> form does not appear essential to the judicial mind, the proceedings are held valid, though the command of the statute is disregarded or disobeyed. In these cases, by a somewhat singular use of language, the statute is said to be directory.' * * *"

It is therefore my opinion that a reasonable delay between the time an examination is given and the time the license is issued is permissible. It is possible, however, that an unreasonable delay might raise a question as to the qualifications of an applicant. A reasonable delay, however, is permissible.

OFFICIAL OPINION NO. 37

May 18, 1953.

L. E. Burney, M. D.,
State Health Commissioner,
Indiana State Board of Health,
1330 West Michigan Street,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

> "We request your official opinion as to whether the definition of 'Tourist Camp,' contained in Section 1700 of Chapter 157, Acts of 1949, includes 'motels,' thus requiring them to comply with the provisions of the act."

The statutory definition of tourist camp appears in Section 1700, Chapter 157 of the Acts of 1949 which is found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-2801 and reads as follows:

> "TOURIST CAMP DEFINED.—As used in this division, unless the content otherwise requires: 'Tourist Camp' means any plot of land used or maintained to be used by transient guests for a camping place, or where any part of such plot of land is so used. The term 'tourist camp' shall be defined to include camping

> places, whether equipped with tents, tent-houses, trailers, huts, or cottages, or whether not so equipped, and regardless of whether or not a fee is charged for its use."

The tourist camp law originated in Indiana in the Acts of 1935 of the Indiana General Assembly as Chapter 214 at page 1020. Section 1 of the 1935 Acts is in most respects the same as Section 1700 of the 1949 Acts, same being Burns' Indiana Statutes Annotated (1949 Repl.) Section 35-2801, *supra,* except that the following new matter was added:

> "as used in this division, unless the content otherwise requires:"

By reason of this, the definition is not exclusive and the whole act must be considered.

Since the tourist camp act was enacted first in 1935 and became a part of the Indiana State Health Code in 1949 without substantial change bearing on the question at hand the popular meaning at the time of this enactment in 1935 must be explored to ascertain the intent of the legislature. Fenstermacher v. Indianapolis Times Publishing Company, Inc. (1936), 102 Ind. App. 189, 1 N. E. (2d) 655. Also we must look at the whole act, the general purpose and evils to be remedied in the years 1935 and 1949 to determine the legislative intent. Indiana State Board of Medical Registration and Examiners *et al.* v. Pickard (1931), 93 Ind. App. 171, 177 N. E. 870.

At the time the 1935 Act was passed, there were numerous places in the state where so-called tourist camps existed consisting of either small cabins, cottages or camping grounds. It is readily apparent that these tourist camps were not equipped with pressured fresh water for bathing facilities or flush toilets and often problems were presented by sewage disposal, garbage storage and other sanitary facilities. It was apparently out of these conditions and hazards to health that the tourist camp act of 1935 was adopted and has since been re-enacted by the legislature. At the present time this type of tourist camp is gradually being replaced by motels and trailer parks. A motel, as the term is properly used, is a permanent structure required to comply with the building code, if any, at the place in which it is built.

It is a general rule of construction that an act is normally construed to apply to situations developing after its enactment of the same type and kind as those governed by the original act. In this regard in the case of Watson v. Brady (1933), 205 Ind. 1, 4, 185 N. E. 516, 517, it was said:

> " 'Technically a railroad is a way or road upon which iron rails are laid for wheels to run on, for the convenience of heavy loads and vehicles. * * * The term "railroad" as employed in our general legislation relates to institutions of a *quasi* public character, to highways or roads constructed by the authority of the state, with fixed metallic rails upon which public carriers may propel their carriages or cars speedily in the transportation of passengers and freight. * * * It is the mode of construction and chartered use, and not the motive power, that determines the character of a railroad, * * *. The term "railroad" is generic, and embraces all species of road constructed and chartered with the above-mentioned attributes. * * * When the act deals with a genus, and the thing which afterwards comes into existence is a species of it * * * the language * * * is generally extended to (the) new things which were not known and could not have been contemplated by the Legislature when it was passed.' McCleary v. Babcock (1907), 169 Ind. 228, 82 N. E. 453, 456. See Muskogee Electric Traction Co. v. Doering (1918), 70 Okla. 21, 172 Pac. 793, 2 A. L. R. 94."

