been named by his spouse as a co-annuitant had the right to take a cash settlement of the accumulated contributions of the teacher in lieu of the co-annuitant benefits. If a beneficiary is permitted to change the election of benefits made for him by the teacher, he should certainly be permitted to change the election he has made for himself. Therefore it would seem a beneficiary has the right to cancel an election of benefits before it had been finally passed upon by the board. This right would pass to the administrator of his estate and, if timely exercised, would be proper. There is nothing in the statutes prohibiting the beneficiary from withdrawing his application, and since this right of withdrawal is given a retired teacher, it should be extended likewise to the beneficiary in this instance. Inasmuch as the application for spouse option had not been processed and approved by the board of trustees, it would seem proper to permit it to be withdrawn by the applicant. The administrator of the applicant's estate could likewise request the withdrawal of the application prior to the time it was presented to the board and approved.

It is, therefore, my opinion that the application in question was not completed since it had not been passed upon by the board of trustees. It should be considered as properly withdrawn by the request of the administrator and the lump sum settlement of the contributions accumulated by Mrs. Virginia Whitson Bills should be paid to the estate of her designated beneficiary upon administrative approval by the board of trustees.

OFFICIAL OPINION NO. 16
February 26, 1958

Hon. 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 of January 23, 1958, for an Official Opinion, which reads as follows:

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"This commission has been presented with the following problems on which we would request your official opinion as to the proper interpretation of the governing statutes.

"Do persons, who are students of a college or university and who are owners of taxable personal property and are residents of the state of Indiana, acquire a tax liability in the county where the college or university is situated; assuming that they have declared ownership in the County, Township or City where their parents reside or in the County, Township or City in which they have previously lived and to which they expect to return after completing their college or university studies?

"Would the same rule apply regardless of whether the student was single or married, and live as husband and wife on the campus or in the county in which colleges or university is situated?

"Would the same rule apply in the case of the ownership of a Mobile Home, as defined in Chap. 169, Acts of 1953, as amended by Chap. 107, Acts 1955?

"Would the same rules apply if the students were residents of a state other than Indiana?

"Would the assessing officials of the County or Township in which the college or university is situated be justified in assessing the property of such students if the student was not able to present evidence of having been assessed in their home county?"

In answer to the first question, your attention is directed to the Acts of 1919, Ch. 59, Sec. 3, as amended, as found in Burns’ (1951 Repl.), Section 64-103, which says in part:

"All property within the jurisdiction of this state, not expressly exempted, shall be subject to taxation. All property of every kind and nature both real and personal and wherever situate, owned or possessed, and subject to taxation within the state of Indiana, shall be assessed and valued for taxation purposes, * * *."
The Acts of 1919, Ch. 59, Sec. 10, as amended, as found in Burns' (1957 Supp.), Section 64-404, reads in part as follows:

“All personal property shall be assessed to the owner in the township, town or city of which he is an inhabitant on the first day of March of the year for which the assessment is made, with the following exceptions * * *.” (Our emphasis)

The case of Schmoll v. Schenck (1907), 40 Ind. App. 581, 82 N. E. 805, established that the phrase “of which he is an inhabitant” (contained within a former property tax statute and identical to the language above emphasized) refers to the place of the property-owner’s fixed domicile, irrespective of where he spends most of his time.

In the light of the above judicial decision, if the Legislature had intended our taxing statute to have a different meaning, it would not have again used the language “of which he is an inhabitant” when it enacted the Acts of 1919, Ch. 59, Sec. 10. Moreover, in Croop v. Walton (1927), 199 Ind. 262, at page 268, 157 N. E. 275, our Indiana Supreme Court followed the earlier construction of the word “inhabitant” saying: “The word ‘inhabitant’ as used in our statute regulating the imposition of taxes, means ‘one who has his domicile or fixed residence in a place,’” citing Schmoll v. Schenck, supra. It is further to be noted that the Acts of 1919, Ch. 59, Sec. 10, has been amended only once,—said amendment being the Acts of 1955, Ch. 72, Sec. 1, which likewise retains the language “of which he is an inhabitant.”

