hearings may be required and held in respect to "terms, restrictions and limitations" as provided in the Acts of 1935, Ch. 287, Secs. 7 and 12, as found in Burns' Indiana Statutes (1952 Repl.), Sections 47-1217 and 47-1222.

OFFICIAL OPINION NO. 56

December 8, 1955

B. Groesbeck, Jr., M. D., Director
Department of Health
1330 West Michigan Street
Indianapolis 7, Indiana

Dear Doctor Groesbeck:

Your letter requesting an Official Opinion on the following question has been received:

"Does the phraseology and construction of Chapter 194, Acts 1953, the same being an Act concerning the rehabilitation of alcoholics, create an autonomous commission or agency responsible only to the Governor and Division of the Budget of the State of Indiana in the conduct of its business and the administration of said Act; or is such commission, by the wording of said Act read in conjunction with Chapter 197, Acts 1953, administratively an integral part of the Division of Mental Health of the Department of Health?"

Your inquiry involves the interpretation of two separate Acts passed by the 88th Session of the General Assembly, to-wit: Acts of 1953, Ch. 194, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Section 22-4401 et seq., and Acts of 1953, Ch. 197, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-2021 et seq. Both Acts were approved March 13, 1953. Chapter 194 became effective August 18, 1953 on promulgation of the 1953 Acts, while Ch. 197, containing an emergency clause, became effective July 1, 1953.

The title of Ch. 194, supra, provides:

"AN ACT concerning alcoholics; defining the words: alcoholics and alcoholism; providing for scientific treat-
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ment and rehabilitation of alcoholics; providing means and methods for decreasing alcoholism; and appropriating funds therefor from the Alcoholic Beverage Act Enforcement Fund.”

The title of Ch. 197, supra, provides:

“AN ACT concerning public health; providing for the abolishment of certain councils and boards and the transfer of their powers, duties and appropriations to the Department of Health hereby created and prescribing its powers and defining its duties.”

The sections in Ch. 194, Acts of 1953, supra, pertinent to your inquiry include:

Section 4 of said Chapter which reads:

“A commission on alcoholism is hereby created as a part of the Division of Mental Health, which commission shall consist of five members, all citizens of Indiana, to be appointed by the governor. It shall have office space and equipment provided by the Division of Mental Health.” (Our emphasis)

Section 6 of said Chapter which reads:

“The commission shall have the power to adopt rules and regulations for its own organization and for the conduct of its business and the administration of this act, in the manner now provided by law for the adoption of rules and regulations of administrative bodies in Indiana.

“It shall employ such scientific and clerical assistants as may be approved by the governor and shall fix their compensation with the approval of the governor and the state budget committee.”

Section 7 of said Act, supra, authorizes the said Commission to perform specified duties, including (1) the keeping of an up-to-date list of public institutions where alcoholics may be committed by state courts and where treatment may be given such committed person; (2) encourage the development and advancement of standards of treatment of alcoholics; (3)
promote and encourage educational activities, and disseminate scientific facts regarding alcoholism among members of the public generally, including grade and high school pupils; (4) to establish, with the Governor's approval, clinics or departments in state institutions for diagnosis, classification, hospitalization, confinement, treatment and study of alcoholics; (5) to utilize facilities and services available through community effort.

Section 10 of said Act, supra, includes the following provisions:

"* * * and the court shall further direct that medical treatment be given the defendant as may be prescribed by the regulations of said commission. * * *"

Section 14 of said Act, supra, provides:

"The commission on alcoholism shall adopt rules and regulations establishing standards in regard to buildings, equipment, personnel, care, and treatment, to be complied with by state institutions which have been designated by the commission for the care and treatment of alcoholism."

Section 16 of said Act, supra, provides:

"This act shall not affect nor repeal any other act or law now in effect, except only to the extent that this act is irreconcilable and inconsistent therewith."

The Sections of Ch. 197 of the 1953 Acts, supra, pertinent to the question herein considered, are:

Section 103, which creates an overall Department of Health;

Section 104, which provides for a Director of that Department;

Section 106, which creates within that department three independent divisions known as (1) Division of Mental Health, (2) Division of Health and Preventive Medicine, and (3) Division of Medical Institutions;

Section 201, which provides for the organization of the Division of Mental Health. It provides for a Mental Health Commissioner, a Mental Health Council and necessary personnel;
Section 202, which prescribes the powers and duties of the Commissioner. *It makes the Commissioner the administrative head of the Division of Mental Health and charges such commissioner with the responsibility of general supervision and control of the division, to which is added the duty of directing the medical and physical care and mental rehabilitation of patients in the institution under the control of the division;*

Section 205, which provides that the Commissioner of the Division of Mental Health shall have complete administrative control and responsibility for ten (10) named state mental institutions (to which alcoholics may be committed under the provisions of the Acts of 1953, Ch. 194, supra).

