OPINION 9

OFFICIAL OPINION NO. 9

April 19, 1974

Honorable Richard B. Wathen
Indiana State Representative
Citizens Bank Building
Jeffersonville, Indiana 47130

William T. Paynter, M.D.
Indiana State Health Commissioner
425 Board of Health Building
1330 West Michigan Street
Indianapolis, Indiana 46206

Dear Representative Wathen and Doctor Paynter:

This is in response to your identical requests for my official opinion on the following question:

> "Is a county general hospital, supported in whole or in part by tax funds, mandated under Indiana Code of 1971, Section 35-1-58.5, to make its facilities available on demand for 'pregnancy terminations'?"

ANALYSIS

The Indiana Code of 1971, Section 35-1-58.5-2 [Acts 1973, Public Law No. 322], declares that abortion ("pregnancy termination") is a criminal act in all instances except when performed under specific circumstances.

Among the circumstances pertinent to your question specified by this law are the following: During the first trimester of pregnancy, the abortion may be performed by a physician in a hospital or licensed health facility only, if all other requirements are met. The Indiana Code of 1971, Section 35-1-58.5-2(a) provides that abortion is a criminal act except when it is performed:

> "During the first trimester of pregancy for reasons based upon the professional, medical judgment of the pregnant woman's physician provided:

> "(1) It is performed by such physician in a hospital, or a licensed health facility as defined in IC 1971, 16-10-2 which offers the basic safeguards as provided by a hospital admission, and has immediate hospital back-up; . . ."

After the first trimester, whether before or after viability of the fetus, the abortion may be performed only in a hospital, if all other requirements are met. [Indiana Code of 1971, Sections 35-1-58.5-2(b)(2) and 35-1-58.5-2(c)(1)]. The above quoted and cited statutory language sets out Indiana's regulatory standards for the performance of abortions ("pregnancy terminations"). These sections govern the times, conditions, and medical procedures under and by which an abortion may be performed. In all other instances, the statute declares that abortion is a criminal act. The quoted and cited sections, then, remove the negative directive of the criminal proscription not to do a specified act, in this case, abortion, except at specified times, conditions, and by type of medical procedure. The statute does *not* replace the negative directive with an affirmative duty to act.

IC 1971, Section 35-1-58.5-8 further provides:

> "a) No physician, and no employee or member of the staff of a hospital or other facility in which an abortion may be performed, shall be required to perform any abortion or to assist or participate in the medical procedures resulting in or intended to result in an abortion, if such person objects to such procedures on ethical, moral or religious grounds; nor shall any person as a condition of training, employment, pay, promotion, or privileges, be required to agree to perform or participate in the performing of abortions; nor shall any hospital, person, firm, corporation or association discriminate against or discipline any person on account of his or her moral beliefs concerning abortion. A civil action for damages or reinstatement of employment, or both, may be prosecuted for any violation of this subsection.
>
> "b) No private or denominational hospital shall be required to permit its facilities to be utilized for the

performance of abortions authorized under the provisions of this chapter."

Your request also raises the question whether the language of subsection (b) quoted above means by implication that non-private or non-denominational (i.e., public) hospitals may be required to permit its facilities to be utilized for the performance of authorized abortions because private or denominational hospitals may not be so required. In answering this question it must be noted that the fundamental rule of statutory construction is to ascertain the legislative intent of the statute. It is a well established rule of statutory construction that where the meaning of the language is clear and unambiguous, there is no need to resort to interpretative aids to determine the legislative intent. In *Fesler v. Bosson* (1920), 189 Ind. 484, 128 N.E. 145, the Supreme Court stated:

> ". . . [T]he words chosen by the legislature must be indicative of its intention, and they mark the line beyond which we cannot go. A statute making plain the purpose and intention of the Legislature requires no construction . . ." *Ibid.*, at 492, 128 N. E. at 147.

The Indiana Code of 1971, Section 35-1-58.5 referred to in your question was enacted by Acts 1973, Public Law No. 322, Section 2. Section 1 of Public Law No. 322 provides, in part:

> "No individual may be compelled to perform an abortion against his will. No hospital may be required to permit its facilities to be utilized for the performance of abortions."

The language of Section 1 is clear and unambiguous and it directly answers your question. The statute clearly provides that *no hospital* may be required to permit its facilities to be used for the performance of abortions. The term "no" is universal; the statute applies to all hospitals, whether private, denominational, public, or tax-supported in whole or in part. The language of the statute, then, clearly leaves the decision whether to allow abortions to be performed in a hospital up to the hospital administration.

CONCLUSION

It is, therefore, my Official Opinion that by enacting Public Law No. 322 during its 1973 session (Indiana Code of 1971, Section 35-1-58.5-2), the Indiana General Assembly clearly stated that *no hospital,* whether public or private, is required to permit the use of its facilities for the performance of abortions.