The case of McCleary v. Babcock (1907), 169 Ind. 228, 238, 82 N. E. 453 cited in the above quote clearly reaches a similar effect.

The case of Daniels v. The State (1897), 150 Ind. 348, 354, 50 N. E. 74, contains a particularly clear and extensive study of the reasons for this rule and its gradual growth as an exception to a rule of strict construction of statutes. In that case it was pointed out:

> "The authorities which we regard as in conflict with this contention of counsel are State v. Kidd, 74 Ind. 554; Mercer v. Corbin, 117 Ind. 450, 10 Am. St. 76; State v. Buskirk, 18 Ind. App. 629; United States v. Nihols, 27 Fed. Cas. No. 15,880; United States v. Barton, 24 Fed.

Cas. No. 14,534; State v. Hays, 78 Mo. 600; Campbell v. People, 8 Wend. 636; State v. Becton, 7 Baxter 138; Graves v. Ashford, *supra;* Gambart v. Ball, 14 C. B. (N. S.) 306; Taylor v. Goodwin, 4 G. B. Div. 228; Collier v. Worth, L. R. 1, Exch. 464; Attorney General v. Saggers, 1 Price 182; Williams v. Drewe, Willes 392; In re Lloyd, 51 Kan. 501, 33 Pac. 307; Hardcastle on Statutes, *supra* (2d ed.), p. 252; Maxwell on Interpretation of Statutes (2d ed.), p. 93."

It is further interesting to note that the rationale of the case of Daniels v. The State, *supra,* requires that in order for a statute to be applicable to new situations that the language of the statute must be sufficiently broad to cover the new situation and that the new situation be in the class which was sought to be covered by the original statute.

In the case of Mercer v. Corbin (1888), 117 Ind. 450, 454, 20 N. E. 132, the Supreme Court of this state had before it a statute making it unlawful for any person to ride or drive on any sidewalk with certain exceptions. After the passage of this act, bicycles were developed. In regard to this problem the Court said:

"Sidewalks are intended for the use of pedestrians, and not for use by persons in vehicles. The manifest purpose of the statute is to preserve the sidewalks from use by persons in or on vehicles, and if a bicycle can be deemed a vehicle, then the appellant had no right to ride or drive his bicycle longitudinally along the sidewalk. If sidewalks are exclusively for the use of footmen, then bicycles, if they are vehicles, must not be ridden along them, since to affirm that sidewalks are exclusively for the use of footmen necessarily implies that they can not be travelled by vehicles. It would be a palpable contradiction to affirm that footmen have the exclusive right to use the sidewalks, and yet concede that persons not travelling as pedestrians may also rightfully use them. A person on a bicycle is certainly not a footman, and if not, then he makes an unlawful use of the sidewalk when he rides or drives his bicycle longitudinally along it. It would seem to follow that even if a bicycle can not be considered to be a

> vehicle, still it is unlawful to ride or drive it along a way set apart for the exclusive use of pedestrians. We think, however, that a bicycle must be regarded as a vehicle within the meaning of the law."

In 1936 the then Attorney General was asked whether or not the statute providing for the cutting of weeds along railway right-of-ways applied to interurban railroads and the Attorney General concluded in 1936 Ind. O. A. G. 191, 192 that it did.

The term "motel" is a coined word of comparatively recent origin and without, as yet, a precise legal meaning. Whether a particular situation comes within the statutory definition of "tourist camp" does not depend upon the name given it by the owner or the operator but it depends upon the factual situation in each particular case. A series of cottages would come within the letter definition if such series of cottages would be covered with a continuous roof. I do not believe it would take them out of the definition. It would still be a species of the row of cottages under non-connected roofs. However, if the situation deals with a single building more in the nature of a hotel and constructed so that it could not be considered as a series of cottages, I do not believe it could be considered as being within the statutory definition.

It is therefore my opinion that each situation must be determined upon its own facts and in accordance with the above considerations as to the nature of the structure, its equipment which is in question and that the name by which it may be called by the operator or owner is not the determining factor.