thereafter and would include the February, 1923, April, 1923, and September, 1923, terms.

From the above cases I deduce that the statutes superseded by Supreme Court Rule 1-4D provided that the filing by the defendant of a motion for change of venue from either the county or the judge cancels all time until the change is perfected, and that upon perfection of the change the time in which trial may be had begins to run in the same manner and for the same period as if recognizance had just then been taken or the defendant had just then been arrested (or the charges filed, if appropriate). I believe that Supreme Court Rule 1-4D should be interpreted in the same manner.

Therefore, it is my opinion that Supreme Court Rule 1-4D applies to city court cases, and that a defendant who petitions for a change of judge must be tried within six months of the date the special judge qualifies if the defendant is in jail, or within one year of the date that the special judge qualifies if the defendant is being held by recognizance. This conclusion seems most logical when one considers that the less serious criminal matters are tried in city court and therefore public policy would dictate they be handled expeditiously.

OFFICIAL OPINION NO. 55

December 28, 1967

FINANCIAL INSTITUTIONS—Mutual Savings Banks—As Having Authority to Make Installment Loans.

Opinion Requested by Hon. Frederick T. Bauer, State Representative

I am in receipt of your request for an Official Opinion, which request reads:

> "I would like an official opinion as to whether or not mutual savings banks may make installment loans under the law in Indiana as it presently exists and without such authority being specifically implemented by new legislation."

Savings banks in Indiana are authorized and regulated by Acts 1869 (Spec. Sess.), ch. 51, as amended, the same being Burns §§ 18-2601 through 18-2654. The class of banks created by that Act were described by the court in *Beard v. Peoples Sav. Bank,* 53 Ind. App. 185, 188, 101 N.E. 325, (1913) thusly:

> ". . . Savings banks organized under the provisions of this statute have no capital stock and no stockholders. Their business is managed by a board of trustees who have no interest in the assets of the bank except to control, invest and manage such assets for the benefit of the depositors. The trustees have power to purchase, hold and convey real estate under certain prescribed conditions. The savings bank is authorized to receive deposits and invest the same in such securities as are specified by the act. . . ."

The court might have included in its description of such banks that the board of trustees is self-perpetuating in that the members fill vacancies on the board (sec. 6, Burns § 18-2606); that the trustees appoint officers of the bank (sec. 9, Burns § 18-2609); that the trustees have the power to adopt and amend by-laws and rules and regulations for the organization and operation of the bank (sec. 10, Burns § 18-2610); that only certain persons or organizations may be depositors in the bank (sec. 16, Burns § 18-2616); that the bank may require advance notice before deposits are withdrawn (sec. 17, Burns § 18-2617); that deposits do not earn a fixed rate of interest, but rather receive semiannual dividends representing their proportionate share of profits received through investments in the preceding six months (secs. 29 through 35, Burns §§ 18-2629 through 18-2635).

More important to your question, the Act specifically describes the type of investments that may be made by a sav-

ings bank. Section 19 of the Act, as last amended by Acts 1965, ch. 422, § 2, the same being Burns § 18-2619, begins thusly: "It shall be lawful for the trustees of any savings bank to invest the money therein only as follows, to-wit:", and describes in ten clauses the types of investments permissible. Such types, briefly described, are: direct or indirect obligations of the United States and its territories and possessions (cl. 1); obligations of the State of Indiana and its political subdivisions (cl. 2); bonds, notes, certificates or securities approved by the Department of Financial Institutions (cl. 3); bonds or notes secured by first mortgage on real estate situated in Indiana or an adjoining state (cl. 4); various loans and mortgages made pursuant to the Federal National Housing Act (cl. 5); short-term promissory notes payable at a chartered bank in the State (cl. 6); purchase of real estate for its own use (cl. 7); the purchase and sale of sight and time drafts and acceptances (cl. 8); the amount of capital stock of a federal reserve bank as will make the savings bank eligible to become a member of the federal reserve system, and in the capital stock of the federal deposit insurance corporations as will qualify it for membership (cl. 9); the capital stock, bonds, debentures or notes of a federal owned bank (cl. 10).

The authority for a savings bank to make loans is described in the following section, § 20, as last amended by Acts 1951, ch. 144, § 1, the same being Burns § 18-2620, which provides:

> "It shall be lawful for the trustees of any savings bank, while awaiting opportunity for the judicious investment of the funds deposited with them, to loan the monies so deposited for periods of not to exceed twelve months:
>
> "a) Upon the security of the bonds, stocks or other securities mentioned in Section 19 of this act as the same has been heretofore or may be hereafter amended, not exceeding ninety per cent of the cash market value thereof.
>
> "b) Upon the security of life insurance policies, not exceeding the cash surrender value thereof.

"c) Upon the security of grains, crops, livestock and all tools, machinery and farm equipment not exceeding seventy per cent of the fair cash market value thereof.

"d) Upon the security of stocks regularly listed upon a stock exchange approved by the Department of Financial Institutions, not exceeding fifty-five per cent of the cash market value thereof.

"The aggregate of all loans made pursuant to authority conferred by this section shall not at any time exceed twenty per cent of the deposits of said savings bank. No authority granted under the provisions of this section, shall be deemed to authorize the violation of any state or federal rule or regulation."

(Re subsection d, the Department of Financial Institutions has approved the New York Stock Exchange and the Chicago Stock Exchange. See Burns IND. ADM. RULES AND REG. § [18-2620]-1).

