an amount not to exceed 3% of the total book value of the assets of the said trust funds in any one year for administrative purposes.

OFFICIAL OPINION NO. 63

July 26, 1951.

Mr. L. A. Cortner, Superintendent,
Indiana Soldiers' and Sailors' Children's Home,
Knightstown, Indiana.

Dear Sir:

I have your request for an official opinion in which you ask several questions. One of those questions is whether Chapter 253 of the Acts of 1951 supersedes Chapter 118 of the Acts of 1947 as to the maintenance of children in your institution.

Chapter 118 of the Acts of 1947 amends Section 10 of Chapter 182 of the Acts of 1933 and provides in part as follows:

> "If, at any time, upon proper investigation by the board of trustees, it shall have been ascertained, before or after accepting any child, that *the parent, parents, relatives or other authorized person charged by law with the responsibility of supporting and educating any child* which is in the care or is to be in the care of such home, has sufficient means or income to properly support and educate such child, or to contribute to the support and education of such child, the superintendent with the approval of the board of trustees may enter into a contract with such person whereby the home shall be reimbursed for the support and education of such child, according to the terms of the contract, in any amount up to one hundred (100) per cent of the average per capita cost to the home of keeping and educating each child therein. * * *" (Our emphasis.)

Chapter 253 of the Acts of 1951 carried an emergency clause and became effective March 5th, 1951, and it provides as to the scope of its coverage as follows:

> "When any person who is being supported at public expense in a *state hospital for the insane, or in the Indiana State schools for feeble-minded, or in the Indiana village for epileptics, or in any other benevolent institution maintained by the State of Indiana* then the estate of such person or the income of such person and the income, earnings, or estates of the following relatives, the husband, wife, adult children or parents of such person shall be held jointly and severally liable for a maintenance fee not to exceed ten dollars per week for the support of such person in the state institution. * * *" (Our emphasis.)

The question resolves itself as to whether the words "or in any other benevolent institution maintained by the State of Indiana" as used in the 1951 Act contemplates the Indiana Soldiers' and Sailors' Children s Home.

Generally a special act is not repealed by a subsequent general act.

> Straus Bros. Co. v. Fisher (1928), 200 Ind. 307, 316, 163 N. E. 225;
>
> Million, *et al.* v. Metropolitan, etc. Co. (1932), 95 Ind. App. 628, 637, 172 N. E. 567.

In the Straus case, *supra,* it was said:

> "* * * And it is a rule of statutory construction that a general statute, without negative words, does not repeal the particular provisions of a former statute on a special subject to which the general language of the later act, if it stood alone, might be deemed to apply, unless the two statutes are irreconcilably inconsistent. Walter v. State (1886), 105 Ind. 589, 592, 5 N. E. 735; Kingan & Co. v. Ossam (1921), 190 Ind. 554, 131 N. E. 81; Monical v. Heise (1911), 49 Ind. App. 302, 305, 94 N. E. 232. * * *"

Furthermore, the doctrine of *ejusdem generis* has been recognized in Indiana.

In the case of Sherfey v. City of Brazil (1937) 213 Ind. 493, 497, 13 N. E. (2d) 568, the Supreme Court quoted, with

approval, from the case of U. S. Cement Co. v. Cooper (1909), 172 Ind. 599, 609, 88 N. E. 69, as follows:

> " 'In the construction of statutes or written contracts the doctrine of *ejusdem generis* is applicable, not in all, but in a certain class of cases when general words are not accorded their usual and ordinary meaning, but restricted to things of the same kind, or genus, as those designated by the particular words * * *
>
> 'The office of the rule, however, like that of all other canons of construction, is to afford aid to the court in developing the true meaning of the statute, and cannot be employed to restrict the operation of an act within narrower limits than was intended by the law-makers * * *
>
> 'It is never used in an arbitrary sense, but operates as a sort of suggestion to the judicial mind that, when specific words of definite and certain meaning in a statute are deemed advisable by the framers, it may be that they intended the general words to extend only to persons or objects of the same kind or class as those embraced within the particular words, or they might not have gone to the pains of any specific enumeration. Whether the doctrine should be applied in any case depends largely upon the character and contents of the act as a whole, having due regard for that primary rule of construction that the object of a law must be sought from the entire act, including the title, and from a consideration of the evil to be remedied, the state of public sentiment existing at the time of the passage of the law, and the general purpose of the act as derived from a consideration of every section. If the general purpose of the legislation clearly appears from a study of all the parts, that purpose cannot be defeated or limited by the doctrine we are considering. * * *' "

See also: McNamara v. State (1932), 203 Ind. 596, 601, 181 N. E. 512.

It is to be noted that the specific institutions listed in the 1951 Act are all institutions for the mentally ill or the

mentally defective. The statute lists State Hospital for the Insane, Indiana State Schools for Feeble-Minded and the Indiana Village for Epileptics.

As is illustrated by the decision in Creasey v. Pyramid Coal Corporation (1945), 116 Ind. App. 124, 130, 61 N. E. 2d 477, the purpose of the general term following a list such as this is to insure the inclusion of after-created situations of the type listed. Therefore, inasmuch as the 1947 Act is limited to the Indiana Soldiers' and Sailors' Children's Home and inasmuch as the 1951 Act does not specifically mention that institution but lists instead a group of non-similar institutions, it is my opinion that your institution is not within the purview of Chapter 253 of the Acts of 1951.

You mention 1948 Opinions of the Attorney General, Official Opinion No. 7, in your letter and ask if changing circumstances would affect the answer given in that opinion concerning the non-availability of funds of the child for payment of support. Inasmuch as the 1947 Act is limited to contracts with parent, relatives or other authorized persons charged by law with the responsibility of supporting and educating any child residing in your institution, it is my opinion that nothing has happened which would make inapplicable the 1948 Opinion referred to and that any change to make the situation more equitable would require legislation.

OFFICIAL OPINION NO. 64

July 27, 1951.

Dr. D. W. Conner,
Secretary, Indiana State
Board of Registration and
Examination in Optometry,
206 Merchants Bank Building,
Terre Haute, Indiana.

Dear Sir:

The letter from your office written by Mr. Wilbur F. Pell, Jr., under date of June 15, 1951, has been received and is as follows: