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to the employee's loss of such right upon dismissal. Therefore, payment for such earned vacation prior to the time the vacation days are actually taken would not be payment given "in advance of such services" in violation of the statutes set out above, and is not forbidden by law.

As previously stated, however, the establishment of pay periods and pay dates for merit employees is an administrative duty of the Auditor of State, consulting with the Personnel Division of the Department of Administration and the State Budget Agency. Therefore, the Auditor, consulting with those agencies, may decide the manner or time when earned salary payments, including earned vacation pay, may be made. That time may be in advance of the date ordinarily used, as the selection of a manner or time for payments is merely an accounting procedure.

OFFICIAL OPINION NO. 9

April 13, 1968

PUBLIC EMPLOYEES—Normal Working Day—Apparent Conflict Between Legislative Act and Administrative Rule.

Opinion Requested by Mr. R. F. McElheny, Director, Personnel Division, Department of Administration.

I am in receipt of your request for an opinion concerning a seeming conflict between one of the rules of the State Personnel Board, and Acts 1953, ch. 133.

Rule 11 of the State Personnel Division, as last amended August 17, 1967, in section 11-1 provides:

"The normal minimum working week shall be 40 hours except as otherwise established by statute or by speci-
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fic ruling of the State Personnel Board. Shift hours shall be established by the appointing authority. Assignment of employees to specific shifts shall be the prerogative of the appointing authority.”

Acts 1953, ch. 133, § 1, the same being Burns IND. STAT. ANN. § 49-604a, provides:

“It is the intent of this act that state offices be open and able to conduct public business at all times during an eight and one-half hour working day. Each employee shall work for a full seven and one-half hours each working day and provision for a one hour lunch period shall be provided each employee. Lunch hours of employees shall be staggered to permit the conduct of business at all times during a working day. It shall be lawful for state offices to close their doors for business from the close of the working day each Friday or in the event Friday is a legal holiday, then from the close of the working day on the Thursday which immediately precedes such legal holiday, until the commencement of the working day on the next following Monday or in the event Monday is a legal holiday, then until the commencement of the working day on the Tuesday which immediately follows such legal holiday; Provided, however, that the State Library may be kept open until noon Saturdays in the discretion of the Indiana Library and Historical Board.”

Your letter indicates that various state institutions (which I interpret as referring to hospitals, penal institutions, etc.) are experiencing difficulties in arranging shifts as a result of the above quoted statute, and that you, therefore, desire an interpretation of that statute.

The purpose of statutory construction has been stated by the Indiana Supreme Court in State ex rel. Roberts v. Graham, 231 Ind. 680, 686, 110 N.E. 2d 855, 858 (1953) thus:

“Courts interpret statutes for the purpose of ascertaining legislative intent. Zoercher v. Indiana Associ-
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ated Telephone Corp. (1937), 211 Ind. 447, 7 N.E. 2d 282; 50 Am. Jur., Statutes, 200. Such intent must be determined primarily from the language of the statute itself, 50 Am. Jur., Statutes, 210, which language must be so reasonably and fairly interpreted as to give it efficient operation and to give effect, if possible, to the expressed intent of the legislature. State v. Griffin 1948, 226 Ind. 279, 79 N.E. 2d 537.”

There is no problem determining the legislative intent of Acts 1953, ch. 133, inasmuch as the first sentence of the first section of that Act states: “It is the intent of this act that state offices be open and able to conduct public business at all times during an eight and one-half hour working day.” The unambiguously expressed purpose of the Act is to establish hours and days during which the public, the citizens and residents of the State of Indiana, will be able to conduct business with the various departments and agencies of their state government. This purpose is fulfilled by requiring those agencies and departments to be open to the public at and during certain specified hours.

There is nothing contained in the Act indicating that the Act is concerned with the hours of work of state employees as a class. Indeed, any such language would probably have to be deemed unconstitutional as being outside the scope of the title of the Act, which is “AN ACT concerning days of business for state offices.” (See Indiana Constitution, Art. 4, § 19.)

Admittedly, the Act does make some provisions as to the working hours of employees of state offices. Section 1, set out in full above, provides:

“Each employee shall work for a full seven and one-half hours each working day and provision for a one hour lunch period shall be provided each employee. Lunch hours of employees shall be staggered to permit the conduct of business at all times during a working day.”

