherrick as such Auditor to the State of Indiana on account of moneys belonging to said State and received by him for whatever purpose during his said term, at the time he retired from said office on the 14th day of September, 1905.

In connection with your said examination and investigation, you may take the evidence of such parties, under oath, as you may think necessary and may be able to induce to appear before you, and such evidence as you may take and such information as you may obtain you will not make public except in your report to me.

You will pursue your investigation and make examination of said office and its several departments uninfluenced by fear, favor or affection, and without any purpose to shield any person or party or to advance the interests of any person or party, to the end that the whole truth touching the affairs of said office for said term may appear in your report; that the guilty be exposed and the innocent vindicated.

The Auditor of State and the Treasurer of State are directed to furnish you every aid and facility in the making of said investigation and examination of said office.

Should clerical or other aid become necessary to the successful prosecution of your labors, you will report that fact to me, and the necessary assistance will be provided.

If, in your investigation, legal questions arise about which you may wish to be advised, you will submit them to me in writing and

I will furnish you with the opinion of the Attorney-General thereon.

Your compensation is hereby fixed at twenty-five dollars, each, per day, each of you to bear your own personal expenses while engaged in such service.

When your services are concluded, you will make report in writing, under oath, and file the same with me. You are also directed to prepare and file, separately from your report of the facts found touching the conditions of said office, such recommendations as may occur to you and seem advisable to make concerning the methods in vogue in such office, and needed legislation touching said office, if necessary. Your report of facts will be required to contain a full account of the finances of the office during said term; also, such evidence as you shall take, together with any finding of facts you may make which shall be based upon such evidence.

Witness my hand and the Great Seal of the State of Indiana. Done at the Capitol in the city of Indianapolis, this 24th day of October, in the year of our Lord, 1905, in the year of the Independence of the United States the 130th, and in the year of the admission of the State of Indiana the 89th.

J. Frank Hanly,

[seal.] *Governor of the State of Indiana.*

EXECUTIVE DECISION

IN THE MATTER OF THE APPLICATION FOR THE PARDON OF DAVID E. SHERRICK, AND REASONS THEREFOR.

April 7, 1906.

Petitions signed by several thousand citizens of the State, requesting the pardon of David E. Sherrick, late Auditor of State, have been filed in the executive office and have been presented for executive consideration and action.

Mr. Sherrick is in the State Prison under sentence of the Criminal Court of Marion County, for embezzlement of the funds of the State coming into his hands while Auditor of State. An appeal from the judgment of the trial court to the Supreme Court of the State has been prayed and granted. The cause is, therefore, still pending in the courts. Most of these petitions were formally pre-

sented to me on the 2d inst., by Mr. Smiley N. Chambers, Mr. John B. Conner, Mr. William D. Cooper, and the Rev. D. R. Lucas.

While the petitions themselves ask for the pardon of Mr. Sherrick, the gentlemen who presented them did not do so. They made "no other recommendation than to ask that Mr. Sherrick be paroled until such time as his case might be determined by the Supreme Court."

The petitions are said to contain 21,000 signatures, more than 11,000 of which are said to be the signatures of citizens of the city of Indianapolis. The large number of signatures has been urged upon my consideration as an evidence that the people of the State desire favorable executive action in this case. It has been also urged that executive clemency ought to be extended in response to "this general sentiment of the community."

In giving consideration to these petitions as an index or evidence of public opinion, it is well to recall the facts and circumstances under which they were circulated and signed. It is common knowledge that they were circulated simultaneously in almost every section of the State and the signatures obtained by an organized, systematic and well-directed campaign, and at a time and in a manner best calculated to appeal to the sympathy of those to whom they were presented. They were circulated and most of the signatures obtained in the interval between the return of the verdict of the jury and the ruling of the Court upon the motion for a new trial, and before sentence was pronounced. In fact, quite a number of them were on file in the executive office before the judgment of the Court was rendered. Many persons to whom they were presented did not know the facts of the case, and would not have signed them had they been conversant with the facts. That this is true is evidenced by personal statements made to me by many persons who signed them, and by letters received from the several communities in the State where they were circulated. The answers to the questions propounded to the gentlemen who presented the petitions, disclose the fact that even some of these gentlemen did not know the facts. Others to whom the petitions were presented, signed them upon impulse and without consideration either of the facts, of the attendant circumstances, or of the importance of the issue involved in the action requested.

