of a corporation as fixed by its Articles of Incorporation, which must not be impaired but which must be safely invested, and to remain as a fund for the security of the policy holders. The Oregon Supreme Court held that such capital did not include surplus or profit. The foregoing case was followed and applied in the decision of *American Life & Accident Insurance Company v. Ferguson, State Insurance Commissioner* (Ore., 1931), 134 Pac. 1031.

In the present instance the factual situation is the reverse of that dealt with in *Union Pacific Life Insurance Company v. Ferguson, supra,* due to the proviso of the subscription contract which has been reproduced above and which indicates that the first $10.00 paid in on each share shall be credited to capital and all succeeding payments shall be credited to surplus. This proviso is proper. It is in accordance with the purpose of Section 74 of the Indiana Insurance Code of 1935, and with the decisions cited herein. But this proviso further indicates that what is paid as a premium is surplus and cannot be used as paid-in capital within the meaning of the statute.

DEPARTMENT OF PUBLIC WELFARE: Right of State Department to permit temporary admission of non-resident insane persons to a State Hospital for the Insane.

July 31, 1941.

Mr. T. A. Gottschalk, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Gottschalk:

I have your request for an official opinion construing Section 22-1501 Burns' Indiana Statutes, 1933, being Section 1, Chapter 56, Acts 1917, page 142, as amended by Section 1, Chapter 55, Acts 1923, page 169, and asking specifically if the State Department of Public Welfare may permit non-residents to be received into one of our mental hospitals temporarily until such person is deported to his place of legal settlement, or to the institution where he belongs.

The section in question is as follows:

> "Settlement required—Exception—Non-resident insane may be admitted—Escaped inmates from other

states.—Insane, feeble-minded and epileptic persons having legal settlement in the State of Indiana shall be entitled to care in a hospital for insane maintained by the state, the Indiana School for Feeble-minded Youth (Fort Wayne State School) or the Indiana Village for Epileptics when committed thereto in the manner provided by law; and any person having legal settlement in any county in the state of Indiana who is poor and in need of relief shall be entitled to care in an asylum for the poor maintained by such county when committed thereto in the manner provided by law; and legal settlement shall be acquired by such insane, feeble-minded, epileptic or poor person in the same manner as is provided for the relief and support of poor persons under Section 5 (Sec. 52-105), chapter 147, of the Acts of 1901: Provided, That the board of state charities may authorize non-residents to be received into the institutions named in this section in cases where the legal settlement can not be ascertained or where the peculiar circumstances of the case constitute, in the judgment of said board, a sufficient reason for the suspension of this rule: Provided further, That whenever it is brought to the attention of the board of state charities that any insane, epileptic, feeble-minded or poor person found in this state is an escaped inmate from an institution in another state, said board may deport such person without application for admission having first been made to an institution in this state. (Acts 1917, ch. 56, Sec. 1, p. 142; 1923, Ch. 55, Sec. 1, p. 169.)

22-1501 Burns' Ind. Stat. 1933.

Insane persons are ordinarily committed to our state hospitals by a formal proceeding in a circuit or superior court. This commitment is the authority which permits the superintendent of a state hospital to accept such patient (Acts 1927, ch. 69; Burns' Ind. Stat. 1933, sec. 22-1201 *et seq.*). These sections relating to commitment only apply to persons having a legal settlement in this state. Courts may be reluctant, if not actually adverse, to commit an insane non-resident to a state hospital, even if the State Department of Public Welfare consents to the admission of such person, for such committal involves a certain expense to the county and increases the number of patients from that county, and may, by such increase, prevent a resident of

the county, having a legal settlement, from being admitted to the hospital, if the quota assigned to the county has been taken up by the inclusion of such non-resident, and other quotas are also filled.

In granting certain powers to the board of state charities in the section above quoted, the legislature evidently intended that a person who has no legal settlement in the state may be admitted to a state insane hospital if the peculiar circumstances of the case would justify the admission, but such person was to be deported as soon as arrangements could be made to that effect. If a committal were necessary in every instance and the court refused to act, even for temporary care, the purpose of a suspension of the rule would be defeated. Furthermore, the care of non-resident insane persons by local officials, awaiting court action adjudicating insanity and subsequent acceptance by the state hospital, has been not only the cause of considerable friction, but proper care could not be given in the county farm or jail, and the non-resident would have no friends or relatives to alleviate his situation. It is clear to me that the State Department of Public Welfare is authorized to grant temporary care in non-resident cases if the circumstances are sufficient to justify the department to waive the regular procedure, such care to be only temporary, until the legal settlement of the patient may be ascertained, and, when ascertained, steps are to be taken to deport the patient to his home, or to an institution, if entitled to be returned thereto.

I am of the opinion that Section 22-1501 Burns' Ind. Stat. 1933 should be construed to authorize the State Department of Public Welfare to waive the regular procedure of commitment in cases of non-resident insane where the peculiar circumstances would justify such action and authorize such non-resident to be received into the proper state institution. However, it is important that the State Department should be *fully satisfied* that:

(a) Such person was insane or otherwise mentally unbalanced.

(b) That he was a non-resident.

(c) That his condition was such as to justify the suspension of or waiver of the regular procedure.

I am furthermore of the opinion that if there were the slightest doubt as to the insanity of such person, he should not be placed in a state hospital for the insane without a committal by a court.