INSURANCE, DEPARTMENT OF: Whether fraternal benefit associations have power to pay benefits to members for hospitalization and nursing service.

January 30, 1939.

Hon. George H. Newbauer,
Insurance Commissioner,
State of Indiana,
State House,
Indianapolis, Indiana.

Honorable Sir:

I have before me your letter of the 25th inst. in which you request my opinion as to the ability of fraternal benefit associations to pay benefits to its membership for hospitalization and nursing service.

You further request an opinion as to the validity of payments that would be made under such a provision direct to the hospital or nurse rendering such service.

Ordinarily a fraternal beneficiary society is a mutual benefit society as such societies are understood in the law.

"In the absence of statutory regulations, they may be organized for any legitimate purpose, the selection of the particular objects for which the association is established and the determination of the means by which those purposes shall be accomplished are peculiarly matters to be decided by the association alone." 19 Ruling Case Law p. 1180.

It is presumed, however, from the statements made in your letter that the subject association is a corporation subject to the provisions of the Indiana Insurance Law of 1935. It is elementary that a corporation of any kind can have and exercise only those powers vested in it by its charter.

As was said by our Supreme Court in National Colored Aid Society v. State, ex rel. Wilson, 208 Ind. p. 380, at page 393 of the opinion:

"It is a familiar rule of law that a corporation can do only what is expressly or impliedly authorized by its charter. A corporation being a mere creature of the law possesses only those properties which the charter confers upon it expressly, or as incidental to its exist-
ence. It can make no contracts and do no acts except such as are authorized by its charter. Those acts must be done by its officers and agents and in such manner as the charter or governing statutes authorizes."

If, then, the subject association is incorporated subject to the provisions of the Indiana Insurance Law of 1935, its powers and privileges must be found within the provisions of that Act. It can not have or enjoy any power or authority not conferred by that Act unless incidental to power and authority actually conferred or vested in said corporation by that Act.

Section 59 of the Indiana Insurance Law of 1935 enumerates the various kinds and types of insurance that may be written thereunder. Section 61 of said Act, however, specifically excepts reciprocal, mutual, fraternal and assessment insurance from its provisions. The language employed is as follows:

"Any number of natural persons, not less than seven, of lawful age, at least a majority of whom are residents of the State of Indiana, and citizens of the United States, may form a corporation under the provisions of this Act for the purpose of making any kind or kinds of insurance described in any one class set out in Section 59, of this Act, other than reciprocal, farm mutual, fraternal and assessment insurance, by complying with the provisions of Sections 62 to 78 inclusive, of this Act." Section 61, Indiana Insurance Law, 1935.

The rights, powers and privileges of such a society must accordingly be found in that portion of the Act specifically relating to the creating and supervising of the same. This is Article 10 under the general heading, "Fraternal Benefit Associations," being Sections 151 to 208, both inclusive, of said Act.

The latter (Article X, supra), is not specific as to the kinds and types of insurance that may be written by such societies unless Section 185-a thereof may be so construed. This section provides in substance that such societies shall provide for the payment of benefits upon the death of its members and may provide for benefits payable upon its members reaching sixty years of age and also for the payment of benefits in case of
total and permanent disability, temporary disability, for memorial and funeral expenses.

There is no specific mention made for the payment of benefits to members to cover hospitalization and nursing service. If such risks are within the purview of the Act it must be that they are covered and included by the language employed herein to wit: "Benefits for partial and temporary disability."

There seems to be no broad general definitions of the word disability as used in insurance policies. Such definitions as have been given by our courts are made in each instance to depend upon the particular insurance policy involved in each case, the risks insured against, and the relationship of the insured to the insurer. It is generally accepted, however, that the word disability means physical incapacity to do or discharge the duties of one's usual occupation, business or avocation. It may be a permanent disability, a temporary disability, a total permanent disability or partial permanent disability. In all such cases the benefits to be paid to the insured are conditioned upon the existence of the disability in some one of the forms above stated. The disability must, moreover, have been created through illness, accident, or other cause stipulated in the policy.

In the instant case there can be no contention that hospitalization or nursing service is a benefit to be paid on account of death, funeral services, old age, or for a monument or marker. So that by elimination your question must be limited to disability as said term is used in said Section 185-a.

It must be borne in mind, moreover, that insurance covering disability in any of its forms is paid for the disability itself and not for any expenses that may have been incurred by the insured by reason of such disability.

In the light of the foregoing it would seem self-evident that Article X of the Indiana Insurance Law does not contemplate the payment of hospitalization and nursing service to its members as benefits.

This is strengthened by the absence of any requirements in certificates to be filed with the Insurance Department or in annual reports filed with your department of any information, statistics, or statements, from which the Insurance Department would be able to ascertain the sufficiency of the reserve of such nursing service to its members.

Your first question is accordingly answered in the negative. Your second question requires no answer in view of the answer to your first question.