Your inquiry concerns the status of the Commission on Alcoholism in relation to the Division of Mental Health; more particularly, whether or not the Commission on Alcoholism is an integral part of the Division of Mental Health or a wholly autonomous branch of the state government responsible only to the Governor and Division of the Budget of the State.

In answer to these questions, I refer to what may be considered key provisions of the two cited Acts in aid of resolving the questions you have presented. The Acts of 1953, Ch. 194, Sec. 4, supra, clearly states that the Commission on Alcoholism shall be a part of the Division of Mental Health, and further provides that the said Commission shall have office space and equipment provided by the Division of Mental Health.

These Sections together with the Acts of 1953, Ch. 194, Sec. 3, supra, which last Section recognizes an alcoholic to be a "sick person" in need of medical care, clearly indicate that the Commission on Alcoholism is an integral part of the Division of Mental Health and not a wholly independent autonomous self-governing agency of the State Government.

While it is true that the Acts of 1953, Ch. 194, Sec. 6, supra, empowers the Commission to adopt rules and regulations for its own organization and for the conduct of its business and the administration of the Act creating the Commission, yet I find no substantial difference between this situation and the position of the State Board of Health and the Stream Pollution Control Board (recognized boards within the Division of Health and Preventive Medicine) with respect to its statutory power to adopt rules and regulations. Accordingly, the rule-
making power given the Commission by a general statute applicable to all agencies of the state (Acts of 1945, Ch. 120, Secs. 1 to 15, as found in Burns' Indiana Statutes (1951 Repl.), Sections 60-1501 to 60-1511), is not a criteria which would make the Commission an independent and autonomous agency of the state.

The intent of the 88th General Assembly to dispense with independent councils and boards dealing with public health on a state level and to concentrate such health activities in the newly created Department of Health with a Director as the administrative head, is clearly shown in the title and body of the Acts of 1953, Ch. 197, supra.

The Acts of 1953, Ch. 194, supra, does not in the title or body thereof exempt the Commission on Alcoholism from the provisions of the Acts of 1953, Ch. 197, supra, but on the contrary expressly provides that the said Commission be "created as a part of the Division of Mental Health." It would appear to follow that the Commission on Alcoholism is subject to the applicable provisions of the Acts of 1953, Ch. 197, supra.

Several provisions of the Acts of 1953, Ch. 194, supra, hereinabove quoted, appear to be in conflict with the Acts of 1953, Ch. 197, supra. One of these provisions found in Sec. 10 of the Act, supra, appears to authorize a court committing to a state institution a defendant found to be an alcoholic, to direct medical treatment be given the defendant as may be prescribed by the regulations of the Alcoholic Commission. Standing alone, this Section would empower a Commission conceivably composed of laymen to prescribe the type of medical treatment to be given a committed alcoholic patient.

It is my opinion that this Section must be read in conjunction with the powers given the Commissioner of Mental Health as found in the Acts of 1953, Ch. 197, Sec. 202 and Sec. 205, supra, said later Section reading:

"The Commissioner of the Division of Mental Health shall have complete administrative control and responsibility for the following institutions." (A listing of the ten [10] state mental hospitals follows.)

In reading the Acts of 1953, Chs. 194 and 197, supra, together I must reach the inescapable conclusion that while the
Alcoholic Commission may have authority to recommend medical treatment for alcoholics committed to state mental institutions under the jurisdiction of the Commissioner of Mental Health, such recommended treatment would be subject to the approval of such Commissioner, who, according to the Acts of 1953, Ch. 197, Secs. 202 and 205, supra, has complete responsibility of the state mental institutions named in Sec. 205 of said Act.

The provisions relating to treatment of alcoholics referred to in the Acts of 1953, Ch. 194, Sec. 14, above quoted, read in conjunction with the Acts of 1953, Ch. 197, supra, would in my opinion likewise be subject to the provisions found in the Acts of 1953, Ch. 197, which prescribe the responsibilities of the Commissioner of Mental Health.

The Acts of 1953, Ch. 194, Sec. 16, supra, is not pertinent to the questions discussed herein for the reason that some of the provisions in the Acts of 1953, Chs. 194 and 197, supra, relating to treatment of alcoholics which may appear to be in conflict are not irreconcilable or inconsistent with each other. The Acts of 1953, Chs. 194 and 197, when read together, disclose the true intent of the Legislature with respect to the severable legal obligations imposed upon the Commissioner of Mental Health and the Commission on Alcoholism.

Rules of statutory construction require separate statutes dealing with the same subject-matter to be construed together to ascertain legislative intent.

Thorn et al. v. Silver et al. (1910), 174 Ind. 504, 89 N. E. 943, 92 N. E. 161;
Wilson v. Jackson Hill Coal & Coke Co. (1911), 48 Ind. App. 150, 95 N. E. 589;
State ex rel. Michener, Attorney General v. Harrison et al. (1888), 116 Ind. 300, 19 N. E. 146.

