former opinions of the Attorney General of this state to collect them in one opinion and to set forth the present rules which govern in this state as best we can determine them, with the view of giving a basis for uniformity over the state. This will also give the General Assembly a further opportunity to change or amend the present statutes if it is not in harmony with this construction and the administrative practice.

STATE BOARD OF TAX COMMISSIONERS: Taxation. Whether private hospitals—Homes owned and operated by private individuals, corporations, etc., for the care of the aged, and non-profit organizations engaged in raising hybrid seed corn, are exempt from taxation.

July 19, 1944.

Opinion No. 66

Hon. Charles H. Bedwell, Chairman
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated June 29th, 1944, which reads as follows, to-wit:

> "We would appreciate the receipt of an official opinion concerning the rights to be exempt from taxation of the following described organizations, to-wit:
>
> "1. Private hospitals that are organized and operated and owned by private individuals or religious organizations where all profits derived from the operation of a hospital are used for hospital purposes. If such organizations are exempt from taxation as far as the hospital is concerned, would such exemption apply to nurses' homes or nurses' training schools that are owned and operated in connection with the hospital.
>
> "2. Homes that are owned and maintained by private individuals, corporations or church organizations for the care of the aged where fees are charged the inmates, but where the net profits, if any, are used in the maintenance of the home.

"3. A non-profit corporation, known as the Purdue Agricultural Alumni Association, Inc., is organized under the provisions of the act approved March 7, 1935 concerning domestic and foreign corporations not for profit. The purpose of the corporation is stated to be the 'purpose of promoting educational and recreational activities and such other activities as may contribute to the welfare of Indiana agriculture.' The corporation owns buildings and has acquired 250 acres of real estate where it carries on experiments for the development of hybrid seed corn which it sells to farmers. The members of the corporation do not receive any pecuniary benefits from the corporation, but are paid compensation for services that are rendered. To what extent, if at all, is the real and personal property of such corporation exempt from taxation."

The answer to each of your questions must be found in the language of the Indiana Constitution, or an applicable statute.

Section 1 of Article 10 of the Indiana Constitution reads as follows, to-wit:

> "The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, *excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.*" (Our emphasis.)

It is firmly established by the decisions of the Supreme Court of Indiana that this constitutional section is not self-executing, and that there must be legislation enacted by the General Assembly granting exemption to one of the classes mentioned in said section of the Constitution in order to entitle property to be claimed exempt from taxation.

> Stark v. Kreyling, 207 Ind. 128 on 132 and 133;
> Martin v. Loula, 208 Ind. 346.

In compliance with the provisions of Section 1 of Article 10 of the Constitution, the Legislature of Indiana has enacted

the following statutes, Burns' 1943 Replacement, Volume 11, Section 64-201, which reads in part as follows:

> "The following property shall be exempt from taxation:
>
> "* * *
>
> "Fifth. Every building, or part thereof, used and set apart for educational, literary, scientific, religious or charitable purposes by any institution or by any individual or individuals, association or incorporation, provided the same is owned and actually occupied by the institution, individual, association or incorporation using it for such purpose or purposes, and every building owned and occupied, used and set apart for educational, literary, scientific, fraternal or charitable purposes by any town, township, city or county, and the tract of land on which such building is situate, including the campus and athletic grounds of any educational institution not exceeding fifty (50) acres; also the lands purchased with the bona fide intention of erecting buildings for such use thereon, not exceeding forty (40) acres; also the personal property endowment funds, and interest thereon, belonging to any such institution or any town, township, city or county and connected with, used or set apart for any of the purposes aforesaid."

Section 64-201a reads as follows:

> "In case any institution, organization, corporation or body designated in this act shall have heretofore acquired, or shall hereafter acquire, any real estate or improvements thereon in foreclosure proceedings, under present mortgage obligations or in settlement and/or payment of present obligations and/or indebtedness due the same, such real estate or improvements shall be exempt from taxation, if owned by such corporation, until March 1, 1944, but from and after March 1, 1944, shall be subject to taxation, unless otherwise exempted from taxation under section one (Sec. 64-201) of this act."

Section 64-203 reads as follows:

> "If all or any part, parcel or portion of any tract or lot of land or any buildings or personal property enumerated in the preceding section as exempt from taxation shall be used or occupied for any other purpose or purposes than those recited in said section by reason whereof they are exempted from taxation, such property, part, parcel or portion shall be subject to taxation so long as the same shall not be set apart or used exclusively for some one of the purposes specified in said enumeration."

Section 64-213 to 64-215, being Chapter 294, Acts 1937, provides how exemption from taxation of any property included in clause five of Section 64-201, *supra,* may be obtained. However, neither of the above sections specifically grants exemptions from taxation, but only apply to the method and procedure for obtaining such exemptions by the owner of the property involved.

It is firmly established by the decisions of the Supreme and Appellate Courts of Indiana that the statutes relating to exemption from taxation must be strictly construed in favor of taxation.

> Barr v. Geary, 82 Ind. App. 5 on 32;
> La Fontaine etc. v. Eviston, 71 Ind. App. 445;
> City of Indianapolis v. Grand Master etc., 25 Ind. 518 on 521.

Furthermore, it is well settled by the Indiana decisions that a statute which purports to grant exemption from taxation for any purpose other than that authorized by Section 1 of Article 10 of the Indiana Constitution is unconstitutional, null and void.

> Deniston v. Terry, 141 Ind. 677, 678 and 682;
> Harn v. Woodard, 151 Ind. 132;
> State Board Tax Commissoners v. Holliday, 150 Ind. 236;
> Oak Hill Cemetery v. Wells, 38 Ind. App. 479.

1. Applying the above principles to your first question, I have been unable to find any statute in Indiana which

specifically exempts private hospitals that are organized and operated and owned by private individuals or religious organizations, where all proceeds derived from the operation of the hospital are used for hospital purposes, from taxation. Therefore, in order for such a hospital to be entitled to claim exemption from taxation it is necessary that it qualify and establish itself as a charitable institution under the language contained in Section 1 of Article 10 of the Indiana Constitution, and Clause Fifth of Section 64-201, *supra*. The question as to whether such a hospital is a charitable institution is one of fact and must be determined from the facts in each particular instance where exemption is claimed. For this reason no general statement can be made which will apply and govern in all cases.

With reference to nurses' homes or nurses' training schools that are owned and operated in connection with any such hospitals described in your first question, being exempt from taxation, it is my opinion that the answer depends upon whether or not the hospital in connection with which the nurses' home or training school is owned and operated is a charitable institution or a non-charitable institution within the meaning of the law. The law upon this subject is well stated by the Supreme Court of Ohio in the case of Aultman Hospital Ass'n. v. Evatt, 140 Ohio State 114, 42 N.E. (2d) 646. In this case the court says:

> "This cause comes into this court on an appeal from the Board of Tax Appeals. That board held that real estate used as a home for student nurses was not used exclusively for public charity and was not exempt from taxation.
>
> "The Aultman Hospital Association, appellant, maintains that under the undisputed facts the nurses home is exempt as a matter of law.
>
> "Section 5353, General Code, provides in part that 'property belonging to institutions used exclusively for charitable purposes, shall be exempt from taxation.'
>
> "The Aultman Hospital Association, organized in 1891, is a corporation not for profit. Practically since organization it has owned and operated the Aultman Hospital at Canton, Ohio. It is open to the public and receives patients without discrimination. *A charge is*

made to those who are able to pay and those who are not are taken in free of charge. (Our emphasis.)

"In 1940 out of a little over 39,000 patient-days, about one-sixth consisted of charity cases. Revenues have never met expenses. Funds for support come from payments by patients, the Community Fund and contributions by public spirited donors. Under such circumstances the hospital must be deemed to be a charitable institution and its hospital property used exclusively for charitable purposes. * * *.

"The property used as a nurses home is about two blocks or so from the hospital proper and was purchased in 1941 because it had then become impossible to rent quarters for student nurses in that section of the city. * * *

"The hospital association receives no income from this property and the student nurses pay no room-rent or board. When a candidate for student nurse is admitted to the hospital she pays the hospital association the sum of $150, which covers equipment, uniform and books. * * *.

"* * *.

"It is a matter of common knowledge that in many hospitals nurses and student nurses sleep in the hospital building. It can hardly be said that for this reason the hospital ceases to be used exclusively for charitable purposes. If facilities for the housing of student nurses are not available in the hospital itself provision may be made for them outside *and, where property is acquired for that specific purpose and used as the newly acquired property was in the instant case, it becomes incidental to and a necessary part of the hospital institution itself. The student nurses were engaged in the work of caring for patients which, the evidence shows, was essential in carrying on the hospital work.*

*"In our judgment the nurses home, like the hospital itself, is within the meaning of the statute, 'property * * * used exclusively for charitable purposes.' and therefore exempt from taxation."* (Our emphasis.)

See also St. Vincent Hospital v. Stine, 195, Ind. 350, for definition of a charitable hospital.

Therefore, it is my opinion that if the hospital in connection with which the nurses' home or nurses' training school is owned and operated, qualifies as a charitable institution, it is exempt from taxation, and also the nurses' home or nurses' training school is likewise exempt from taxation under the provisions of Section 1 of Article 10 of the Indiana Constitution, and Clause Fifth of Section 64-201, *supra.*

The foregoing is in answer to your specific question and does not pass upon the question as to whether or not, under certain circumstances, a nurses' training school might not be exempt from taxation under Section 1, Article 10, of the Constitution, and Clause Fifth of Section 64-201, as an educational institution.

2. Referring to your second question, it is my opinion that the same rule applies with reference to homes that are operated and maintained by private individuals, corporations or church organizations, for the care of the aged, where fees are charged the inmates, but where the net proceeds, if any, are used in the maintenance of the home, as applies to your first question. If the home, or institution, referred to in your second question, qualifies as a charitable institution, it is exempt; otherwise, it is subject to taxation: and again, as with reference to your first question, the question as to whether or not a particular home is taxable or is exempt from taxation, is one of fact which must be determined from the particular facts and circumstances in each instance wherein exemption may be claimed.

It is well settled that such institutions may qualify as charitable institutions and in support of this statement, and for a statement of the rule as to what constitutes a charitable institution, I call your attention to the law as stated by both the Supreme and Appellate Courts of Indiana in the following cases, to-wit:

Barr v. Geary, 82 Ind. App. 5 on page 28;
Board v. Dinwiddie, 139 Ind. 128;
St. Vincent Hospital v. Stine, 195 Ind. 350.

In addition to the above authorities, I call your attention to Volume II Restatement of the Law of Trusts, pages 1140-

1169, Sections 338 to 377 inclusive, defining the nature of charitable purposes. These purposes are stated as follows:

"Charitable purposes include

(a) the relief of poverty;
(b) the advancement of education;
(c) the advancement of religion;
(d) the promotion of health;
(e) governmental or municipal purposes;
(f) other purposes the accomplishment of which is beneficial to the community."

For a full discussion of each of the above purposes, see the Restatement of the Law of Trusts, *supra.*

3. Referring to your third question, I beg to advise that, as I understand the facts, the non-profit corporation known as the Purdue Agricultural Alumni Association, Incorporated, is a private corporation organized under the laws of the state of Indiana and the corporation is in no manner affiliated with or connected with Purdue University or any other agricultural or educational college or institution; that the stock holders and officers of the Purdue Agricultural Alumni Association, Incorporated, are graduates of Purdue University and are engaged in the business of operating a farm upon which hybrid corn is grown for the purpose of selling the same as seed to the farmers throughout the state of Indiana. That experiments are made for the purpose of improving the particular species of hybrid seed corn produced on such farm, but that in the final analysis the corporation is engaged in the business of raising and selling hybrid seed corn. Under such circumstances it is my opinion that there is no statute in Indiana which grants exemption from taxation to the property, both real and personal, owned and operated by the Purdue Agricultural Alumni Association, Incorporated, and that it does not come within any of the classes mentioned in Section 1 of Article 10 of the Indiana Constitution, and for these reasons such property is subject to taxation.

It may, however, be contended that this institution comes within the class designated as scientific under the provisions of Section 1 of Article 10 of the Indiana Constitution and Clause Fifth of Section 64-201, and therefore, entitled to exemption from taxation. In such event it is my opinion

that the law, as declared by the Supreme Court of Massachusetts, in the case of Board of Assessors v. Garland School of Home Making (1937), 296 Mass. 378, 6 N. E. (2d) 374 on pages 380 and 381, is applicable, and in order to be entitled to exemption the corporation must meet the qualifications and requirements stated by the Supreme Court of Massachusetts in the following words, to-wit:

> "The answer to the question 'whether the institution is in its character literary, benevolent, charitable or scientific within the meaning of those words in the statutes' 'will depend upon the language of its charter or articles of association, constitution and by-laws and upon the objects which it serves and the method of its administration' * * *, that is, 'upon its purposes declared and the work done.' * * *.
>
> "The only corporations falling within the class described by the words quoted are corporations which are 'charitable' in the broad sense in which that word is used in the law relating to public charities. * * *. The words descriptive of exempt institutions are to be construed together. The word 'benevolent' used in connection with the word 'charitable' is synonymous therewith. * * *. And these words are not restricted to relief of the poor or sick, but, subject to the limitation above stated, bring institutions of a general charitable nature within the scope of the exemption. * * *. While the words 'literary' and 'scientific' show that the exemption given by the statute is not restricted to institutions having the narrow charitable purpose of relief of the poor or sick, they are to be interpreted, like the word 'benevolent,' in the light of their use in connection with the word 'charitable' and do not extend the exemption to literary or scientific institutions which are not in the nature of public charities. *This interpretation is in accord with the underlying reason of the exemption, that it is given in return for the performance of functions which benefit the public.* * * *." (Our emphasis.)

Applying this test and principle of law to the facts which I have assumed to be true, with reference to the corporation

mentioned in your third question, it is my opinion that such a corporation would not be exempt from taxation as a scientific institution under the language contained in Section 1 of Article 10 of the Indiana Constitution and in Clause Fifth of Section 64-201.

In connection with this opinion I call your attention to the official opinion which I issued to you this date (July 19, 1944), in answer to your letter, upon the question of the property of the Elks Lodge and other fraternal organizations being subject to taxation. In this opinion I made an exhaustive review of the authorities bearing upon the subject of exemption from taxation, and to the numerous official opinions which have heretofore been issued by the Attorneys General of the state of Indiana, and what is said in that opinion and the authorities therein reviewed should be considered in connection with what is said in this opinion.

INDIANA STATE TEACHERS' RETIREMENT FUND: TEACHERS' CONTRACTS—Local school corporations may not enact rules regarding approval or cancellation of teachers' contracts continued in effect by Chapter 130, Acts 1941.

July, 25, 1944.

Opinion No. 67

Hon. Robert B. Hougham, Executive Secretary
Indiana State Teachers' Retirement Fund Board,
334 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of July 16, 1944 has been received as follows:

> "The question has arisen as to the legality of the practice of certain school corporations in the passage of a rule setting a date prior to which teacher contracts must be signed, after the legal dismissal date as provided by law.
>
> "The Indiana State Teachers' Retirement Fund desires your opinion as to whether or not this practice is