missioners is clearly within the definition of the term "municipal corporation" as used above. However, Agricultural Societies and 4-H Clubs are private corporations and have always been so treated by the Courts and the Legislature of this State, see Warren County Agricultural Joint Stock Co., *et al.* v. Barr (1876), 55 Ind. 30. I do not believe a private corporation such as an Agricultural Association, even though its corporate purposes be public in nature, was intended to be within the definition of a municipal corporation as used in the above-cited statute and for that reason if the Agricultural Society or 4-H Club lets the contract, the Acts of 1935, Ch. 319, *supra*, need not be complied with.

OFFICIAL OPINION NO. 30

June 18, 1956

Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Wickersham:

Your letter of June 5, 1956, has been received and reads as follows:

> "In a county a petition for the establishment of a county hospital under the provisions of Chapter 144, Acts 1917, as amended, and for the issuance of bonds was filed with the board of county commissioners. An election was held as provided under that act and the majority of voters voted in favor of establishing such county hospital.
>
> "Two questions have been presented to us, and we would appreciate your official opinion regarding same.
>
> "1. Since the majority of the voters have voted favorably on the question of establishing a county hospital, is the Board of County Commissioners bound by such vote, and is it manda-

tory for such Board to proceed with the building of such county hospital?

"2. If the Board of County Commissioners proceeds to build such county hospital, can it provide a wing to such hospital to be used as a county home for the poor?

"A copy of the petition used and a copy of the ballot are attached for your information."

It is shown by the copy of the petition attached to your letter that the petitioners request "that the Board of Commissioners of said County establish, construct, equip and maintain a county hospital, all as provided for by the laws of the State of Indiana, Ch. 144, Acts of 1917, as amended."

The Acts of 1917, Ch. 144, as found in Burns' Indiana Statutes (1950 Repl.), Section 22-3215, after providing for the required number of persons signing a petition, provides in Section 1 thereof that the petition shall be:

"* * * asking that an annual tax levy may be levied for the establishment and maintenance of a public hospital at a place in the county named therein, and shall specify in their petition the maximum amount of money proposed to be expended in the purchasing or building of such hospital, such board of county commissioners shall make an order requiring the county auditor to give notice by publication for three [3] consecutive weeks in a weekly or daily newspaper of general circulation printed and published in said county, that on a day to be named by the board at a date not earlier than thirty [30] days nor later than sixty [60] days from date of the first publication the polls will be opened at the several voting places in said county for the purpose of taking the vote of the legal voters thereof upon the question whether the proposed hospital named in the petition shall be established, and the auditor shall publish such notice as required by the order. * * *"

Said Section of the statute further provides:

"* * * If a majority of the votes cast at any such election be found to be in favor of the establishment of

> such hospital, such board of commissioners shall enter an order establishing such hospital and authorizing the purchase or building of such hospital, fixing the amount to be paid therefor and also fixing the amount of tax to be levied upon the assessed property of said county for maintenance thereof, which tax shall not exceed [2] mills on the dollar for a period of time not exceeding twenty [20] years; and may provide for the issuing of county bonds to provide funds for the purchase of a site or sites and the erection thereon of a public hospital and hospital buildings and for the support of the same. * * * "

Said statute is lengthy and detailed and, among other things, provides for the appointment of a board of trustees to manage the hospital who are to be appointed by the board of county commissioners; authorizes the establishment of a training school for nurses, a detention department for insane patients, and a tuberculosis department; provides for the organization of the board and the salaries of its members and for the manner in which the hospital funds shall be handled and reported; provides for the issuance of bonds by the board of county commissioners for the construction of the hospital which shall be limited to the amount specified in the petition; provides that physicians, nurses, attendants, the persons sick therein, and all furniture and other articles brought there shall be subject to the rules and regulations of said board of trustees; and, Section 10 of said Act, as found in Burns' Indiana Statutes (1950 Repl.), Section 22-3229, provides as follows:

> "Every hospital established under this act shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits; but every such inhabitant or person who is not an indigent shall pay to such board of hospital trustees, or such officer as it shall designate, for such county public hospital, a reasonable compensation for occupancy, nursing, care, medicine or attendants, according to the rules and regulations prescribed by said board, such hospital always being subject to such reasonable rules and regulations as said board may adopt in order to render the use of said hospital of the

> greatest benefit to the greatest number; and said board may exclude from the use of such hospital any and all inhabitants and persons who shall wilfully violate such rules and regulations. And said board may extend the privileges and use of such hospital to persons residing outside of such county, upon such terms and conditions as said board may, from time to time, by its rules and regulations prescribe."

1. In answer to your first question, I am of the opinion that under the above-quoted provision from Section 1 of said Act, *supra,* that when such a petition is properly filed with the board of county commissioners, and an election held thereon approving such project, that it is mandatory that the board of county commissioners shall enter an order establishing such hospital and authorizing the purchase or building of such hospital, fixing the amount to be paid therefor and also fixing the amount of tax to be levied upon the assessed property of said county for its maintenance, which tax shall not exceed two (2) mills on the dollar for a period of time not exceeding twenty (20) years.

