LIEUTENANT GOVERNOR: Interpretation of Chapter 279 of the Acts of 1943 with specific reference to the duties of the committee provided for by said act in determining the need of a Northern Indiana Children's Hospital.

November 22, 1943.

Hon. Charles M. Dawson,
Lieutenant-Governor,
State House,
Indianapolis, Indiana:

Dear Lieut.-Gov. Dawson:

This will acknowledge receipt of your letter dated November 12th, 1943, which reads as follows:

“Pursuant to the provisions of Chapter 279 of the Acts of 1943 which provides for the appointment of a committee to study and make recommendations as to the need of a Northern Indiana Children’s Hospital, the committee has been appointed by the Speaker of the House and myself, as President of the Senate.

“Inasmuch as there seems to be some error in the wording of Section II of the Act, I will appreciate it very much if you will furnish me with a written opinion as to the interpretation of this Section.”

Section 2 of Chapter 279, Acts 1943, page 785, as it appears in the published volumes of the 1943 Acts, reads in part as follows:

“Section 2. Immediately after the taking effect of this act the president of the senate and the speaker of the house of representatives of the State General Assembly shall each appoint four members of their respective bodies to form a legislative committee, and not more than two of the members from each house shall be members of the same political party. Such legislative committee shall be and it is hereby authorized and empowered to recommend a suitable site in any county in northern Indiana upon which to study and investigate the feasibility and necessity for such a hospital and if found feasible and necessary by such committee to recommend the establishment and con-
struction of the same and build, construct and equip such hospital, or recommend a site with a building already constructed thereon suitable for such a hospital. In the selection of such site the committee shall take into consideration the healthfulness and natural advantages, convenience as to transportation, and all such other matters and things as appeal to the judgment of such committee with reference to the requirements of such hospital and the general adaptability of such site to such purposes. A report on the location of site selected shall be made to the government by said committee at the convening of the next regular session of the General Assembly, and thereafter the committee shall cease to exist. Members of said committee shall be reimbursed for all traveling and other expenses necessarily incurred in the proper performance of their duties, which claims shall be filed with the auditor of the state in the manner prescribed by law, and upon approval of said auditor, shall be paid out of such funds hereafter appropriated for the benefit of said hospital.”

It readily appears that the italicized language appearing in Section 2 as contained in the published volume of the 1943 Acts is vague, indefinite, ambiguous and, if construed literally, results in an absurdity and defeats the purpose of the Legislature in providing for the appointment of a committee to select a site for the hospital sought to be established by the provisions of Chapter 279.

It is well settled that in construing the language of an act and to ascertain the intention of the Legislature in enacting the law, it is proper to consider both the title and the body of the act.

State ex rel. v. Markey, 212 Ind. 59;
Steiert v. Coulter, 54 Ind. App. 643 on 652.

Referring to the title of Chapter 279, Acts 1943, we find that it reads as follows:

“AN ACT establishing a hospital in the state of Indiana for the care and treatment of crippled children, including children afflicted with infantile paralysis;
providing for the appointment of a committee to choose a site; providing for the appointment of a board of trustees with power to acquire the site so selected, either by purchase, donation or otherwise, including the exercise of the right of eminent domain; prescribing the powers, duties and qualifications of such board; authorizing the appointment of a superintendent and fixing his qualifications and authority; and making appropriations for the establishment and maintenance of such hospital."

Section 1 of the Act provides for the establishment and maintenance of a state hospital to be known and designated as "The Northern Indiana Children's Hospital," for the care and treatment and rehabilitation of crippled children and children afflicted with infantile paralysis, whose condition may be relieved or improved by proper medical or surgical attention.

Section 2 reads as heretofore set forth.

Section 3 reads in part as follows:

"Upon the filing with the governor of said report by the legislative committee recommending the establishment of any such hospital and the selection and location of such site for the hospital, the governor shall appoint a board of trustees of said hospital * * * ."

Section 4 provides for acquiring the necessary ground upon which the hospital may be erected.

Section 5 provides for procuring plans, specifications, construction, equipment, advertising for bids and awarding of the contracts for the construction and erection of such hospital.

Section 6 provides for the appointment of a superintendent and his qualifications.

Section 7 defines the powers, rights and duties of the board of trustees, the officers and superintendent of the hospital.

Section 9 appropriates the necessary funds for selecting such hospital and reads in part as follows:

"For the purpose of verifying the necessity and need of this hospital, there is hereby appropriated the sum
of three thousand dollars to cover any necessary expenses incurred by the committee, appointed for the selection of the necessary site of such hospital, * * *.”

