Applying the rule used in these cases to the question raised by your letter, I am of the opinion that providing the city in question comes under Burns' 48-6518 *et seq., supra,* then and in that event a fireman who has reached his thirty-fifth [35th] birthday, but has not reached his thirty-sixth [36th] birthday when appointed to the Fire Department, is eligible to participate in the Firemen's Pension Fund.

OFFICIAL OPINION NO. 35

July 9, 1956

Colonel Herman H. Schmitz
Commandant
Indiana State Soldiers' Home
Lafayette, Indiana

Dear Colonel Schmitz:

This is to acknowledge receipt of your letter of May 2, 1956, in which you request an Official Opinion as follows:

> "The Indiana State Soldiers' Home has received a statement from the Indiana University Medical Center in the amount of $2,019.33 for medical care of Mrs. 'X' who was and still is a properly admitted member of the Indiana State Soldiers' Home.
>
> "This member was placed in the care of the I. U. Medical Center in accordance with the Acts of 1947, Chapter 300, Sec. 4, p. 1247, Burns' 52-1134, for surgery and treatment. It is our belief that the payment for the services should be the responsibility of the county auditor in accordance with the Acts of 1947, Chapter 300, Sec. 5b, p. 1217, Burns' 52-1135.
>
> "The Auditor of Posey County has indicated a refusal to pay this obligation because it is his belief that members of the Soldiers' Home are not 'committed' from the county of residence in the sense that a mental patient is 'committed' to a mental hospital or an inmate is 'committed' to one of the correctional institutions, but are voluntary applicants and are, therefore, not the responsibility of the county concerned.

> "Your official opinion is requested as to what agency, if any, is responsible for payment of medical expenses incurred under the provisions of Burns' 52-1134 if the individual has voluntarily entered a state benevolent institution and is not committed by some form of legal procedure."

The Indiana State Soldiers' Home was established by the Acts of 1923, Ch. 102, as found in Burns' Indiana Statutes (1950 Repl.), Sections 22-2201 to 22-2219. Admission to the home is covered by Section 22-2211, thus:

> "All honorably discharged soldiers, sailors, marines and nurses, who have served in the United States in any of its wars and all honorably discharged veterans who served in any of the authorized campaigns of the United States, having service connected *disabilities*, as evidenced by a pension certificate or the award of compensation, who have been residents and citizens of the state of Indiana for two [2] years immediately preceding, and who are residents at the time of application for admission to the home, and who may be *disabled* and destitute; also the wives of such *disabled* and destitute soldiers, sailors and marines, and *disabled* and destitute widows over forty-five [45] years of age, of soldiers, sailors or marines of the United States, who have been residents of the state of Indiana for two [2] years immediately preceding, and who are residents at the time of application for admission to the home, may be admitted to the Indiana State Soldiers' Home as members thereof, under such rules and regulations as may be adopted by the board of trustees: * * *." (Our emphasis)

Since the majority of the Home's residents are disabled, it is not only likely that they will require medical care but that many of them will need hospitalization at one time or another. The former is contemplated by the appointment of post surgeons authorized under Section 22-2206, *supra*, but the subject of hospitalization is covered by the Acts of 1947, Ch. 300, as found in Burns' Indiana Statutes (1951 Repl.), Section 52-1134:

> "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 be placed in a public hospital other than a state owned or operated hospital unless the daily charge for hospitalization at such public hospital shall be less than that charged by the state owned or operated hospital." (Our emphasis)

The Acts of 1947, Ch. 300, as found in Burns' Indiana Statutes (1951 Repl.), Section 52-1135 (b), *supra,* covers the costs and expenses of hospitalization of institutional inmates "placed" in hospitals and reads as follows:

> "(b) The necessary *costs and expenses* which may be incurred upon the placing of an inmate of an institution in a hospital *shall be paid out of the county general fund of the county from which such inmate was committed.* A certified and itemized statement of the cost of treatment shall be rendered to the penal, benevolent or correctional institution from which the inmate has been placed. If the superintendent or warden of said institution shall find that said certified and itemized statement of the cost of treatment be proper, *a copy of such statement, together with a copy of the order authorizing such care, shall be sent by the proper official of such institution to the auditor of the county from which the inmate was committed to the penal, benevolent or correctional institution, and the entire cost of such treatment shall be paid by the county.* No charges for medical, surgical or hospital care of inmates shall be paid out of county funds for any subsequent medical, surgical or hospital care unless a new written order is issued by the superintendent or warden of the penal, benevolent or correctional institution wherein said inmate is confined." (Our emphasis)

Your letter indicates that it is thought in some quarters that involuntary "commitment" is necessary before the county general fund is obligated to pay the costs and expenses of hospitalization of an inmate of a benevolent institution who derived from that county.

Commitment is defined legally as:

> "A warrant authorizing a person's imprisonment; a mittimus; the process by which a person is confined under the order of a court at any time before or after final sentence."
>
> Ballentine's Law Dictionary, 2nd Ed., p. 239.