2. In answer to your second question, it is clear from a reading of the various Sections of said statute that the county hospital petitioned for, and voted upon, is a county hospital for those requiring medical and surgical attention, as distinguished from a county home for the poor. This is emphasized by Section 10 of said Act, *supra,* where the quoted provisions show that indigent persons admitted to said hospital, who are sick or injured or maimed are given a separate classification as to payment for their hospital costs.

In addition to the foregoing, under Section 18 of said Act, as found in Burns' Indiana Statutes (1950 Repl.), Section 22-3237, it is stated as follows:

> "The board of hospital trustees shall have power to determine whether or not patients presented at such public hospital for treatment or surgical operations are subjects for charity, and when such fact is duly determined by said board, it is hereby made the duty of the superintendent or matron of said hospital to notify the township trustee of the township wherein said

> charity patient resided, or wherein he or she was found at the time of sickness or accident, that such person has been admitted to said hospital as a charity patient from said township, which said notice may be either written or printed. It is hereby made the duty of the township trustees, as overseers of the poor in their respective townships of the county where such hospital shall have been established to pay to the treasurer of the hospital board the cost of the hospital care of such patient or patients as may have been admitted to such hospital from their respective townships: Provided, however, That the charge for hospital care for such patient or patients shall not exceed the actual cost of the same, said cost to be estimated by the matron or superintendent, or some one selected by them, which amount so due from said township trustee shall be paid by said trustee when the same shall be certified to by the matron or superintendent of such hospital."

All of the above provisions are inconsistent with the proposition that part of the building to be erected from the sale of bonds within the financial limit specified in such petition, could be used for a county home for the poor. All the provisions of the statute indicate it is to be a medical and surgical hospital in the true sense of the meaning of the word "hospital."

In the case of Frax Realty Co. v. Kleinert (1929), 123 Misc. 455, 205 N. Y. S. 728, the Court was required to determine if a "Home for the Aged" was a "hospital" within the meaning of a zoning resolution prohibiting garages for more than five (5) cars within two hundred (200) feet of a charitable hospital. On page 729 of the opinion the Court said:

> "* * * In common usage a hospital is an institution which is maintained for the purpose of providing a place to which persons may resort for medical or surgical treatment. The inmates may be treated by physicians or surgeons employed by the Hospital, or by those of their own selection, while the incidental nursing is usually provided by the Hospital; but in any case the fundamental idea underlying the common conception of a Hospital is that of a place for medical or surgical treatment.

> "On the other hand a home for the aged is a place where persons of advanced years go to live. Such places are the usual resort of aged persons, who for one reason or another, have no homes of their own, or who have no relatives or friends able or willing to provide them with homes. The conditions of admission are usually the attainment of a certain age and the payment of a certain fee, in consideration of which the institution undertakes to provide board, lodging, attendance, clothing, and, of course, medical attention when needed, and all the other material incidents of a home. Persons do not resort to such institutions for medical or surgical treatment but to be provided with the necessities and a part of all the comforts of home. The inmates may or may not be in need of medical or surgical treatment. Need of such treatment is in no sense a condition of admission, nor is it the main purpose of such an institution to provide such treatment. This is merely the incident of providing a home."

In the case of McNichols v. City & County of Denver *ex rel.* Newton (1949), 120 Colo. 380, 209 P. (2d) 910, it was held the word "hospital" in its ordinary usage, means an institution for the medical or surgical care of the sick, the injured, or the infirm. That where electors of the city and county voting favorably on the question whether the city council should issue bonds for improving, extending, and equipping a "hospital," the city was not authorized to expend the money raised for the construction of a building to be used by the bureau of public welfare whose functions did not include any medical or surgical treatments.

The last referred to case further announced a principle of law, equally recognized in Indiana, that while a Municipality has a reasonable discretion in the use of the proceeds attained from the sale of bonds, a use for a purpose other than that authorized by the statute and the voters is not within the range of reasonable discretion.

It is my understanding that the county about which you inquire has heretofore sold its county home and is concerned as to whether the proceeds from such sale may be used for the

purpose of erecting a wing to a county hospital, which wing would be used as a county home.

In view of the foregoing, I do not think a county home, even though it be built as a wing to a county hospital, could be located on real estate purchased under the Acts of 1917, Ch. 144, *supra,* for county hospital purposes.

However, county asylums may be established under 1 R. S. 1852, Ch. 81, § 25, p. 401, as found in Burns' Indiana Statutes (1951 Repl.), Section 52-201 *et seq.* and constructed and financed under the provisions and procedures authorized in said statute.

If the county hospital building extended to the property line of the real estate on which it was located, then it might be possible for the county to purchase the adjoining real estate and erect a county home thereon under 1 R. S. 1852, Ch. 81, § 25, p. 401, *supra,* and I can find nothing which would prevent such county home from being constructed physically as a wing or addition to the hospital. However, as indicated above, the tax levies, the proceeds thereof and other funds, and the real estate must be kept separate and the administration of the county hospital and the county home must be independent and separate and under the jurisdiction and control of the persons authorized by law to administer the respective organizations.

OFFICIAL OPINION NO. 31

June 26, 1956

Mr. Curtis E. Rardin
State Auditor
238 State House
Indianapolis 4, Indiana

Dear Mr. Rardin:

This is in reply to your letter which reads in part as follows:

> "We submit to you the following question on which we respectfully request your official opinion:
>
> "Can the Warehouse Revolving Fund established by Section 36, Chapter 279, Acts of 1947,