could then obtain a permit to carry a pistol he would be faced with the necessity of securing possession of a pistol. When we realize that the delivery of a pistol to any person under the age of eighteen is a felony, we can readily see that the intent of the Legislature was that one under the age of eighteen years under no condition, unless he came within Section 10-4737, supra, should possess a pistol. Therefore, you would not be at liberty to issue a permit to one under the age of eighteen years. You would, however, be permitted to issue a license to one over the age of eighteen years.

You also request that I define the rights of firearms dealers in regard to the sale of pistols to people who are not twenty-one years of age. Section 10-4740, Burns, deals with the regulation of sales of pistols by any person and Sections 10-4741 and 10-4742 deal with the licenses of and sales by retail dealers of pistols and, among other things, provides:

"No pistol shall be sold in violation of any provision of this act, * * *.”

Again these sections deal with “persons” and contain no age limit. As noted above, Section 10-4747 makes it a felony to deliver a pistol to one under the age of eighteen.

It is, therefore, my opinion that firearms dealers may sell to persons over the age of eighteen years, said sales, however, to be made in accordance with the procedure set out in the statute with reference to all sellers and retail dealers.

OFFICIAL OPINION NO. 10
February 11, 1948.

Mr. Ben H. Watt,
State Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of January 26, 1948, received requesting an official opinion on the interpretation of the provisions of Chapter 276 of the Acts of 1947 and Chapter 211 of the Acts of 1927 as applied to the following questions:
"1. Can a school corporation be reimbursed for constructing a building, repairing or remodeling a building or for purchase of any equipment which will become a fixed part of any building, under the provisions of either Chapter 276 of the Acts of 1947 or Chapter 211 of the Acts of 1927?

"2. Can school corporations be reimbursed for transporting to school the children specified under these two acts?

"3. Can school corporations be reimbursed for equipment needed for the proper administering of the classes as provided by the two Acts?"

In construing any statute the primary purpose is to determine the legislative intent and courts will look to the general purposes and scope of a statute to determine such legislative intent. City of Indianapolis v. Evans (1940), 216 Ind. 555, 567; State, ex rel. Bailey v. Webb (1939), 215 Ind. 609, 612.

Chapter 211, Acts 1927.

Chapter 211 of the Acts of 1927 was construed by the Attorney General in an opinion found in 1937 Indiana O. A. G., page 410. Chapter 211 of the Acts of 1927 is Section 28-3501 to 28-3509, inclusive, Burns' 1933. It is considered advisable to set out the following part of said official opinion:

"The Act referred to constitutes sections 28-3501 to 28-3509, inclusive, of Burns' Indiana Statutes, Annotated (1933). Section 1 of said Act, which is section 28-3501 of Burns' Indiana Statutes, Annotated (1933), provides for and authorizes the organization of special classes for children who, on account of physical disability cannot be taught advantageously in the regular classes of the school corporation, whenever ten or more of any special type are found within any school corporation who will profit by a type of instruction different from that given in or afforded by the regular classes of the school corporation. Section 4 of the Act (Burns' Indiana Statutes, Annotated (1933), section 28-3504) authorizes the transportation of such children in certain cases; and sec-
tion 5 of the Act (Burns' Indiana Statutes, Annotated (1933), section 28-3505) authorizes the providing of lunches without charge to children who are enrolled in such special classes. Section 6 of the Act (Burns' Indiana Statutes, Annotated (1933), section 28-3506) provides for the reimbursement by the state of the school corporations maintaining such classes in an amount equal to three-fourths of the cost of instruction in such special classes in excess of the cost of instruction of the same number of children in the regular classes of the schools of such corporation, based upon the average daily attendance."

The only question there asked which is pertinent to this inquiry was:

"May the State Superintendent of Public Instruction reimburse school corporations for the expenditure of money as provided for in this Act for any purpose other than tuition, lunches and transportation?"

The opinion holds that reimbursement could not be made by the Superintendent of Public Instruction for expenditure of money under the 1927 Act for any other purpose than tuition, lunches and transportation. I agree with such finding except as applied to your question number 3, as hereinafter noted.