If the word "committed" were strictly interpreted in Burns' 52-1135 (b), *supra,* then the only persons covered by it would be persons committed to state institutions under court order. Yet, by far the larger portion of the Acts of 1947, Ch. 300, *supra,* is concerned with the power of county departments of public welfare to "commit" indigent persons to "any public hospital in the county" and implementation of this power. Consideration of that Act, as set out in Burns' Indiana Statutes (1951 Repl.), Section 52-1131, discloses certain similarities between these provisions relating to county departments of public welfare and those relating to residents of benevolent institutions thus:

> *"The county department of public welfare* of each county in this state *is hereby empowered to commit to any public hospital* in the county or to any public hospital in an adjacent county or to any hospital operated by the trustees of Indiana University, *any person having a legal residence in such county,* who shall appear to the satisfaction of the department after examination and upon recommendation of a physician or surgeon licensed to practice medicine in this state and having the degree of doctor of medicine to be suffering from a disease, defect or deformity, which may be benefited by treatment in such hospital, *provided such person,* or anyone chargeable under the law with the responsibility of furnishing medical, surgical or hospital care for such person, *is not financially able to defray the necessary expense* of such medical, surgical and hospital

> care. Upon the filing of an application by any person requesting the county department of public welfare to furnish medical, surgical or hospital care as provided for in this act the county department of public welfare shall investigate the financial resources of such applicant, or anyone chargeable under the law with the responsibility of furnishing medical, surgical or hospital care for such applicant, and *if after such investigation, the county department of public welfare shall determine that such applicant,* or anyone chargeable under the law with the responsibility of furnishing medical, surgical and hospital care for such applicant, *are financially unable to defray the necessary expense of such medical, surgical and hospital care, the county department of public welfare may make such commitment as herein provided;* Provided, that no person shall be committed to a public hospital of a county unless the daily charge for hospitalization at such hospital shall be less than that charged at an institution operated by the trustees of Indiana University." (Our emphasis)

Analysis of Burns' Section 52-1131, *supra,* discloses that a goodly portion of it is devoted to investigation and determination of the financial resources of the applicant, which fact is predetermined upon admission to most benevolent institutions, and the Indiana State Soldiers' Home in particular. As this fact is established under the statutes relating to the individual benevolent institutions, it was unnecessary to contemplate it in Section 52-1134, *supra,* as a prerequisite to placement in a hospital by the superintendent of the institution. In case of both the applicant to the county department of public welfare and in the case of applicants for admission to the Indiana State Soldiers' Home *the initiating act is a voluntary application.* In neither case is a court obliged to pass upon it, although Section 52-1132, *supra,* gives the person affected by a decision of the county department of public welfare a right to take an appeal *de novo* to the circuit court of the county. Only if such an appeal is granted and the applicant is hospitalized as a result may it be said that the applicant is truly committed by a court order. In all other cases, commitment by the department of

public welfare is substantially the same as placement by an institutional head.

The list of charitable and benevolent institutions in Indiana is long; the persons served therein vary greatly in the matter of their needs and the manner of placement. In some cases they are "committed" by court order; in others they are simply "admitted." In some cases there is a prerequisite of destitution; in others there are provisions for partial or total contribution to support by them or other persons responsible. Some institutions have provisions for both voluntary and involuntary admissions and others are wholly of one type or the other. Despite this disparity, the Legislature grouped state benevolent institutions together in the provisions of the Acts of 1947, Ch. 300, *supra.*

Sutherland on Statutory Construction, 3rd Ed., by Horack, says in Vol. 2 on page 339:

> "The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must, if possible be read so as to conform to the spirit of the act."

Webster's New International Dictionary, 2nd Ed., p. 539, lists synonyms of "commit" as "entrust, confide, consign, relegate," saying:

> "Commit is the widest term; it may express merely the general idea of delivering into another's charge * * *, or it may have the special sense of an absolute transfer to a superior spirit."

If the Acts of 1947, Ch. 300, *supra,* used "commit" in a general sense rather than a technical one, all parts of the Act could be given effect without inquiry into the manner in which the sovereign acquired authority over the person; and it would be immaterial whether commitment to the "penal, benevolent or correctional institution" were voluntary or involuntary. Further, in the absence of a specific requirement that such

commitment be involuntary, one has no right to imply such a requirement in limitation of the express intention of the Act.

Therefore, it is my opinion that payment of costs and expenses of persons voluntarily entering a state benevolent institution is an obligation of the county in which the inmate was resident prior to delivery into the charge of the institution, as prescribed under the Acts of 1947, Ch. 300, Burns' Section 52-1135 (b), *supra.*

OFFICIAL OPINION NO. 36

August 13, 1956

Honorable William J. Davey
Insurance Commissioner
Department of Insurance
240 State House
Indianapolis, Indiana

Dear Mr. Davey:

This is in answer to your request for an Official Opinion which raises the following questions:

> "Since 1934 an Indiana corporation known as Laymen of the Church of God has been doing an insurance business in Indiana on the assessment plan. Said corporation was organized on June 26, 1934, under the Indiana non-profit Act of 1889. The attorneys for the corporation urge that this erroneous incorporation was due to information on the blanks provided by the Secretary of State to the effect that the non-profit Act of 1889 was appropriate for mutual benefit associations.
>
> * * *
>
> "The corporation desires to continue its insurance operations as in the past and wishes to make such changes as are required to make its business conform to law. The corporation proposes to re-incorporate under Acts of 1897, Ch. 195, Sec. 5, as found in Burns' Indiana Statutes, Sec. 39-425. You will note that such cited statute deals with companies doing an insurance business on the assessment plan. It is the view of the