(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
purchased, constructed, leased or set apart for that purpose: Provided, That all moneys received for such hospital shall be deposited in the treasury of the county to the credit of the hospital fund, and paid only upon warrants drawn by the auditor of said county upon the properly authenticated vouchers of the hospital board. ***” (Our emphasis.)

The question devolves to this: Whether “exclusive control of the expenditure of all moneys collected to the credit of the hospital fund” gives permission to the trustees to expend money without an appropriation by the county council.

The laws relating to appropriation by the county council require an annual appropriation by the council in all instances other than those specifically excluded by the laws pertaining to such appropriations.

Section 26-515 of Burns' 1933, the same being Acts 1899, Chapter 154, Section 15, page 343, provides as follows:

“The power of fixing the rate of taxation for county purposes, and for all purposes where the rate not fixed by law is required to be uniform throughout the county, shall be vested exclusively in the county council; and neither the board of county commissioners, nor any county officer or officers, shall have power to fix the rate for any such purpose whatever. The power of making appropriations of money to be paid out of the county treasury shall be vested exclusively in such council, and, except, as in this act otherwise expressly provided, no money shall be drawn from such treasury but in pursuance of appropriations so made.” (Our emphasis.)

The exceptions where appropriations are not necessary annually are contained in Section 26-522 Burns' 1933, 1945 Pocket Supplement, the same being Acts 1899, Chapter 154, Section 22, page 343; 1935, Chapter 110, Sec. 1, page 407.

“Funds due and payable to the state or any township, town or city of the county from the county treasury may be paid in the manner and upon the authority prescribed by law other than this act; but except as to such funds no money shall be paid from
the county treasury otherwise than upon a warrant drawn by the county auditor. Except as to salaries of county councilmen this act shall not be construed as authorizing the auditor to draw any warrant that is not authorized by existing or other law than this act. Appropriations by the county council shall not be necessary to authorize a warrant drawn and payment made out of the county treasury in the following instances, namely:

"Of any money belonging to the state and commanded by law to be paid into the state treasury; of any money belonging to any school fund, whether principal or interest; or any money belonging to any fund of any township, town or city of the county and commanded by law to be paid to such municipality; or of any money due to any person, company or corporation which has been paid into the county treasury pursuant to assessment on persons or property of the county in territory less than that of the whole county for any public improvement or the purchase thereof, such as ditches and drains and repairs thereof, straightening water-courses, making levees and repairs thereof, or establishing and constructing highways, turnpikes, gravel or macadamized roads; of any money due to any person, company or corporation, which has been paid into the treasury to redeem from any tax or other sale; or of any money so due that has been paid in pursuant to authority of law as a tender or payment to the person, company or corporation; or taxes erroneously paid; or money which any statute expressly provides shall be paid for a purpose therein stated out of the county treasury without being first appropriated for such purpose by the county council. In all the above enumerated instances payment may be made out of the county treasury upon the authority and in the manner prescribed by law without appropriations by the county council.

"In all other instances, including all payments from any general or special fund to be used by any county or by the board of commissioners of any county in the construction, maintenance or repairs of any highways
or bridges therein, or for any purpose other than as
above stated no warrant shall be drawn upon, or money
paid out of the county treasury, unless an appropria-
tion by the county council therefor has been made, for
the calendar year in which the payment is made, and
which appropriation remains unexhausted: Provided,
however, That nothing contained in this act shall be
so construed as to apply to any funds received from
the state or the federal government for poor relief,
unemployment relief, old age pension or other funds
which may at any time be made available under 'The
Economic Security Act,' or under any other federal
act providing for civil and public works projects.”
(Our emphasis.)

It appears from the foregoing that the exclusive control of
expenditures of money by the trustees refers to that money
which has been appropriated by the county council. This
result is inescapable when the underlined provision of Section
22-3220, quoted supra, is read in conjunction with Section
26-522, last above quoted. The latter act includes the language
of the hospital act as to the matter of making payments upon
warrants drawn by the auditor.

The need for an annual appropriation becomes even more
definite in view of Section 26-524 of Burns’ Indiana Statutes
Annotated 1933, the same being Acts 1899, ch. 154, Sec. 24, p.
343; 1903, ch. 136, Sec. 1, p. 238:

“When any item of appropriation shall remain un-
expended at the end of the calendar year for which
the same was appropriated, the amount thereof shall
immediately revert to the general fund of the county,
and no warrant shall be drawn on such appropriation
after the end of such year: Provided, That in any and
all cases where any appropriation is not used and
expended during such year because of any suit that
may be instituted to restrain or enjoin the expenditure
of any money so appropriated, (then such appropria-
tion) shall not revert to the general fund of the
county until one (1) year after the termination of
such suit, if such suit shall terminate against the
party or parties instituting the same.”
It becomes apparent in view of the foregoing that an appropriation exists only for one year, and that after that time there is no available money appropriated against which warrants may be drawn by the county auditor.

This opinion does not consider the question of money left to the hospital by devise, bequest, gift or in any manner other than funds raised by tax levy for hospital purposes. It is my opinion that those funds which are raised by tax levy for hospital purposes may not be expended by the trustees of such hospital, unless there is an annual appropriation of such funds by the county council for hospital purposes.

OFFICIAL OPINION NO. 12

February 17, 1948.

State Election Board,
State House Annex,
Indianapolis 4, Indiana.

Gentlemen:

I acknowledge receipt of your letter of January 21st in which you ask my official opinion upon the following questions:

"1. Whether or not a councilman is eligible or qualified to take an oath of office after he has moved from his ward.

"2. Whether a councilman, who has moved from his ward, is eligible to serve as such councilman for such ward while living outside such ward.

"3. If the law holds that the councilman in question is ineligible to qualify and take his oath of office after he has moved from his ward, and if the law further holds that such councilman is ineligible to serve as a councilman, if not a resident of the ward from which he was elected, would the acts of such councilman, while serving in the council, be lawful and with authority; and would the acts of the council be binding on the city?

"4. If such councilman from the Third Ward shall be ineligible to take office, would the councilman in