It is well also to remember in this connection that the defendant was until recently the incumbent of a high office and that he possessed a wide acquaintance throughout the State. The fact that less than 10,000 persons outside of the city of Indianapolis

signed the petitions, in view of the campaign and the extraordinary effort made to secure signatures, and of the facts and circumstances surrounding the case, is strong evidence that the great mass of the people of the State are not in sympathy with the purpose of the petitions and do not desire favorable executive action thereon. Many hundreds of letters have been received at the executive office from points throughout the State, and from persons of high standing and character, urging me to refuse the prayer of the petitions. These letters are not prompted by impulse, nor are they the result of an organized or well-directed campaign. They are the voluntary expressions of thoughtful men who appreciate the great public interests involved in the case, and are a much surer and safer index of the sober, thoughtful and enduring sentiment of the masses of the people than these petitions are.

The power to pardon is an executive function and under the constitution belongs exclusively to the Chief Executive of the State. It is a high power, and is to be exercised with great care. It was vested in the Governor because of the great responsibility of the office, and in the belief that it would be used only upon mature deliberation, and never from impulse or caprice. It was not intended that it should be exercised in any case merely in response to what, for the moment, might appear to be public sentiment. The man who happens to be, for the time, vested with this power, has no right, either legal or moral, to use it in a personal way. He may not use it to save his friend, nor may he refuse to use it because his enemy would be the beneficiary of its use. It is vested in him for public purposes alone.

Where the guilt of the beneficiary of the exercise of such power is clear and without palliating fact or circumstance, public opinion, however strong it might be, would not be a sufficient justification for its exercise, and this is especially true where the crime is great and involves grave public interests affecting the administration of affairs of state. The crime of which Mr. Sherrick has been adjudged guilty is a grave one. It strikes directly at the administration of public affairs. It involves the betrayal of public confidence, and is, therefore, doubly dangerous to the State. If it were conceded that a widespread sentiment favorable to the exercise of the pardoning power exists in the present case, that does not of itself justify the use of such power, unless there is substantial doubt of Mr. Sherrick's guilt, or some palliating circumstance or fact of controlling importance.

No such doubt exists, and no palliating fact or circumstance is called to my attention either by the petitions themselves or by the words of those who presented them to me. The only basis for executive clemency offered in the petitions is found in the following paragraph:

"David E. Sherrick is a victim of circumstances and a practice followed by practically all state, county and township officers within our State for fifty years past, however vicious such practice may have been, rather than any deliberate criminal intent upon his part."

There is in this statement one fundamental defect. *It is not true.* One of the gentlemen who presented the petition to me, informed me in the course of his remarks on the occasion of the presentation of the petitions, that he had refused to sign them because they contained this statement and because the statement was false. He himself had been a State officer. He knew he had not been guilty of such crime as that of which Mr. Sherrick was convicted. He could not sign the petition without indicting himself, and he therefore declined to do so. This statement, since it contains the only facts mentioned in the petitions upon which executive clemency can be predicated, challenges consideration and analysis. If it is not true, then no basis for favorable executive action is offered by the petitions. While it is well known that Mr. Sherrick was convicted of the crime of official embezzlement, the facts of his embezzlement have been so often misstated as to deceive the general public. It has been said that his crime was a technical one; that he did no more than loan the public funds coming into his hands and appropriate the interest, and that all public officers—state, county, township and municipal—have done the same thing for many years. The statement in the petitions quoted above is predicated upon this contention, but the contention is absolutely without foundation either of fact or circumstance. For these reasons it is important that some official public statement be made of the facts as they actually are. In what I am about to say, I do not speak from the record in the trial of the cause. I do not have that before me, but I do speak within the purview of the indictment upon which Mr. Sherrick was convicted, and within the facts of the case; facts, too, which are without dispute, and which cannot be successfully disputed. When the Supreme Court reviews the record of a cause on appeal, it is bound by the record. It cannot go beyond it. But this rule does not apply to a case when it reaches the Governor upon an application

