a subsequent legislature could undoubtedly resolve that uncertainty by appropriate action. This was done by the proviso to the appropriation for the hospital.

A similar situation arose in State v. Ash (1939), 87 Pac. (2d) 270 (Ariz.), and the court said at page 273:

"It is, of course, true that the legislature may not repeal or modify general legislation in a general appropriation bill. * * * But when the meaning of the legislature in a general law is doubtful, we think its action in the appropriation bill may be considered in determining what its true meaning was in the general law. * * * ."

In any event one General Assembly could not bind a subsequent one so as to prevent amendatory, supplemental or repealing legislation.

I am, therefore, of the opinion that the trustees of the Northern Indiana Children's Hospital are empowered to make a final selection of the site.

OFFICIAL OPINION NO. 27

March 21, 1946.

Col. Austin R. Killian,
Superintendent, Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 9, 1946 which reads as follows:

"The Department of Public Safety, during the year 1936, acquired a certain area of land at Columbia City by deed free of cost. The property was provided by the Columbia City Commercial Club with the understanding that a building would be erected on the property to house State Police radio broadcasting facilities. Last fall the radio station was combined with and
moved to the State Police District Headquarters at Ligonier. The complete removal of all State Police radio equipment from the building and grounds at Columbia City is contemplated within the next few months.

"Will you kindly render an official opinion to cover the disposition of the Columbia City property at time of this Department's evacuation?"

The real estate involved in your inquiry was conveyed to the State of Indiana by the Columbia City Commercial Development Club, a corporation, on April 9, 1935. After describing the particular property conveyed, the deed contained the following clauses:

"THIS INDENTURE WITNESSETH That Columbia City Commercial Development Club, an Indiana Corporation, in and for the consideration of one dollar ($1.00) CONVEYS to The State of Indiana for the purpose of installing and maintaining a State Police Radio Station thereon and for no other purpose or use, the following described real estate in Whitley County Indiana, to-wit:

* * *

"It is expressly agreed and understood that the real consideration for this conveyance is the erection and maintenance of a State Police Radio Station on the real estate conveyed and for no other purpose and consideration and it is therefore agreed that should The State of Indiana abandon or remove or cease to use said real estate for said purpose, then and in that event, the real estate shall revert to the grantor and the grantor shall have the right to take immediate, full and complete possession thereof."

It seems clear upon the face of the instrument that the intention of the grantor was to convey a title to the grantee so long as the property was used for the purposes specified. In determining the exact estate conveyed to the grantee, it is the intention of the parties which will control rather than
the use of any specific language. In Mendenhall v. First New Church, etc. (1911), 177 Ind. 336, the court said at page 342:

"* * * The character of a written instrument is to be determined from the real nature of the transaction, and not from the form nor the name which the parties apply to the instrument. * * *"

In that case, an instrument had been written which was designated as a lease to certain properties for church and Sunday school purposes "for and during the time they may occupy and use it as a church and Sunday school." Notwithstanding the use of the word "lease", the estate created was adjudged by the court to be a qualified or a determinable fee, defined as follows:

"* * * An estate which may revert upon the happening of some contingency, but which, on the other hand, may endure forever, is a qualified or determinable fee. * * *"

In Fall Creek School Township v. Schuman (1913), 55 Ind. App. 232, lands were conveyed to the trustees of a school township "so long as the same is used for school purposes." After having been devoted to school purposes for sixty years, the school was abandoned. It was there held that a determinable fee was created and that upon the abandonment of the school, the estate of the township terminated ipso facto.

Whether the estate is a determinable fee or one upon condition subsequent is difficult to determine. The result in this particular case would make little difference except that an estate upon condition subsequent requires an overt act by the grantor in order to vest the title. As stated in 4 Thompson, Real Property, page 699:

"* * * It is sometimes difficult to determine whether the words used are words of condition, making the estate voidable, or words of limitation, making the estate cease to exist. If the words inserted are for the benefit of the grantor, giving him the power, on default of performance, to destroy the estate if he will, and vest the estate in himself or his heirs, the words are words of condition; but if the words
used are conclusive of the time of continuance and of the extent of the estate granted, the words are words of limitation. * * *

It appears to me that the particular interpretation of the language of this deed is that there was no intention to create an estate upon condition subsequent despite the language in the last clause of the limitation in the deed, but rather it was the intention to grant a fee simple estate upon a definite limitation, to-wit, upon failure to use for the specific purpose, the title would immediately revert to the grantor or its successor.

"* * * Thus, where land is conveyed for educational, religious, or public purposes, and it appears to be the intention of the parties that the estate shall end when it ceases to be used for such purpose, entry by the grantor is not necessary to terminate the estate."

4 Thompson, Real Property, page 703.

I do not find that such a limitation in Indiana violates either the rule against perpetuities even though applicable here (see Chapter 216, p. 983, Acts of 1945), or that against restraints on alienation (now repealed—see Section 6, Chapter 216, supra). Generally, the rule against perpetuities does not invalidate a right of reverter or a right of re-entry for breach of condition subsequent.

4 Thompson, Real Property, page 627;
Note 70, A.L.R. 1196;
Note 113, A.L.R. 1476.

And in Indiana there was no restraint upon alienation so long as at all times there were living parties who had united the entire right of ownership, and could convey the same.


I am therefore of the opinion that upon the abandonment of the use for which the property was conveyed, it immediately reverts to the grantor.