It should be noted that even the above provisions relating to the hours of work of employees in state offices are limited
to those items necessary to the purpose of the Act. Except for his lunch period, each employee is required to work in the office during the entire time the office is required by statute to be opened, and the employees must arrange their lunch schedule so that the office will remain open during the lunch hour. In other words, the provisions relating to the working hours of the employees of state offices are designed and intended solely to insure that there will be personnel available to conduct public business during the entire period the office is required by the Act to remain open.

In fact, the language used in the Act indicates an intent to establish those hours when a public office must be open rather than those hours a public office must be closed. In permitting state offices to be closed during the week-end the statute provides that “it shall be lawful for state offices to close their doors for business from the close of the working day each Friday. . . .” The statute does not say that state offices must be closed on Sunday or that it would be illegal for such offices to be open on Sunday. “Courts, in passing on legislative enactments, from whatever position attacked, will assume that the lawmakers used words and language advisedly and expressive of their intention.” Young v. State, 194 Ind. 221, 225, 141 N.E. 309, 310 (1923).

The first section of the Act, quoted above, very specifically requires that all state offices shall be open for an 8 1/2 hour working day, without specifying the days involved. It then makes it lawful for such offices to close on certain specified days. Had the Legislature intended that state offices must be closed on those days, the Legislature would have so stated.

The second section of the Act, Burns § 49-604b, protects those citizens who are unable to perform a required act (such as renewing a license) on a specified date when that date coincides with a day (such as Saturday) that the state office involved may be lawfully closed by specifying that such act may be performed on the next following day that the office is required to be opened. (This second section explains the provision concerning the State Library contained in the first section. The Indiana Library and Historical Board is given the power to make it unlawful for the State Library to be closed on Saturday mornings, and inferentially to require
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citizens who have business to conduct with the Library on a date that falls on Saturday to conduct that business on that date.)

Similarly, the first section of the Act does not prohibit a state office from remaining open for more than 8 1/2 hours each weekday; it merely guarantees that it will remain open at least that long.

Your question concerns state institutions and therefore requires neither an incisive definition of the term "state office" nor a comprehensive listing of those offices that fall within the term. Words used in a statute must be given their usual and ordinary meaning. Sutto v. Board of Medical Registration & Examination, 242 Ind. 556, 564, 180 N.E. 2d 533, 537 (1962). In North Side Laundry Co. v. Board of Property Assessment, Appeals and Review of Allegheny County, 183 Pa. Super. 407, 79 A. 2d 419, 421 (1951), the court, in determining whether a laundry was an "industrial plant" and therefore subject to a tax levied on industrial plants, said:

"The law can do no better than to define an industrial plant as that type of establishment which the ordinary man thinks of as such."

The Indiana Supreme Court has also resorted to the criterion of what the ordinary man thinks in finding the plain or ordinary and usual meaning of a word used in a statute. See Gross Income Tax Div. v. Colpaert Realty Corp., 231 Ind. 463, 470, 109 N.E. 2d 415, 418 (1952).

An ordinary man will no more interpret the word "office" as including institutions than he would interpret the phrase "state offices" as including "county offices". That ordinary man would feel supported in his interpretation when he discovered that the state offices involved were those that "conduct public business."

The phrase "state offices" as used in Acts 1953, ch. 133, must be interpreted as those places where the general public may conduct business with the various departments and agencies of their state government. Although classifying some operations of state government might be troublesome, there
is no question but that state institutions, which in fact do not deal with the general public, are not "state offices."

I, therefore, see no conflict between Acts 1953, ch. 133, and the Personnel Board rule authorizing appointing authorities to assign the employees under their supervision to shifts. The Act is concerned only with state offices that conduct business with the public, and in relation to such offices merely establishes the minimum time that the office must be open. The Personnel Board rule relates to all state employees employed under the merit system, whether employed in offices that transact business with the public or in positions that have no contact whatsoever with the public. The Act provides that the state offices concerned must be opened a minimum number of hours, but the Act does not prohibit those offices from remaining open a greater number of hours nor does it apply to any function of the state other than offices that transact business with the public. The Personnel Board rule provides that whatever hours the particular function operates, whether a state office following an eight and one-half hour day, five day week, schedule or the nursing department of a state hospital following a twenty-four hour day, seven day week, schedule, the appointing authority has the right to arrange the working hours of his personnel so as to perform proficiently the function of that department. Insofar as the Act establishes a working week of thirty seven and one-half hours for employees in state offices which the law covers the rule specifically defers to the Act.

Therefore, it is my opinion that no conflict exists between Acts 1953, ch. 133, and section 11-1 of Personnel Board Rule number 11, and that the latter applies to the employees of state institutions.