for executive clemency. It is the duty of the Governor to consider all the facts in the case of which he has or may obtain any knowledge. He may consider the guilt or innocence of the applicant. He may consider the character of the crime itself, with all its attendant circumstances; the effect it has had, or the effect its repetition may have upon society, and the administration of public affairs. He may consider the fairness of the trial, and the character of the defense made, if any. He may consider any new evidence discovered after the trial, which goes to the question of the guilt or the innocence of the applicant. He may consider the habits, character and the past life of the applicant. All these things are proper subjects of consideration in the exercise of the high power of executive clemency.

Mr. Sherrick entered upon the duties of the office of Auditor of State in the month of January, 1903. He was without property and without other income than his official salary. This salary is fixed by law at $7,500 per annum. He was indebted at the time in the sum of $20,000. Immediately upon coming into office he took $20,000 of the public moneys coming into his hands, with which to pay his personal indebtedness. Within four months after his induction into office, he visited French Lick Springs, where he lost in less than thirty days, more than $9,900 of money in gambling. At that time he had received but one quarter's salary. Other than that, he had no money of his own. His gambling debts at French Lick were paid by checks drawn upon banks where the public funds in his care were deposited, and they were paid by these banks out of the public funds. From that day to the day of his resignation, he was a defaulter to the extent of many thousands of dollars. The use of the public funds in the payment of his individual debts was not "loaning the funds and using the interest accruing thereon," as it is charged other public officials have done. It was a criminal conversion of these funds to his own use. It was embezzlement. The use of more than $9,900 of public funds, and their loss at the gaming table, was not "the loaning of the funds." It was the conversion of them to his own use in an unlawful and criminal business. It was embezzlement. Under the law as construed by him, himself, it was his duty to make semi-annual reports to the Treasurer of State, in January and July, of the fees and moneys coming into his hands as Auditor of State, and thereupon to pay to the Treasurer of State all such fees and moneys. By far the greater portion of the money coming into his hands each annual period, was paid to him in the months of January and July of the

respective settlement periods. When the first semi-annual settlement period came, Mr. Sherrick did not have the funds on hands with which to make settlement. He did not have these funds, not because he had loaned them, but because he had used $20,000 of them to pay his own individual debts, and had lost $10,000 of such funds in gambling. His report was therefore delayed until the 23d day of July, and the moneys coming into his hands for this, the first month of the new semi-annual settlement period, were used to make up the shortage occasioned by his embezzlement of the funds coming into his hands during the first semi-annual settlement period, and to enable him to make the settlement required by law. But that was not payment to the State. On the contrary, it was an affirmative, deliberate act of official malfeasance, resorted to for the purpose of concealing and covering up his embezzlement of the public moneys coming into his hands during the preceding semi-annual settlement period. It was in no sense an accounting to the State for the money he had received during the time covered by his report. The use of the State's money coming into his hands during the first month of the second semi-annual settlement period to make good the defalcation occurring during the first semi-annual settlement period, did not change in any way his position or his relation to the State. He was still a defaulter. The second semi-annual settlement, due in January, 1904, was delayed until February 4, 1904, and delayed to enable him to use the funds coming into his hands during the month of January to meet an increased defalcation in the second semi-annual settlement period. His third semi-annual settlement was delayed for a like reason until August 1, 1904; his fourth until January 31, 1905, and his fifth until August 26, 1905. This last settlement was made in answer to the imperative, persistent and oft-repeated demand of the Governor of the State, and to make it he used $144,141.49 of the money coming into his hands after his settlement was due.

