employ a librarian and such assistants as may be needed in the care and preservation of the property belonging to such library, and to fix and pay the salaries of the librarian and the necessary assistants and other necessary employees."

The authority to pay salaries given so expressly in the language above quoted necessarily excludes any authority to make other provision for such employees by way of retirement pension funds or annuities and further legislation would be required, in my opinion, to authorize the use of public funds for such purposes.

DEPARTMENT OF PUBLIC WELFARE: Construction of Chap. 47, Acts of 1939, limiting expenditures of appropriations for benevolent institutions for the year beginning July 1, 1940. Under Chapter 47, Acts of 1939, when does excess per capita appropriations become available?

October 24, 1940.

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

Dear Mr. Gottschalk:

I have your letter of October 23, 1940, in which you ask a construction of Chapter 47 of the Acts of 1939, which is one of the appropriation acts passed by the last legislature and your inquiry deals especially with the provisions of Section 8 and Section 10 of that act so far as the same applies to the maintenance of the state benevolent institutions and the inmates thereof. These sections are as follows:

"That the Department of Treasury is hereby authorized to allow such bank service charges in the handling of the gasoline tax refund account and the State Highway Commission revolving fund, as in their judgment may be equitable. Such charges to be paid from the fund thus affected.

"Not more than one-half of the appropriation for the fiscal year ending June 30, 1941, for personal service
or other operating expenses and equipment, may be spent during the calendar year 1940.

“Wherever in this act, provision is made for excess per capita appropriation and the same is earned by an institution as provided in this act, the amount so earned shall be credited to the excess per capita account of such institution and can only be available for personal service, all other operating expense and material, when the regular appropriation for any or all of the above funds are exhausted and can only be used to reimburse any or all of the above funds in the same ratio that the exhausted fund bears to the total amount of the regular appropriations for the fiscal year for personal service, all other operating expense and material.”

The appropriations made for these institutions by the legislature at its last session were made for the fiscal year beginning July 1, 1939 and the fiscal year beginning July 1, 1940 and in providing for the expenses of these institutions such as the State Soldier's Home, an appropriation was made for personal services and also an appropriation for all other operating expenses and the appropriation was made for these items for each of the fiscal years. In addition to the main appropriation which is based upon a daily average of four hundred and fifty inmates each month, the legislature in order to care for all of the inmates of that institution during the portion of the year in which the inmates might exceed the base number, provided that there should be an excess per capita appropriation in the sum of $400.00 per annum for the inmates of that institution over and above the base number and computed upon the daily average number of inmates in that institution each month. It is further provided in this act that the excess amount is to be approved by the Department of Public Welfare.

It will be noted that the legislature provided a limitation upon the expenditures for the benevolent institutions in the fiscal year 1940-1941 which would not apply to the expenditure for the fiscal year of 1939-1940, in that the legislature provided that not more than one-half of the appropriation for the fiscal year ending June 30, 1941 may be expended during
the calendar year 1940. Because of this distinction made by the legislature between the two fiscal years, the provisions of Section 8 and 10 will have to be construed according to the intent of the legislature for the appropriations and expenditures in each of said years.

There are certain provisions with regard to the construction of statutes which should govern us in determining the meaning and limitations of these two statutes. It has been held that:

"Courts must give effect to the intent of the legislature, and, in seeking such intent will look to the act as a whole, as well as to each and every part thereof, to its title, its general purpose, and the evils or mischiefs it was enacted to remedy, and that words and phrases of a statute will be taken in their plain, ordinary and usual sense unless a contrary purpose is clearly manifest."

Smith, Trustee, v. State, 202 Ind. 185-191; Woodring v. McCaslin, 182 Ind. 134-139.

"Possibly the most important purpose of the construction of all the parts of a statute together and with reference to one another, is that of giving, by means of such comparison, a sensible and intelligent effect to each, without permitting any one to nullify any other, and to harmonize every detailed portion of the statute, with the general purpose or particular design which the whole is intended to subserve."

Woodring v. McCaslin, 182 Ind. 134-139.

"In ascertaining the legislative intent in an enactment, the statute should be so construed as to prevent absurdity or injustice."


The intent of the legislature is plain that all the inmates of the institutions above mentioned should be cared for in any
case and that if the base appropriation was not large enough then the excess appropriation should be used. The excess appropriation is modified and governed by the limitations in the latter part of Section 8 just as much as the base appropriation is so limited. When one-half of the base appropriation for the first half of the fiscal year ending June 30, 1941 has been exhausted, then the balance of the base appropriation for the fiscal year ending June 30, 1941 could not be used but the excess per capita appropriation would then come into effect, and, in the example suggested as to the Soldier’s Home, one-half of the $400.00 per annum excess per capita, to-wit, $200.00, would be available for that institution for that period to be added to the base appropriation which had been so exhausted during the first six months’ period, but could only be used “in the same ratio that the exhausted fund bears to the total amount of the regular appropriations” for one-half of the fiscal year for the appropriation in question. If the part of the appropriation that was exhausted during the first six months of the fiscal year 1941 was operating expense, then so much of the one-half of the excess per capita appropriation could be used as determined by the proportion that the operating expense bore to the total appropriation for that institution for that period. This construction would be a limitation as provided by Section 8 of this chapter and also make it possible to care for all of the inmates in this institution and would be the only logical construction of the limitation so provided by the legislature.

While the appropriation for the State Soldier’s Home was used as an example, the same construction would apply to each of the institutions, depending upon the base appropriation, the excess per capita appropriation and the particular fund that was exhausted and within the ratio of that particular fund to the entire base appropriation for the six months’ period. In each case the excess per capita appropriation or that part of it that is needed for a particular item must be first approved by the State Department of Public Welfare before it may be used.