"The position of the Department with reference to the service of its officers or employees upon school boards is set forth in Section 39 of the Postal Laws and Regulations. Briefly stated, they are permitted to serve on school boards, either with or without compensation, when appointed to such boards, and when their service as members of such boards will not involve them in any way in political activities or political campaigns. In no circumstances are they permitted to hold elective office on school boards."

STATE BOARD OF TAX COMMISSIONERS: Taxation—Exemptions of Fraternal Organizations and Hospitals.

July 19, 1944.

Opinion No. 65

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

Dear Sir:

This will acknowledge receipt of your letter of June 22nd in which you request an opinion upon the following questions:

"1. Is the real and personal property of the Elks Lodge exempt from taxation, and if so, to what extent, and if exempt what particular statute grants the exemption.

"2. To what extent, if at all, is the property of other lodges and fraternal organizations, such as Masons, Odd Fellow, Knights of Columbus, K. of P. exempt from taxation.

"3. What are the requirements that would entitle a lodge to qualify as a 'fraternal, beneficiary association' under the provisions of clause 11 of Section 1, of Chapter 262 of the Acts of 1937, (Burns' R. S. 1943, Sec. 64-201).

"4. Under the provisions of Sec. 3 of Chapter 4 (294) of the Acts of 1937 (Burns' R. S. 1943, Sec. 64-
215), certain property owners are not required to file annually a claim for exemption, and among the property holders mention is 'hospital or any municipal corporation or political sub-division of the State of Indiana'. Does the word 'hospital', as so used in such Section, apply to hospitals generally, or does it only apply to hospitals that are owned by the State of Indiana."

Section 1 of Article 10 of the Constitution of Indiana provides as follows:

"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."

Acting under this constitutional provision, the General Assembly has from time to time enacted laws granting exemptions from taxation in certain instances. The pertinent statutes upon this question now in force are Section 64-201, Burns' R. S. 1933 1943 Replacement, clauses 5 and 11, which are as follows:

"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.

"* * *

"Eleventh. All the personal property of any fraternal beneficiary association, incorporated, organized or licensed under the laws of this state, and all the real estate of any such association, except that real estate or part thereof not actually occupied and used exclusively by such association in carrying out the purposes for which it was incorporated, organized or licensed." (Acts 1919 as last amended in 1937.)

Section 64-203, Burns' R. S. 1933, 1943 Replacement, which is 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." (Acts 1919.)

Section 64-213, Burns' R. S. 1933, 1943 Replacement provides that on or before the first day of March each year, "any person, corporation, fraternal society, or the agent of any such person, corporation or fraternal society, which shall own, operate or otherwise manage any real estate or tangible personal property," the whole or any part of which is believed to be exempt, may file certain prescribed statements with the auditor applying to have such property exempt from taxation. Sections 2 and 3 of this act are more specifically referred to in our answer to your fourth question.

It has been held that a statute exempting property from taxation must be within those classes authorized by the above quoted provisions of the constitution.

State ex rel Morgan v. Workingmen's Building and Loan Fund and Savings Assn., 152 Ind. 278, 280;
Answering your third question first, it is my opinion that the words "fraternal beneficiary association, incorporated, organized or licensed under the laws of this state," in the eleventh clause of Section 64-201, supra, refers to an association incorporated or organized under the laws of the state relating to fraternal beneficiary associations, which laws expressly define such a fraternal beneficiary association. The statutes referred to originally appeared as Sections 39-2301 to 39-2344 (Acts 1915, Ch. 91, p. 257). This act was superseded in 1935 by Chapter 162, Sections 181 to 208, both inclusive (Burns' R. S. 1933, 1943 Replacement, Sections 39-4401, et seq.), to which reference is made.

For definitions of fraternal, beneficial, or societies see the following cases:

Gay v. Woodmen of the World, 102 S.E. 195, 179 N.C. 210;
Huffman v. Brotherhood of R. R. Trainmen, 259 N.W. 663, 65 N.D. 446;
Yeomen of America v. Rott, 140 S.E. 1018, 145 Ky. 604;
In Re Mason Tire & Rubber Co., 11 Fed. (2d) 556;

In answer to your fourth question, this section and the act of which it is a part does not grant exemptions, but by Section 1 provides a method of claiming exemption for property which is exempted under the law by filing annual application therefor. Section 2 of the act makes it the duty of the assessor and auditor to enter all property and extend the taxes thereon except where exemptions are granted as provided in the act. Section 3 then excludes from the provisions of the act certain property as follows:

"There shall be excluded from the provisions of this act any property which is owned by the state of Indiana, or by the government of the United States, or by a church, school corporation, state accredited
school, state accredited charitable institution, university, college, university or college fraternity or sorority, hospital or any municipal corporation or political subdivision of the state of Indiana, and both occupied by such institutions and used for such purposes; and all annuities payable by religious or charitable organizations, or by educational institutions located in this state, to any person or persons who have made gifts, bequests or devises to any such organization or institution and which shall have been offered and accepted prior to the passage of this act.”