In each of these semi-annual reports and settlements, the law required him to account for and pay over to the Treasurer of State all fees and moneys coming into his hands and for whatever purpose received. These reports were required to be verified. Prior to his resignation he made five reports. In that time (that is, from the month of January, 1903, to September 14, 1905), he collected miscellaneous fees in the sum of $6,978.07, which he sequestered, converted to his own use and omitted from his reports. Of most of these fees no public record whatever was kept, and not a dollar of them was reported or paid to the Treasurer while Mr. Sherrick

was in office. When he resigned, his total defalcation, exclusive of interest, amounted to $151,119.56. His defalcation did not grow less, but on the contrary, it constantly increased.

In addition to the money used in riotous living and lost at the gaming table, he invested the public funds in mining stocks, in oil well stocks, and in other speculative securities, which were bearing no interest, and from which he had no right to expect any substantial return during his term of office. These facts conclusively prove, and none of them are the subject of dispute, that Mr. Sherrick is guilty of something more than a technical violation of the law. They demonstrate beyond doubt that he systematically and constantly from the day of his induction into office until the day of his resignation, converted to his own use, squandered, gambled away and embezzled the public funds. And it is, therefore, not true that he is the victim of "a practice followed by practically all state, county and township officers within our State for fifty years past." Indeed, there is not even a semblance of truth in such a statement. Many of those who have urged this false statement of fact with most vehemence and have made loudest outcry about it have known its falsity from the beginning. Others have been imposed upon and have used it innocently, but have thereby contributed to the deception of the public.

It is quite proper, in considering this application for executive clemency, to inquire how Mr. Sherrick administered the other affairs of his office. In the month of December, 1904, previous to the convening of the General Assembly in January, 1905, Mr. Sherrick, as Auditor of State, addressed a letter to the officials of certain railway companies doing business in the State of Indiana, asking them to forward to him for distribution among the members of the General Assembly, all railroad passes which such companies intended for the use of members of the General Assembly, stating that he had some prospective legislation of personal concern to himself, and that he would see to it that the interests of the companies were cared for along with his own. In many instances this was done, and the office of the Auditor of State became for weeks a broker's office for the distribution of free railway transportation to members of the General Assembly.

At the meeting of the Board of State Tax Commissioners, held in July and August of 1905, the question of the valuation, for the purpose of assessment, of the Monon Railway, came before the members of the Board for their consideration in executive session. Some of the members of the Board believed the existing valuation

of the road to be too low, and desired that the valuation should be raised. Mr. Sherrick very vigorously opposed any increase in the valuation. He supported his position with such poor logic and reason as to excite remark. After the adjournment of the Board, and in the presence of the members of the Board, he was asked by the Governor for an explanation of his conduct. He said that his act was due to the fact that an attorney, then residing in Chicago, who was his warm personal friend, and to whom he was under many obligations, had requested him to keep the valuation of the Monon Railway Company where it then was as a personal favor to him, and had said that if such valuation could be kept without increase, that he, the Chicago attorney, would be able to get permanent employment as counsel for said railway company.

Those are only two instances of many that could be cited where the official conduct of Mr. Sherrick was such as to deserve the condemnation of every honest citizen of the State, and, taken in connection with his systematic, studied and long-continued embezzlement of the public funds, they are such as to preclude absolutely executive clemency.

I am compelled to believe that many men who signed the petitions on file in this case would have refused to do so had they known all the facts connected with Mr. Sherrick's administration of his office.