It is apparent from the reading of the italicized language contained in Section 2, Chapter 279, of the published Acts of 1943, that some inadvertence, mistake or typographical error has been committed in the printing of this section of Chapter 279. I have examined the original bill designated as Senate Bill 62, which became Chapter 279, which is now on file in the office of the director of the Legislative Bureau. An examination of the original Senate Bill 62 discloses that while the bill was pending before the Legislature it was amended upon motion. The amendment was originally interlined in said Section 2 and the place for the insertion of the amendment was designated by a caret, and if the amendment had been printed in the published Acts of 1943, as interlined in the original bill, said Section 2 would read in part as follows:

“Such legislative committee shall be and it is hereby authorized and empowered to study and investigate the feasibility and necessity for such a hospital and if found feasible and necessary by such committee to recommend a suitable site in any county in northern Indiana upon which to recommend the establishment and construction of the same and build, construct and equip such hospital, or recommend a site with a building already constructed thereon suitable for such a hospital. * * *.”

As above quoted, the language and all the words and phrases contained in said Section 2, aforesaid, would be clear, definite, unambiguous, sensible, and fully state the purpose and intention of the Legislature in enacting Section 2. Under such circumstances it is my opinion that the law as declared by the Supreme Court of Indiana in the case of Kos v. State ex rel. Metzler, 218 Ind. 115, is applicable in construing and interpreting the language contained in Section 2 of Chapter 279. On page 120 of 218 Indiana, Judge Fansler, speaking for the court, uses the following language, to-wit:

“* * * Some inadvertence, or mistake, or typographical error is suggested. The enrolled act, with
the words 'in excess' in the proper place, is clear and intelligible, and the reason for the use of the words, which are so confusing and seemingly unnecessary in the printed act, becomes plain and logical. * * * *"

"* * * *

"When the legislative intention in the first instance is plain and clear, and consistent with ordinary rational conceptions, and it is established that by typographical error its intention was not correctly reported in the published Acts, and where it is so obvious that there is no room for disagreement among reasonable men that the wording of the re-enactments followed the published act, rather than the original language of the enrolled act, only because of inadvertence or mistake, courts are not required to perpetuate the error and ascribe to the Legislature an intention which it obviously never had. From a consideration of the entire act, its purposes, and its legislative history, we conclude that the clause in the re-enactments was intended to express the identical legislative intention indicated in the original enactment. State ex rel. Devening v. Bartholomew (1911), 176 Ind. 182, 191, 95 N. E. 417, 420, and cases cited."

Again the rule is stated by the Supreme Court of Indiana in the case of Seiler v. State ex rel., 160 Ind. 605 on 623, as follows:

"While it may be said that the grammatical construction of a statute is one of the methods of interpretation, still it is not always the true mode, and must yield to the manifest intention of the legislature, as the grammatical sense and structure of the sentences, and propriety of language therein employed, will not be adhered to if inconsistent with the declared purpose, or if to do so would render the law inconsistent or absurd. State v. Myers, 146 Ind. 36, 23 Am. & Eng. Ency. Law, 368."

Applying the above rule of interpretation to the language of Section 2 of Chapter 279, Acts 1943, it is my opinion that said section must be construed to read in part as follows:
"Such legislative committee shall be and it is hereby authorized and empowered to study and investigate the feasibility and necessity for such hospital and if found feasible and necessary by such committee to recommend a suitable site in any county in northern Indiana upon which to recommend the establishment and construction of the same and build, construct and equip such hospital, or recommend a site with a building already constructed thereon suitable for such a hospital. * * *.”

Furthermore, in view of the clear, concise and definite language contained in the first sentence of Section 3 of said Act, to the effect that:

"Upon the filing with the governor of said report by the legislative committee * * *.",

it is my opinion that the language contained in Section 2 requiring a report on the location of a site selected to be made to the “government” must be construed as a typographical error and that the word “governor” should be substituted in lieu of the word “government”, so that said language would read as follows:

"* * * A report on the location of site selected shall be made to the governor by said committee at the convening of the next regular session of the General Assembly, and thereafter the committee shall cease to exist. * * *.”

Considering all of the provisions contained in the various sections of Chapter 279, as well as the title of the Act, it is my opinion that Section 2 should be construed as I have heretofore indicated, so that the benevolent purpose and intentions of the Legislature in attempting to create a hospital for crippled children may not be defeated, but be given full force and effect. It is my opinion that the authorities heretofore cited and quoted in this opinion fully justify and sustain the interpretation which I have placed upon the language of said Section 2 of Chapter 279, Acts 1943.