such payment after such approval. The decision is left with the Auditor of State.

In conclusion, therefore, it is my opinion that the disputed claim of this veteran, having been approved and allowed by the Veterans' Affairs Commission, may now be allowed by you as auditor, but that the action of that Commission does not in any case require you to allow any claim which you determine to be unlawful.

OFFICIAL OPINION NO. 27

June 30, 1960

Mr. Joda G. Newsom
Chairman, State Board of Tax Commissioners
404 State House
Indianapolis 4, Indiana

Dear Mr. Newsom:

This is in response to your letter requesting my Official Opinion upon certain questions concerning the power of the Board of County Commissioners of Marion County and of the Health and Hospital Corporation of said county, the substance of which are as follows:

> 1. Does the decision in the case of City of Indianapolis *et al.* v. Buckner *et al.* (1954), 233 Ind. 32, 116 N. E. (2d) 507, or any other factor, prohibit the Board of County Commissioners of Marion County from voluntarily effecting a legal transfer of the physical plant, real estate, management and operation of the Marion County Home, known as Julietta, to the Health and Hospital Corporation of Marion County, Indiana, for such corporation to operate for the same purposes for which it is now maintained?
>
> 2. If said Board of County Commissioners has the power to effect such a transfer, does the Health and Hospital Corporation of Marion County have the power to legally accept such a transfer and operate such home for the same purposes for which it is now maintained?

The Buckner case, to which your request makes reference, was commenced for the purpose of challenging the constitutionality, both as a whole and also separately, of certain individual provisions of the Acts of 1951, Ch. 287, as found in Burns' (1959 Supp.), Section 35-902 *et seq.*, being the act pursuant to which the Health and Hospital Corporation of Marion County was created. In the decision and opinion of the Indiana Supreme Court in said case the constitutionality of said act as a whole was sustained, but the Court held those provisions thereof to be unconstitutional which purported to remove from county boards the powers granted them by reason of the Constitution of Indiana, Art. 9, Sec. 3, which provides:

> "The county boards shall have power to provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society."

Among the special powers purportedly granted to said corporation by reason of the Acts of 1951, Ch. 287, Sec. 27 was that contained within paragraph 24 of said section which stated:

> "SEC. 27. In addition to the powers and duties conferred upon it elsewhere in this Act such Board shall have full power and authority to do all acts necessary or reasonably incident to carrying out the purposes of this Act including, but not in limitation thereof, the following:
>
> * * *
>
> "24. It shall have the powers and duties over and relating to county asylums for the poor now vested in the Board of County Commissioners not inconsistent with the provisions of this Act, which powers and duties are hereby transferred to and vested in said Board of Trustees. The Board of Trustees shall appoint a superintendent of said asylum, who need not hold a license to practice medicine or be a farmer but shall be of good executive ability and qualified by education and experience to manage such an institution."

Citing authority, the Court's decision noted that "county boards" referred to in the Indiana Constitution, Art. 9, Sec. 3,

supra, are the boards of county commissioners and concluded that the provisions of the involved act which sought to remove the power granted by said section of the Constitution from such county boards and to transfer it involuntarily to the newly created Health and Hospital Corporation would be clearly unconstitutional. The Court's opinion concluded by noting that the act contained a severability clause, as a consequence of which the remainder of the act would not be affected by the deletion of paragraph 24, *supra,* since the remainder of the act is workable.

Your letter implies as, of course, must be assumed by reason of the Indiana Constitution, Art. 9, Sec. 3, which was the basis of said Buckner decision, *supra,* that the proposed transfer concerning which you inquire would result only from the exercise of discretion by the Board of County Commissioners of Marion County, the consent by such Board to said proposal and its voluntary transfer to the Health and Hospital Corporation of Marion County, instead of such transfer being effected by the Legislature as attempted by the said Acts of 1951, Ch. 287, *supra.* Your letter refers to the fact that in many counties of the state the operation of county homes and poor farms has heretofore been discontinued and that said counties are providing care for the indigent, aged and infirm by means of the services of the County Welfare Department or by contract with private nursing homes or by contract with other counties maintaining such homes. The authority for the discontinuance of the operation of such homes and farms and for the care of such persons by other means is by reason of the specific statutory power found in 1 R. S. 1852, Ch. 81, Sec. 34, as amended, as found in Burns' (1959 Supp.), Section 52-215, which provides:

> "Any asylum or farm provided by the board of county commissioners for the poor, may be discontinued in whole or in part by such board, subject to the approval of the county council of such county and the property, real and personal, relating thereto, which belongs to the county, may be sold, leased or otherwise disposed of, in whole or in part, as lands of the county are now sold or may be applied in such manner as may be best for the interest of the county as may be approved by the county council. If the county asylum or farm of

> any county be discontinued, as hereinbefore provided, the board of commissioners of such county may contract with the board of commissioners of the nearest other county or counties which have available accommodations for the maintenance and care of the poor persons, of such county in the asylum or farm of such other county; and the board of county commissioners may contract with any person or corporation who maintains within the county an institution for the care of poor persons, or such other agency or private institution located in this state that has appropriate facilities and is willing to accept and provide care and maintenance for such poor persons, for the maintenance and care of the poor persons of such county, upon such reasonable terms and conditions as may be agreed upon by the board of commissioners and approved by the county council."

It is apparent from the provisions of the foregoing statute that the Legislature has implemented the constitutional powers granted to Boards of County Commissioners by defining and particularizing acts which such a board may perform in pursuance of their duty to provide poor farms and asylums pursuant to the constitutional grant. It is clear from the above statute that such county board could discontinue such an asylum or farm, could dispose of the property relating thereto "in such manner as may be best for the interest of the county" and could contract either with other counties, persons or corporations for the maintenance and care of the poor persons of the county pursuant to the conditions stated in said statute.

The Board of County Commissioners has for a considerable time been recognized by our Supreme Court as possessing broad powers under its constitutional grant. In Platter v. The Board of Commissioners of Elkhart County (1885), 103 Ind. 360, 369, 2 N. E. 544, the Court in reviewing several past decisions stated:

> "* * * the board of commissioners has very broad powers over county property and institutions, and that its discretion in the control and disposition of such institutions is seldom, if ever, interfered with by the courts. * * *"

After citing a number of early Indiana Supreme Court decisions, the Court further stated:

> "* * * These authorities amply fortify the position that the board of county commissioners possess the usual powers of a public corporation over the property and institutions of a county, and it can not be doubted that the logical sequence is that the board may sell property when in its sound judgment it is no longer required for a county purpose, and may change the location of county institutions, if not forbidden, when it is required by the welfare of the people of the county.
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> * * *
>
> "* * * It is for the authorities of the locality, and not for the courts, to determine what changes are required by the growth, expansion and other alterations in the condition and progress of a county. * * *
>
> "We think there can be no doubt that if the board can change the location of an asylum, it may do all acts necessary to effect the change, for it is an elementary rule that the grant of a principal power confers all incidental ones."

Therefore, in answer to your first question it is my opinion that the Buckner decision, *supra,* does not, nor does any other factor, prohibit the Board of Commissioners of Marion County from voluntarily effecting a legal transfer of the physical plant, real estate, management and operation of the Marion County Home, known as Julietta, to the Health and Hospital Corporation of Marion County, Indiana, pursuant to the provisions of Burns' 52-215, *supra,* for such corporation to operate for the same purposes for which it is now maintained. Thus, by means of the Indiana Constitution, Art. 9, Sec. 3, it is within the power of the Board of County Commissioners to do what the Legislature itself could not do.

It may be noted that the above answer to your first question would not "remove" the power from the Board of County Commissioners to provide poor farms and asylums as specifically granted by the Indiana Constitution, Art. 9, Sec. 3, *supra.* If the Board of County Commissioners were to be dissatisfied with said operation of said home by the Health and Hospital

Corporation of Marion County or if the facilities of such home were to become inadequate and were not expanded by said corporation to provide the needs of such county for a poor farm or asylum, the constitutional power of the Board of County Commissioners remains and would still be effective whereby such board could provide another such farm or asylum.

Since Burns' Section 52-215, *supra,* authorizes the Board of County Commissioners to act in the disposition of such property "in such manner as may be best for the interest of the county," it is noted from your letter that the proposed transfer could be justified on that basis. As indicated by you, of the total residents who presently occupy the Marion County Home, approximately one-third are now bed-fast and a large percentage of the others are incapacitated by varying degrees of infirmities of mind and body. Due to the condition of such persons now occupying the home, its present operation more nearly corresponds to that of a hospital, clinic or nursing home as distinguished from its original concept simply as a county farm for the poor and aged. Accordingly such transfer could be justified as being in the best interest of the county since the Health and Hospital Corporation was created, among other things, to provide care and medical assistance to the needy, to avoid conflicting and overlapping jurisdictions in the county and to fix the administration and control of public health problems directly in the hands of individuals selected on the basis of specifically relevant qualifications. Those now concerned, namely the residents of the home, would presumably benefit by such proposed transfer.

As your letter also notes, the territorial jurisdiction of the Marion County Board of Commissioners and that of the Health and Hospital Corporation of Marion County are the same i.e., all of Marion County, so that in the practical sense the transfer of the property from said board to such corporation would not (except technically) reduce the assets of the county. Also is the fact that the tax base of both units of government would be the same, to wit: Marion County, so that unless the operation by the corporation were substantially more costly it may be presumed that the same persons, that is, taxpayers of Marion County, would be paying substantially the same amount of tax for the operation of the home as before such

transfer, assuming that no expansion or other altering factors occur.

In answer to your second question it should be stated that the power of the Health and Hospital Corporation of Marion County to accept such home or asylum and operate it for the purposes for which it is now maintained and operated depends upon the power granted such corporation by the Acts of 1951, Ch. 287, *supra*. Section 27, Paragraph 11 thereof expressly provides that such corporation shall have the full power and authority:

> "11. To acquire property, real, personal or mixed by deed, purchase, lease, condemnation or otherwise and dispose of the same. To receive gifts, donations, bequests and public trusts and to agree to conditions and terms accompanying the same and bind the Corporation to carry them out. To receive Federal or State aid and administer the same. To erect such buildings or structures or improvements to existing buildings or structures as may be needed to administer and carry out the provisions of this Act."

The foregoing provision constitutes authority for the corporation not only to accept the transfer of said home, but also to bind itself and its present and future officers to its use as an asylum as may be stipulated in the deed.

Further, an examination of this act discloses that it was clearly intended and designed to afford the corporation created pursuant to its terms with the complete power necessary for the maintenance and operation of such an asylum, for in said act, Acts of 1951, Ch. 287, Sec. 1, as found in Burns' (1959 Supp.), Section 35-902, the term "hospital" is specifically defined to include:

> "* * * any county asylum for the poor heretofore established by the board of county commissioners of the county in which this corporation is created."

Also Section 22 of said Act, as found in Burns' (1959 Supp.), Section 35-923 provides, in part:

"The board shall create a division of public health and a division of public hospitals and such other divisions as it may deem necessary.

* * *

"* * * The division of public hospitals shall operate and manage a hospital, clinic, dispensary, or facility adjunct thereto which is under the jurisdiction of the corporation. Provided, however, that the board may create a separate division to operate and manage an asylum for the poor."

In conclusion, therefore, it is clear that if the Board of County Commissioners of Marion County makes such a transfer, the Health and Hospital Corporation of Marion County has the specific statutory authority both to accept such property and to maintain and operate the said Marion County Home, known as Julietta, as an asylum for the poor, after which transfer said corporation will have control of such asylum in accordance with the Acts of 1951, Ch. 287, *supra*.

OFFICIAL OPINION NO. 28

July 1, 1960

Mr. Joda G. Newsom
Chairman, State Board of Tax Commissioners
404 State House
Indianapolis 4, Indiana

Dear Mr. Newsom:

This is in response to your request for my Official Opinion concerning the legality of an item contained within an emergency appropriation ordinance passed by the Marion County Council for funds to be advanced to the Indianapolis-Marion Building Authority for a proposed municipal auditorium building. Simply stated, your question is whether that Authority is authorized to construct such a building.

It should be noted at the outset that the practice of advancing funds by a city and county on a reimbursement basis to a building authority which is organized under and governed by