It is said in the petitions that Mr. Sherrick was the victim of circumstances. If so, they were circumstances of his own making. The system of loaning the public funds for the individual profit of public officers, which has grown up in Indiana, is not responsible in any substantial degree for Mr. Sherrick's crime. There was nothing in this system, however devotedly he might have followed it, which compelled him to take public funds to pay his private debts, or to take public funds for investment in speculative mining stocks, or to hazard public funds at the gambling table. The system referred to is bad enough; so bad, in fact, as to be a reproach to an honest people such as ours, and it will have sins enough to answer for without charging it with the crimes of Mr. Sherrick. A bad system rarely, if ever, destroys an honest man, or one fit to be clothed with the responsibility of high office. If Mr. Sherrick had been looking for precedent, he could easily have found one in the record made by his immediate predecessor, whose reports were made on the day the law required, and who paid, without the delay of an hour at each of the semi-annual settlements, every dollar of the moneys of the State he had collected. It is apparent from the

facts in the case that Mr. Sherrick was not searching for precedent. On the contrary, he was engaged in blazing a new way—a path at the end of which shame and disgrace inevitably lay.

It has been said that he intended no wrong, and that he had no criminal intent, but no impartial and fair-minded man can read the record of his acts and believe such a statement. How can it be said he intended no wrong when he took public funds with which to pay his private debts? How can it be said he intended no wrong when he took public funds and invested them in speculative securities from which he had no right to expect a return within his term of office? How can it be said he intended no wrong when he took thousands of dollars of the public money and gambled it away, or when he expended other thousands of such funds in riotous living?

A man must be held to intend the reasonable and probable results of his acts, and he may not, after having committed great crimes for a long period of time, escape punishment upon the plea that he intended no wrong in the commission of them.

It was suggested by those who presented these petitions that Mr. Sherrick and his friends have made good his defalcation, principal and interest, and that this fact should be considered as a palliating circumstance. This statement also deserves consideration. It has the same fundamental defect as the statement heretofore quoted—*it is not true.* The defalcation has been made good and the State has lost no money, but the credit for this is not due either to Mr. Sherrick or his friends. When Mr. Sherrick resigned his office, certain securities were turned over by Mr. Reed, a deputy in his office, to the Governor of the State, and afterward placed in the hands of Mr. Reed as Receiver in the suit upon Mr. Sherrick's official bond. These securities consisted of a few promissory notes and a number of speculative mining stocks, in which Mr. Sherrick had invested the public funds. Information came to the Governor and to the Attorney-General of the State, which disclosed the fact that the State's funds had been invested in these securities and that they had been used to pay Mr. Sherrick's private obligations; that the men who received them knew them to be State funds when they so received them and so applied them. Under these facts and the law of the land, the title to the money was not divested, it still remained in the State, and the State had the right to follow and recover its funds. The Attorney-General was instructed by the Governor to require the persons who had thus received the moneys of the State to return it to the State, and to proceed to do so without fear or favor. This the Attorney-

General did, and, in case after case, the persons who had received these funds paid them back because they were compelled to do so to escape prosecution. Two banks which had received the public funds in satisfaction of a personal indebtedness due to them from Mr. Sherrick, paid back $25,000. A number of other persons from whom mining and other stocks had been purchased, returned the money they had received, and took back their stocks. W. S. Wickard and the Murray Lumber Company had received a large sum of the State's money, ostensibly as a loan, amounting in the aggregate to more than $50,000. The greater portion of this money was used by Mr. Wickard to take up his notes, upon which Mr. Sherrick was security, in a certain bank in the city of Indianapolis. The bank knew when it received these funds that it was receiving public funds. The Attorney-General was directed to prepare, and he did prepare, a complaint to which he made the bank a party, and in which he charged these facts. A copy of it was served upon the officers of the bank, and they were informed that it would be filed the next day at the hour of two o'clock unless the money of the State was returned to it. This money was returned within forty-eight hours. More than three-fourths of the defalcation was made good through collections made by the Attorney-General in the manner stated above. Therefore, it is not true that either Mr. Sherrick or his friends made good his defalcation. The zeal, the ability and the courage and integrity of the Attorney-General, acting under the direction of the Governor, alone saved the State from loss. After all this was done, there was still a shortage of something like $25,000 or $30,000. Of this sum, the surety of Mr. Sherrick's official bond paid $6,000. The balance was raised by the friends of Mr. Sherrick. The sum thus raised—some $25,000 or $30,000—represents substantially the amount of the public funds which Mr. Sherrick had gambled away in two years and a half, and lost in midnight orgies, or in other criminal practices. And, in the face of these facts, I am asked to extend him executive clemency, *on the ground that he intended no wrong and had no criminal intent.*