It is further said in Croop v. Walton (1927), 199 Ind. 262, 270, 157 N. E. 275:

“While a person can have but one domicile at a time, * * * he may have concurrently a residence in one place or jurisdiction and a domicile in another * * *.

“Where there is a complete removal of residence, with an intention to remain an indefinite time, even though there may be a floating intention to return to the former domicile at some future and indefinite period, it has been held that there has been a change of domicile. But an intention to return on the occur-
rence of some event which may reasonably be anticipated, as when the health of a relative has been restored, is not such an indeterminate or floating intention. * * * The mere absence of Walton from his domicile in Sturgis and his temporary residence in Elkhart for the benefit of his wife's health, even though such absence and residence continued for a number of years, did not effect a change of domicile, since he did not have any intention to abandon that domicile and acquire another and did have an intention of returning to his domicile at a later time for residence. * * *

"Domicile is of three kinds—domicile of origin or birth, domicile by choice, and domicile by operation of law. Domicile by choice * * * has for its true basis or foundation the intention of the person. Whether appellee changed his domicile depends very largely upon his intention. To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently or at least indefinitely * * *." (Our emphasis)

Upon the assumption stated in your first question, it would appear that ownership was "declared" at the legal domicile of the students in either case, because the domicile of the parents is the domicile of the minor child for taxation purposes (Brookover v. Kase (1908), 41 Ind. App. 102, 83 N. E. 524), and the domicile of an adult is largely a matter of intent, which excludes the idea of loss of domicile by temporary residence.

Some tests of domicile, which are listed in the Croop case, supra, at page 273, are payment of taxes at the domicile, hotel registration noting the domicile, voting at the domicile, oral and written declarations in deeds, insurance policies, mortgages, leases and contracts that such was his domicile, selecting the domicile as a burial place for his daughter, and maintaining membership in lodges, clubs, and a church at the domicile.

The fact of whether domicile has been established at the place where the student is attending a college or university
is to be determined individually by the above criteria; however, the usual situation is that a student will have a manifest intention to return to his home as a domicile on the occurrence of his graduation, an event which may reasonably be anticipated, and so he would not necessarily have lost his domicile by residence at or near a college or university.

It is my opinion that the answer to your first question is that declaration of ownership at the place where the parents reside, or where the student previously lived and expects to return, is indicative of lack of intent to establish a new domicile in the county where the college or university may be. Therefore, such students would not incur tax liability upon their personal property within the county in which the college or university is located under such circumstances.

As to your second query, there is no statutory exception to the operation of the general rule as to assessment at the place of domicile enunciated in the portion of Burns' 64-404, supra, quoted above, which would indicate that marital status alone would have any effect upon the answer to your first question.

Thirdly, taxation of mobile homes is specifically provided for by the Acts of 1953, Ch. 169, as amended, and as found in Burns' (1957 Supp.), Section 64-3301 et seq. Said Act has the avowed purpose to provide for the:

"* * * assessment of mobile homes at a rate of assessment similar to the rate of assessment used for the assessment of other dwellings and sleeping places."
(Our emphasis)

which indicates that the intention is not to treat mobile homes as personalty.

It is required by Burns' 64-3303, that every person permitting a mobile home to park in such manner as to permit occupancy as a dwelling or sleeping place must report that fact to the Township Assessor to assess said mobile home. It is thereby implied that the Legislature intended for tax liability to attach in any county where the assessor had a duty to assess and certify it to the county auditor. (As evidence of payment of the tax assessed, prescribed decalcomania must be displayed upon the mobile home and assessment and payment of
a tax levied upon the mobile home is a bar to assessment in any other county in the state during that year, by Burns' 64-3308.)

It is clearly the intent of the Legislature that mobile homes shall have a taxable situs aside from the owner's domicile. Therefore, students owning mobile homes placed in such a manner as to permit occupancy as a dwelling or sleeping place in the county wherein is located the college or university would acquire a tax liability in that county, provided that a tax on the mobile home had not been paid elsewhere, in this state or another.