(1). Therefore, in answer to your first question I am of the opinion reimbursement could not be made under the 1927 statute for the construction, repair or remodeling of buildings, or for the purchase of fixed equipment.

(2). The question as to right of reimbursement for transportation of pupils under the 1927 Act is answered in the affirmative. In this connection it is pointed out that the transportation of pupils is specifically authorized by said Act.

(3). I do not believe the question of reimbursement for equipment was given any particular consideration in the writing of said opinion. The true test under the 1927 Act is whether or not it is "cost of instruction in such special classes in excess of the cost of instruction of the same number of children in the regular classes of the schools of such corporation, based upon the average daily attendance." Of such excess the State under the 1927 Act paid only three-fourths.
If the word "equipment" as used in your third question means such types of equipment necessary to be used in order to facilitate the giving of instruction to such children because they are physically disabled children, then in my opinion that would be cost of instruction in excess of that required to teach normal children going to school in such school corporation, and for such excess cost of such equipment reimbursement could be made in an amount equal to three-fourths of such excess.


Chapter 276 authorizes the education of "handicapped children" who are defined as those having a physical or mental disability which makes regular school room activity impractical or impossible and children having need for such educational facilities (Section 1).

Section 3 of said Act provides in part as follows:

"Any school corporation may convert, build or lease the necessary school buildings or dormitories or use existing buildings, for the purpose of establishing and maintaining classes of one or more pupils who are residents of the State of Indiana and come under the definition of handicapped children as set out in section 1 of this act. Any school corporation may provide for instruction in the home of any handicapped child who is not able to attend a special class or school for handicapped children. Nurses, therapists and doctors may be employed in connection with such classes or schools and any expenditures therefor shall be lawful expenditures for maintaining the education of handicapped children. All nurses, therapists and doctors and related specialists employed under this act shall be registered and authorized to practice under the laws of this state and shall be subject to such additional examination as the Division of Special Education may require. Any school corporation may purchase special equipment needed in a class or school for handicapped children and any expenditure therefor shall be lawful expenditures for maintaining the education of handicapped children. All such children shall receive credit
for school work accomplished on the same basis as normal children who do similar work.

"The school corporation constructing and/or operating any such school shall pay the operating expense thereof, for each pupil attending, in an amount equal to the average per capita pupil cost of educating normal children in the school corporation. Other school corporations sending handicapped children as students of such school shall pay tuition in a like amount. Any school corporation operating schools or classes for handicapped children shall at the end of each school semester send to the office of the State Superintendent of Public Instruction a certified statement of the average cost per pupil for maintaining the education of handicapped children, including pupils attending such school and residing in other school corporations, and the average cost per pupil for normal children based upon average daily attendance. The average cost for normal children shall include state aid, if any, and the state apportionment of school unit funds. The State Board of Education shall certify the amount of the excess spent for handicapped children to the auditor of state who shall reimburse each such school corporation in total excess of the cost of instruction of the same number of children in regular classes of the schools of such corporation from funds appropriated for such purposes.

"***

"Participation in costs and/or reimbursements to school corporations by the state pursuant to the provisions of this act shall be subject to any standards of requirement and rules and regulations of the state board of education adopted as provided by law. Before any type of special class, organized or to be organized under the provisions of this act, is established in any school corporation of this state, such type of special class shall be submitted to and shall be approved by the state board of education. The state board of education shall adopt and promulgate such rules and regulations as may be deemed necessary for the proper administration of this act." (Our emphasis.)
Section 5 of said Act reads as follows:

"The Division of Special Education may, with approval of the Indiana State Board of Education, upon application by the governing body of a school corporation, together with proof of need thereof, authorize school corporations of the state to purchase, convert, remodel or construct rooms or buildings for special schools for handicapped children. In making such authorization the Division shall consider the geographical location of any such previously authorized school in an effort to get such schools located near the homes of the handicapped children which it will serve.

"The school corporation shall pay the cost of purchase, conversion, remodeling and/or construction and the cost of building equipment of any such school and may finance such conversion, remodeling and/or construction as other school buildings are financed; provided, however, that all plans and contracts have been submitted to the Director of Special Education and approved by the Indiana State Board of Education before any such work is begun.