The construction of an act which is plain in itself cannot be controlled by a subsequent act.

Karr et al. v. Board of Comrs. of the County of Putnam (1908), 170 Ind. 571, 85 N. E. 1.

Statutes on the same subject, and passed at the same legislative session should be construed in pari materia and statutes
containing no emergency clauses, enacted at the same session and relating to the same subject-matter, take effect at the same time and will be construed as a part of the same system of laws.

Jackson, Administrator v. Hocke (1908), 171 Ind. 371, 84 N. E. 830;

Clark v. Board of Comrs. of Howard County et al. (1922), 78 Ind. App. 309, 135 N. E. 582;

Cummins v. Pence et al. (1910), 174 Ind. 115, 91 N. E. 529.

The Acts of 1953, Chs. 194 and 197, supra, must be construed together as parts of one body or system of law and together expressing the legislative will. These Chapters were enacted in the same day, and both relate to the subject-matter herein involved.

Such expression of the law is found in Baker v. Grange (1928), 200 Ind. 506, 509, 165 N. E. 239, which held:

"Statutes which relate to the same thing, or to the same subject, person or object are in pari materia and it is presumed that such acts are imbued with the same spirit and actuated by the same policy * * * and they should be construed together as if parts of the same act * * * to determine their effect * * *. This rule applies with peculiar force to statutes passed at the same session of the legislature * * *." (Our emphasis)

The intent of a statute is to be ascertained from an examination of all its parts, and the intent may prevail over its literal import.

Steiert v. Coulter et al. (1913), 54 Ind. App. 643, 102 N. E. 113, 113 N. E. 117;

Marion Trust Co. v. City of Indianapolis et al. (1906), 37 Ind. App. 672, 75 N. E. 834;

Stout v. Board of Comrs. of Grant County (1886), 107 Ind. 343, 8 N. E. 222.

A cardinal rule regarding the construction of all statutes of this state is:
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"* * * words and phrases will be taken in their plain or ordinary and usual sense unless a different purpose is clearly manifest by the statute itself, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import." Indiana Dept. of State Rev., Gross Income Tax Div. v. Colparert Realty (1952), 231 Ind. 463, 109 N. E. (2d) 415.

The sole provisions of the Acts of 1953, Ch. 194, supra, which relate to the Commission's direct responsibility to the Governor and State Budget Committee are found in Secs. 4, 6, 7 and 15 of said Act. None of these Sections are in conflict with Sec. 4 of said Act which creates the Commission on Alcoholism as a part of the Division of Mental Health. Accordingly, Secs. 4, 6, 7 and 15 of said Act, read in conjunction with the remaining provisions of the Act, do not have the effect of constituting the Commission on Alcoholism an autonomous body responsible solely to the Governor and the State Budget Committee.

In view of the foregoing, I am of the opinion on the question presented by your letter of inquiry:

1. The Commission on Alcoholism is, to the extent indicated in the foregoing discussion, for certain administrative purposes, an integral part of the Division of Mental Health and therefore not autonomous. For example, after alcoholics have been admitted to a state institution, their care, maintenance, treatment and rehabilitation is under the Division of Mental Health.

2. Insofar as the Commission on Alcoholism is developing a program for the care and treatment of alcoholics, including activities prior to the admission of a patient to a state institution and after his discharge therefrom, the adoption of rules and regulations concerning same and for the conduct of its business and for the administration of said Act in regard thereto, then said Commission is authorized to operate as a separate unit in the Division of Mental Health.

The opinions expressed herein are general in character due to the nature of the question asked. I cannot anticipate all of the specific factual situations which will arise involving the
relationship between the Division of Mental Health and the Commission on Alcoholism, and if you have any specific questions in regard thereto please advise.

OFFICIAL OPINION NO. 57

December 9, 1955

Mr. Wilbur Young
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Young:

Your letter of November 21, 1955 has been received and reads as follows:

"Section 4, Chapter 247, Acts of the Indiana General Assembly of 1949 refers to levying a tax levy and rate to be known as a transportation tax of ten cents on each one hundred dollars of adjusted assessed valuation for purposes of distributing funds from the state school equalization fund for transportation purposes.

"Section 2e, Chapter 303 of the Acts of the Indiana General Assembly of 1955 establishes a new transportation formula for the fiscal years of 1955-1956 and 1956-1957. On page 905 of the Acts of 1955, at the conclusion of the third full paragraph, we find the following sentence:

"'The said per capita wealth factor shall be used as the measure of local effort instead of the provisions of Section 4 of Chapter 247 of the Acts of 1949 as amended.'

"Will you please give me an official opinion on the following questions:

"Question 1: Does Section 2e, Chapter 303 of the Acts of 1955 suspend that part of Section 4, Chapter 247 of the Acts of 1949, which permits the levying of a transportation tax to the extent of making it illegal for such a transportation tax