Sections 64-213 to 64-215, both inclusive, Burns’ R. S. 1933, 1943 Replacement.

To construe this section to mean that the taxing officials were not to enter the property of hospitals generally on their books and duplicates would have the effect of giving exemption to hospitals generally, including private hospitals for profit, and would to that extent be unconstitutional under the authorities, supra.

The question of the exemptions of hospitals is covered by another opinion given this date in answer to your inquiry of June 29th, to which reference is made. It is there pointed out that a construction which leaves the statute constitutional should be adopted. It is therefore my opinion that neither of the suggested constructions in your fourth question should be followed, but the term “hospital” should be construed to relate to those hospitals which are exempt from taxation by some statutory provision, such as those owned by the United States, the State, its political subdivisions, or which are charitable institutions.

Your first and second questions may be considered together. Similar questions have received the consideration of courts of other jurisdiction on numerous occasions; however, such decisions are not entirely in accord. Many of them may be distinguished or reconciled upon differences in the language of the respective constitutional or statutory provisions of the particular state. Most of the decisions upon this question limit themselves to a discussion as to whether such an organization as the Elks Lodge, Masonic Order, Odd Fellows, Knights of Pythias and similar organizations, are charitable institutions within the meaning of the language of the par-
ticular constitutional or statutory provisions in question. A number of such decisions appear to turn upon or be largely influenced by the fact that some word such as "purely," "solely," or "exclusively," is made to modify the word "charitable" in the statute or constitutional provision in question. For example in Pennsylvania a Masonic organization was held to be a charitable organization, the court saying, "The appellee clearly is a charity." But exemption was denied in that case because it was not a purely public one under the language of their statute.


In Maine their rule required that it must be a "public charity" and the court held that since in the Masonic Order in question acts of charity were largely confined to members, it was not a public charity. This is not the rule in Indiana under a decision hereinafter referred to.

Regardless of such distinction, it appears that the weight of authority is that such orders and organizations as those referred to are charitable institutions or organizations. In Volume 5 of Ruling Case Law at page 373 it is stated in connection with Masonic organizations that the weight of authority is that they are charitable institutions. In the case of Horton v. Colorado Springs Masonic Building Society, 64 Colo. 529, 173 P. 61, it was held that a Masonic Temple was "exempt from taxation under a statute exempting buildings used for charitable purposes" and it was pointed out at page 547 of the opinion in that case that the decisions from such states as Pennsylvania, Maine, Ohio and Minnesota could be distinguished as being under a statute or constitutional provision providing that it must be a purely public charity. To the same effect as the Horton case see Commissioners v. San Luis Valley Masonic Association, 80 Colo. 183.

In the case of Savannah v. Solomon's Lodge, No. 1 F. & A. M., 53 Ga. 93, a Masonic lodge was held to be a charitable institution under a statute exempting "any house belonging to any charitable institution." In the case of State ex rel Cragor Co. v. Doss, Tax Assessor, (Fla.) 1942, 8 So. (2d) 15, the court held property of the Knights of Pythias and Odd Fellows exempt from taxation under a constitutional provision and statute similar to those of Indiana. In the case of
Grand Lodge v. Board of Review, 281 Ill. 480, a Masonic home on 200 acres of land was held within the provisions of a statute providing "all property of institutions of public charity * * * when such property is actually and exclusively used for such charitable or beneficial purposes" to be exempt. The above case was followed in the case of People ex rel Morse v. Grand Lodge, Independent Order of Vikings, 354 Ill. 447.

In the case of Morrow, Treas. v. Smith, Executor, 145 Iowa 514, the court discusses the decisions from various states and concludes at page 524:

"** * * But the weight of authority, such as it is, is with the proposition that a lodge, such as the devisee in this case, is a charitable institution, but it is not purely or exclusively such, and is not a public charity. As such charitable institution in the broader sense, exemption has been granted to it in other jurisdictions where the statute did not confine the exemption to purely public charities. * * *

"** * * Inasmuch as the Legislature did not see fit to restrict the term 'charitable institutions,' we would not be justified in placing such restriction upon it unless such restriction inheres in the legal meaning of the term, or unless such construction be necessary to harmonize this provision with other provisions of the statute, or to save its validity for constitutional or other reasons. This provision as it is conflicts with no other. It is neither inconsistent nor unreasonable. We are constrained, therefore, to hold that the defendant in its relation to this devise is a 'charitable institution' within the meaning of this section. If this interpretation is not in accord with the legislative intent, it is better that such legislative intent be hereafter expressed by appropriate amendment than that we should assume to amend the statute by a strained construction."