It has been urged that executive clemency should be extended to him, at least to the extent of a parole, because of the high position he held, because of his prominence in public affairs, and because of the shame and disgrace that would come to him through the execution of the sentence pronounced by the court. Sitting as the Governor of the State he has so deeply wronged, this plea does not appeal to me. The fact that he held high position, that he was

prominent in affairs, and that he had great opportunity to serve the people whose commission he had obtained and whose confidence he held, does but aggravate his crime and magnify his offense.

It is said that the law has been vindicated by the conviction and sentence of Mr. Sherrick, and that the execution of the judgment ought to be suspended or stayed. If this be true in the present case, there is no reason why it could not be said or why it would not be true in every case. Conviction and sentence do not vindicate the law. Without the execution of the law's judgment, conviction and sentence would be a sham. They would not deter infractions of the law; they would not protect society. Few of the persons who signed these petitions would believe in or would be willing to defend this doctrine if it were applied to cases of robbery, child stealing, burglary, entering a house to commit a felony, obtaining money by false pretense, counterfeiting or manslaughter. And yet the penalty in each of these cases is less than the penalty imposed for the crime of which Mr. Sherrick is guilty. In each of the cases named the maximum punishment is fourteen years. In official embezzlement it is twenty-one years. Therefore, it must be held that official embezzlement is, in the eyes of the law, a graver crime than any of the offenses named. How, then, can it be said that the law is not vindicated by verdict and sentence in such cases, but is vindicated in the graver and more far-reaching offense? The position is not tenable. This case more profoundly concerns the public welfare than any of the cases named, and the law is not vindicated until its sentence has been executed. The minimum punishment is two years. The maximum punishment is twenty-one years. It may be that executive clemency may be properly exercised somewhere between these periods. That I do not now decide.

The law—the law of Indiana—is made for all men, for the rich and the poor, the great and the small, the prominent and the obscure, and, in so far as I have a voice in its administration, it shall fall upon all men alike, while I am Governor, without regard to who they are, or what position they hold or may have held. The man in the lowly walks of life is required to abide by the law. He may never have had a fair chance or opportunity in life; he may be a waif upon the street; he may know little of his relation to his fellows, of his duty to society, or to the State; he may be hungry and cold, but if he breaks the law and does but take only so much of another man's property as to satisfy his hunger, or to protect him from the cold, he is made to feel the weight of the law he has broken. To obtain his pardon no campaign is organized. As to

him the law is left to take its course. I see no reason why a different rule should obtain where the man who infracts the law holds high position or is the child of great opportunities.

As an individual my heart is heavy with grief that Mr. Sherrick betrayed the trust confided to him by a generous people, and is guilty of the crimes of which he has been tried, convicted and sentenced. I am grieved beyond measure that the circumstances and facts of the case do not permit executive clemency. If this were a personal matter, Mr. Sherrick should go free now. But it is not. Decision in this case is not the act of an individual, it belongs to the office, it is the act of the Governor of the State. I am compelled to eliminate from my mind all questions of friendship, of party ties, of public sentiment, or of personal sympathy, and to decide the question upon its merits alone, with a view only to the public good, to the welfare of society and of the State, and to the maintenance of a proper standard of administration of public affairs. Viewed in this light, and in the light of the undisputed facts and circumstances of the case; my oath of office, the law and my official duty coerce me into the denial of the application. I believe Mr. Sherrick had a fair trial. The facts were and are without dispute. The jury could not have done less under their oaths than they did. The case is still pending in the courts. If error of law has been committed, it will, no doubt, be corrected. But even though error of law shall be found to have intervened in the trial of the cause, the fact will remain unchallenged and unchallengeable, unchanged and unchangeable, that Mr. Sherrick is guilty of one of the gravest crimes known to the law. The application is therefore denied.