As to your fourth question concerning the taxable personal property of non-residents of the State of Indiana who attend a college or university within the state, which property is within the jurisdiction of the state, Burns' 64-404, supra, provides a specific exception to the rule of taxation at the domicile as follows:

"Fourth. Personal property of non-residents of the state shall be assessed to the owner or to the person having control thereof in the township, town or city where the same may be, except that where such property is in transit to some place within the state it shall be assessed in such place."

Therefore, personal property in the State of Indiana but not in transit, belonging to or controlled by non-resident students, and within the county of the college or university would be taxable in the county where the college or university is situated.

In answer to your last question, it was said in Croop v. Walton, supra, at page 266:

"* * * Moreover, one seeking to establish his claim of exemption from taxation on the ground of non-residence is not required to show that his property was assessed elsewhere. * * *" (Our emphasis)

If the students' taxable personal property must be assessed at the domicile, because it does not fall within any of the exceptions listed in the whole of Burns' 64-404, supra, a county where he is not domiciled would have no statutory
basis for assessing the property physically present therein, even though the student was unable to present evidence of assessment at the domicile.

In summary, it is my opinion that Indiana residents who are students at Indiana colleges or universities and who own taxable personal property there, do not incur tax liability in the county where the college or university is situated if their domicile is not there. Declaration of ownership in a county, township, or city where the parents reside or from which the students have come and intend to return, are indications that the domicile is intended to continue in that place.

The simple fact that the student is married and has his spouse living with him at or near the university would have no bearing except insofar as such fact were accompanied by other indications establishing domicile there.

Mobile homes are specially treated and, by legislation applicable thereto, may be taxed in any county where they remain as sleeping places, but payment of a current tax liability thereon in another county or state is a bar to assessment elsewhere.

The taxable property of non-residents of the state within the jurisdiction of Indiana is assessable in the county where it may be found, provided that it is not in transit.

The fact that students fail to pay tax on their property at their domicile would not change their tax liability from that place, except if the property be a mobile home, and there is no statutory basis for assessment by county or township officials where the college or university is located merely because of temporary residence within the county for educational purposes.

This opinion, of course, is not to be interpreted as holding that the personal property of students attending colleges and universities away from their homes is exempt from tax liability by reason of such circumstance. Inasmuch as your questions all concern whether the assessing officials of the taxing unit in which the college or university is located may assess such property, all of said questions basically present solely the question of jurisdiction to assess a personal property tax. Your inquiry does not present any question as to
whether such property is exempt from taxation. Therefore, in conclusion, I wish to emphasize that the duty remains upon said students to list such property and pay taxes thereon in the county of their domicile and such liability is a continuing one in their home counties.

OFFICIAL OPINION NO. 17
February 27, 1958

S. T. Ginsberg, M. D.
Mental Health Commissioner
Division of Mental Health
1315 West 10th Street
Indianapolis, Indiana

Dear Doctor Ginsberg:

In your letter of January 31, 1958, you request an Official Opinion on the following question:

"In consideration of Sec. 1, (b), Ch. 262, Acts of 1957, is the State of Indiana liable for payment of the cost when a patient, while on convalescent leave and physically absent from a state mental hospital, is wounded by action of county and state police officers and is hospitalized in another hospital at the direction of an official of the state mental hospital?"

In order to answer this question, it is first necessary to refer to the Acts of 1947, Ch. 300, Sec. 4, as amended, as found in Burns' (1951 Repl.), Section 52-1134, which reads in part as follows:

"Any person who is an inmate of any penal, benevolent or correctional institution of the state of Indiana, and is found to be in need of medical, surgical or hospital care which cannot be provided by the institution, may be placed in any state owned or operated hospital or other public hospital for necessary medical, surgical or hospital care on written order of the superintendent or warden of the state institution wherein said inmate is confined, provided that such inmate shall not