In the case of Ancient and Accepted Scottish Rite v. Board of County Commissioners, 122 Neb. 586, the court said at page 592:

"** * * Masonry falls entirely, without exception, within the three categories of charity, educational
purpose, and religious purpose. It has no other function or purpose and does no other work.' Further, that the statements thus made 'may be fully verified in every particular by reference to a large body of masonic literature available to any one who is interested in studying it, open to everybody, representing the best masonic thought for centuries back in time.'

"It further appears that these results are accomplished by and through the teachings of its rituals as employed in the conferring of its degrees, and in the transaction of its business, as well as by its literature."

The court then discusses the decisions from numerous states and concludes, at page 604, as follows:

"It follows that it fairly appearing from the evidence that the ownership as well as the primary and dominant use to which the Temple was devoted, at and for a number of years prior to the assessment of the taxes in suit, were exclusively for educational, religious, and charitable purposes, and that it was not owned or used for financial gain or profit to either owner or user, the district court erred in denying the claim for exemption."

Coming to the authorities in Indiana, we find that our Supreme Court as early as 1865 held in the case of City of Indianapolis v. The Grand Master, etc., 25 Ind. 518, that the Masonic order was a charitable institution. The court said, at page 522:

"The third paragraph of the answer presents the question whether that is a charitable institution, in the sense of the statute, which confines its benefactions to those who have become members of the Masonic order, having paid the fees commonly required for that purpose? We think that this question must be answered in the affirmative. It is not essential to charity that it shall be universal. That an institution limits the dispensation of its blessings to one sex, or to the inhabitants of a particular city or district, or to the membership of a particular religious or secular organization, does not, we think, deprive it either in legal or
popular apprehension of the character of a charitable institution. If that only be charity which relieves human want, without discriminating amongst those who need relief, then indeed it is a rarer virtue than has been supposed. And if one organization may confine itself to a sex, or church, or city, why not to a given confraternity? So narrow a definition of charity as the third paragraph presupposes is not, that we are aware of, ever attached to it, and we are not at liberty to circumscribe the effect of the statute, and defeat its intention, by affixing to its terms an unusually limited meaning."

On December 24, 1897 the then Attorney General, William A. Ketcham, gave the following opinion to the Auditor of State:

"In the matter of the Odd Fellows' Lodge of Sullivan, Indiana, I have to say that only that portion of the building used for lodge purposes exclusively, being, as I am informed, the second story of the building, should be exempted from taxation. The personal property of the lodge used in the lodge room would also be exempt."

Our investigation indicates that for a long period of time it has been the general, accepted practice in this state to exempt the property of such organizations from taxation under the construction of language in statutes similar to the present existing statute, where the property was used for the purposes of the organization. In other words, the taxing authorities have followed the opinion of the Attorney General above quoted and the decision in 25 Ind., and this long continued practice, particularly in view of the acquiescence of the legislature therein by failure to specifically exclude them from this construction of the exemption, is entitled to serious weight.

In the recent case of County Department v. Scott's Estate, 55 N.E. (2d) 337, our Appellate Court said:

"Pursuant to an opinion of the Attorney General of the State of Indiana rendered on the 28th day of October, 1936 (Opinions of Attorney General of Indiana, 1936, p. 395), to the effect that the County Depart-
ments of Public Welfare should collect the amounts paid as old age pensions after the passage of the 1936 Act, they have since continued to do so, and the amounts so collected have been equally divided between them and the State Department of Public Welfare. The opinion of the Attorney General is not controlling, yet the practical construction given to legislation by the public officers of the state and acted upon by those interested and by the people is influential, Zoercher v. Indiana Associated Telephone Corp., 1937, 211 Ind. 447, 7 N.E. 2d 282, particularly where the legislature, by inaction continuing through several sessions, has indicated satisfaction with that construction. Hindman et al. v. State, Ind. Sup. 1943, 50 N.E. 2d 913; 50 Am. Jur. Statutes, §326, p. 318. * * *.”