J. Frank Hanly,
Governor of the State of Indiana.

APPOINTMENT OF A COMMISSION TO INVESTIGATE AND REPORT CONDITIONS AND NEEDS OF THE PEOPLE OF FONTANET, AFTER THE POWDER-MILL EXPLOSION.

October 18, 1907.

There is need of assistance at Fontanet. The people of the State ought to make quick and adequate response. The DuPont Powder Company has placed $5,000 in my hands for distribution and as a basis for a relief fund. I have appointed Messrs. W. C. Van Arsdel, Hilton U. Brown, of the Indianapolis News, and B. F. Lawrence, of the Indianapolis Star, as a commission to take charge of the distribution of this fund. These gentlemen have gone to Fontanet to ascertain exact conditions. They will report to me either this evening or in the morning and will then be able to give the people of the State definite and accurate information as to the necessities and the extent of their obligation in this saddest of all calamities.

I have urged upon the DuPont Powder Company the duty of repairing injured and replacing destroyed houses at the company's expense. This, they have undertaken, at least to some extent, and by morning I will be advised definitely as to the exact extent of relief the company will give in this direction.

I hope contributions to the fund already started will not be delayed, but that they will be begun at once. The people whose houses were destroyed at Fontanet are poor people. In many instances all they had in the world was invested in their little homes. These have been utterly destroyed. In other instances, the bread-winners of families are dead. The survivors are destitute. The duty of a rich, generous and Christian people in such an emergency is too clear for comment. At such a time he who gives quickly gives twice.

J. Frank Hanly,
Governor of the State of Indiana.

REMARKS BY GOVERNOR HANLY AT THE INAUGURATION OF GOVERNOR MARSHALL.

JANUARY 11, 1909.

Four years and three days ago I stood here in your presence and took upon myself an obligation to support the Constitution of this Commonwealth and to faithfully discharge the duties of the high office of Governor. Through the vicissitudes of a full constitutional term I have kept that oath as best I could. How well I have kept it I leave to posterity to decide. This much, however, I claim for myself: My purpose has been pure; my effort sincere; my zeal untiring. I have sought only the public good—the welfare of the many. I have not finished the work you gave me to do, but I have fought a good fight. I have not obtained all I sought or all you desired, but I have not quailed in battle nor run away from any duty seen and understood. My heart has not been divided. I have held no commission but yours. I have had no master but my conscience. I would have served you better if I could.

And now within the hour I shall cease to have to do officially with public affairs, perhaps forever. The obligation I then took passes even now to another. A moment and I shall be free. Grateful forever to you for the opportunity of service the great office brought, I am glad to lay it down and seek opportunity for further service in humbler sphere. I go contented and happy. Private life has no terrors for me. But the welfare of the State—the happiness of her people—can never while I live be without interest to me, and from my place in the ranks I shall not cease to speak and write and fight for her and for them.

He whom you are about to clothe with authority to administer the government for the next four years is here ready to take the oath of office and assume the responsibilities of the position. Though differing in political faith and affiliation from him, I bespeak for him your sincere and loyal support in the discharge of the grave duties of the great office upon which he is about to enter. I shall support him in all things where differing convictions of fundamental principles and policies do not separate us. He will be the Governor of my State, and I shall uphold his hands in every effort he makes in behalf of the people and the public welfare.

Mr. Justice Roby of the Appellate Court will now administer to the Governor-elect the oath of office prescribed by the Constitution.

(Justice Roby here administered the oath.)

Ladies and Gentlemen: The Governor of the State of Indiana!

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