"The school corporation establishing any such school may send all its handicapped children thereto and shall admit, so long as facilities permit, any other handicapped children of the state who are eligible under this act and who are not provided with an opportunity to attend an adequate school in their own school corporation."

Section 11 of said Act provides that it shall be construed so as not to amend, alter or repeal Chapter 211 of the Acts of 1927, but shall be supplemental thereto.

It is at once apparent that while each of the foregoing Acts deal with physically disabled children and provide for reimbursement for the cost of educating such children in excess of the cost required to educate normal children, there are other provisions in the 1947 Act essentially different from the provisions of the 1927 Act.

In this connection it is pointed out the 1947 Act provides for reimbursement of the "total excess of the cost of instruction of the same number of children in regular classes of the
schools of such corporation." (Section 3.) This is very 
pertinent on the question of reimbursement for construction, 
repair and remodeling of the buildings, as the physical school 
plant, including fixed equipment, would be a requirement for 
normal children. The same is true as to transportation unless 
such children would require some special form of transporta-
tion, and in that event only the excess might be considered 
chargeable as the basis of a refund.

It is pertinent to note that under Section 3 of the statute 
in the provision regarding therapists and doctors employed 
in this connection with such classes "any expenditures there-
for shall be lawful expenditures for maintaining the education 
of handicapped children." Said section also provides that any 
"special equipment needed in a class or school for handicapped 
children" should be considered lawful expenditures for main-
taining the education of handicapped children.

From the foregoing it is clear the Legislature under the 
1947 Act intended to provide full refund for any excess cost 
of carrying on such school in excess of that necessary for 
the maintenance of a school for normal children.

I am therefore of the opinion that under the 1947 Act your 
questions should be answered as follows:

(1). I do not believe the Act contemplates any reimburse-
ment for the construction, repairing and remodeling of any 
building for such school purposes, nor would it contemplate 
reimbursement for "fixed equipment" in such building except 
such fixed equipment as is made necessary solely by virtue 
of the fact such children are physically and mentally disabled.

(2). As above indicated, reimbursement may not be made 
for transportation of children under the 1947 Act unless 
special equipment is necessary for such purposes due to the 
physical or mental condition of the children, and then only 
to the extent that such cost exceeds that of normal transporta-
tion. In this respect it is pointed out this Act makes no 
provision for transportation and provides for total reimburse-
ment for excess cost while the 1927 Act provides for only 
partial reimbursement of excess cost and makes a direct 
provision regarding requirement for transportation. It is 
therefore reasonable the Legislature believed normal trans-
portation facilities should be borne by the school corporation 
to the same extent as it pays such cost for the transportation 
of normal children.
(3). Section 3 of said Act specifically authorizes the purchase of "special equipment needed in a class or school for handicapped children" and provides that any such expenditures therefor "shall be lawful expenditures for maintaining the education of handicapped children." This would clearly authorize reimbursement for such equipment made necessary by virtue of the physical or mental disability of the children but would not include ordinary school room equipment used in a school for normal children.

OFFICIAL OPINION NO. 11
February 17, 1948.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion concerning the following question: Is it necessary that the county council appropriate annually the funds raised by tax levy for county hospital purposes?

I have searched the laws pertaining to the establishment and maintenance of county hospitals and I find no provision in such laws stating that an appropriation is necessary each year to expend the funds raised by tax levy for hospital purposes. However, there is one provision in Section 22-3228 which gives permission to make an annual appropriation not exceeding ten percent of the general fund.

Section 22-3220 of Burns' Indiana Statutes Annotated, 1947 Replacement, the same being Acts 1917, ch. 144, Sec. 3, p. 527; 1943, ch. 166, Sec. 1, p. 487; 1947, ch. 366, Sec. 1, p. 1448, in part provides as follows:

"* * * They (trustees) shall have the exclusive control of the expenditure of all moneys collected to the credit of the hospital fund, and for the purchase of site or sites, the purchase or construction of any hospital building or buildings, and the supervision, care and custody of the grounds, rooms or buildings