See also:

Groher, Treas. v. Colgate-Palmolive-Peet Co., 94 Ind. App. 234, 245;
Zoercher v. Indiana Associated Telephone Corp., 211 Ind. 447, 456.

It is therefore my opinion that such organizations, orders and institutions as the Elks, Masons, Odd Fellows and Knights of Pythias should in this state be construed to be charitable institutions or associations. For a full discussion of the tests for determining if an institution is charitable see St. Vincents Hospital v. Stine, 195 Ind. 350, and authorities there cited. However, in view of the fact that various lodges or orders of the above mentioned may be different with different articles of incorporation or association, by-laws and purposes, each particular case must stand upon its own facts and circumstances, as there might well be some branch or order of some of such associations or institutions where its articles of organization, by-laws and purposes might not qualify it to come within the definition of a charitable institution.

In connection with this question see also the following authorities:

State ex rel. Bretel v. Board of Assessors, 34 La. Ann. 574, (Masons);
Masonic Education & Charity Trust v. Boston, 201 Mass. 320, (Masons);
State ex rel. Hibernian Society v. Addison, Sheriff, 2 S.C. 499, (Masons);
Cumberland Lodge v. Nashville, 127 Tenn. 248; (Masons);
Salt Lake Lodge, B. P. O. E. v. Groesbeck, 40 Utah 1, (Elks);
In Re Masonic Temple Society, 90 W. Va. 441, (Masons);
Newark v. State Bd. of Taxes and Assessments (N. J.), 155 Atl. 9, (Masons);
People ex rel. Masonic Hall & Asylum Fund v. Farrell, et al., 223 N. Y. Supp. 660, (Masons);
Dakota Lodge No. 1, I. O. O. F. v. Yankton County, 56 S. D. 234, (Odd Fellows);

In your letter you also refer to the Knights of Columbus, which we have not mentioned above as it is expressly mentioned and included in those exempted in the ninth clause of Section 64-201, Burns’ R. S. 1933, 1943 Replacement.

The fact that such organizations or a particular organization in question is a charitable institution or association does not necessarily mean that its property or at least all of its property is exempt from taxation. As shown by clause 5 of Section 64-201, supra, the exemption is limited to the building or part thereof which “is owned and actually occupied” by the institution or association “using it for such purpose or purposes.” It is also expressly provided by Section 64-203, supra, that if any part or portion of the property is used or occupied for any purpose or purposes other than those by reason of which they are exempted from taxation, that such part, parcel or portion shall be subject to taxes. It was pointed out in the City of Indianapolis case in 25 Ind., supra, that the use of the building by lessees for theaters, concerts and mercantile purposes, is not a use by the owners for charitable purposes. In the opinion of Attorney General Ketcham referred to above it was pointed out that only that portion of the building used for lodge purposes exclusively, together with the personal property of the lodge used in the lodge room,
would be exempt. This same rule has been applied to other institutions within the exemptions in the constitutional and statutory provisions.

In the case of LaFontaine Lodge No. 42, I. O. O. F. v. Evison, Auditor, 71 Ind. App. 445, it was held that real estate owned by an Odd Fellows Lodge, the rents and profit of which went into a fund for the care of a cemetery owned and operated by the lodge in which the lots were sold without regard to fraternal connections, was not exempt as being devoted to charitable purposes.

In the case of Barr, Trustee v. Geary, Auditor, 82 Ind. App. 5, the court concluded that the memorial home and the three acres on which it was located were used and set apart for charitable purposes, but the balance of the 2,800 acre farm on which there were eight tenant houses and the income from which was to be used part in payment of annuities, part to an individual during her lifetime and the rest to the maintenance of the home was not exempt.

The question of the use to which the property is put has been considered in a number of prior opinions by the Attorneys General of this state, of which we refer you to the following:

O.A.G., February 5, 1918, p. 493;
O.A.G., February 5, 1921, p. 438;
O.A.G., July 28, 1930, p. 612;
O.A.G., July 26, 1934, p. 364;

Several of the above opinions contain very full and complete discussions and reference is made thereto. Said opinions lay down the following general principles and tests:

It is its property used for the purposes named in the constitution and statutes of this state that entitles an educational, literary, scientific, religious or charitable institution to tax exemption. Each situation must be determined upon its facts and circumstances. Property of such an institution which is rented for some other use or purpose is not exempt from taxation even though the rent received is so used and applied.

In view of the fact that we have had a number of inquiries on the subject-matter of your letter, or involving the same statute and constitutional provisions, we have in this opinion gone rather fully into the decisions of the courts and the
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."