Thus, a savings bank unable to find sufficient proper investments may loan as much as twenty percent of its deposits for a period not to exceed twelve months if the loans are properly secured. The Act makes no provisions for either the charging of interest on such loans or for the schedule of repayment of such loans within the twelve-month limit.

The Installment Loan Act, Acts 1951, ch. 159, the same being Burns §§ 19-13-101 through 19-13-106, is concerned exclusively with the charging of interest on a loan and the schedule of repayment of a loan. The first section, Burns § 19-13-101, provides:

"Any individual loaning money, any bank or trust company organized under the laws of this State, or any national banking association having its principal banking office in this State, may charge, collect and receive in advance or otherwise, a loan charge not in excess of $8.00 per $100.00 per year on the total amount of each loan or forebearance of money which is payable in instalments. Such loan charge may be

> computed from the date of such loan or forebearance to maturity of its last instalment and for its entire period on the original total amount thereof, which original total amount may include the loan charge and all expenses permitted by this Act. The instruments evidencing such loan or forebearance of money may provide for the payment of principal, loan charge and any expenses permitted by this Act, totaled into a single amount, in equal or substantially equal monthly, quarterly or other instalments, as the parties may agree, and may provide for security therefor and for the insurance of such security as for other loans. Such loan or forebearance of money shall be valid for the amount of the principal, the loan charge therefor, and any expenses permitted by this Act."

The Act contains no language, either specific or general, indicating a legislative intent to grant the power to make loans to those institutions that did not previously have that power.

Since the Act regulating the conduct of business by savings banks authorizes such banks to make short-term loans under certain conditions but does not regulate the interest or schedule of repayment of such loans, and since the Installment Loan Act specifically applies to "any bank . . . organized under the laws of this state," then savings banks may make loans under that Act provided the criteria under which they can make loans are satisfied. (Conversely, banks, including savings banks, are specifically excluded from the provisions of the Small Loan Act [Burns § 18-3005], the Industrial Loan and Investment Act [Burns § 18-3119], and the Consumer Loan Act [Burns § 18-3603]).

It would be proper at this point to examine more closely the type of investment authorized for savings banks under the sixth clause of Acts 1869 (Spec. Sess.), ch. 51, § 19, as amended, Burns § 18-2619, (the section briefly described above.) That clause authorizes investments:

> "In promissory notes, payable at some chartered bank within this state, and having not to exceed

> twelve (12) months to run from the date of the loan or purchase, made or endorsed by two (2) or more responsible freeholders, one (1) of whom at least shall be a resident of the state of Indiana, and no such promissory note shall exceed the amount of ten thousand dollars ($10,000.00.)"

A casual reading of the above clause in isolation induces the thought that a savings bank may devote all of its deposits to twelve-month installment loans in the form of promissory notes properly cosigned. I do not believe that the clause, when considered in context, can be so interpreted. The court in *Combs v. Cook,* 238 Ind. 392, 397, 151 N.E. 2d 144 (1958), said:

> "It is not to be presumed that any part of an Act is meaningless and without a definite purpose. If possible, effect must be given to every word and clause used in the Act. [citing authority]
>
> "Our duty here is to ascertain the intent of the Legislature as shown by the entire Act, each section being considered with reference to all the other sections.... [citing authority]"

Section 19 of the Savings Bank Act (Burns § 18-2619) specifically concerns the power of the trustees of a savings bank "to invest the money therein"; section 20 (Burns § 18-2620) specifically concerns the power of the trustees "while awaiting opportunity for the judicious investment of the funds deposited with them, to loan the moneys so deposited." Loans made under the authority of the latter section would no doubt be evidenced by promissory notes.

Thus both sections, one directly and one indirectly, concern promissory notes. It is inconceivable that the Legislature intended the sixth clause of section 19 to authorize loans under the guise of investments in promissory notes. To so interpret that clause would be to obliterate any distinction between the usage of the words "invest" and "loan" in the Act, and to render nugatory the careful legislative separation of the power to invest from the power to loan. It

is much more reasonable to assume that the grant of power to invest "[i]n promissory notes, payable at some bank within this state," authorizes the discounting and purchasing of secured obligations payable to other banks, a power similar to that granted in the eighth clause to "[deal] in exchange by purchasing and selling sight or time drafts and acceptances payable out of this state."

In anticipation of a future question, I will point out that the Department of Financial Institutions may not by rule and regulation change the circumstances under which a savings bank may make a loan in such a manner as to permit savings banks to regularly engage in the business of making installment loans. The powers of an administrative agency such as the Department of Financial Institutions were described in the court in *Indiana Dept. of State Revenue v. Colpaert Realty Corp.*, 231 Ind. 463, 479, 109 N.E. 2d 415 (1952):

> "An administrative board has the undoubted right to adopt rules and regulations designed to enable it to perform its duties and to effectuate the purposes of the law under which it operates, when such authority is delegated to it by legislative enactment. *Blue v. Beach* (1900), 155 Ind. 121, 56 N.E. 89; *Albert v. Milk Control Board of Indiana* (1936), 210 Ind. 283, 200 N.E. 688; *McCreery v. Ijams* (1945), 115 Ind. App. 631, 59 N.E. 2d 133. But it may not make rules and regulations inconsistent with the statute which it is administering, it may not by its rules and regulations add to or detract from the law as enacted, nor may it by rule extend its powers beyond those conferred upon it by law. *McCreery v. Ijams, supra*; 73 C.J.S., Public Administrative Bodies and Procedure, §§ 93 and 94."

Thus the Department of Financial Institutions lacks the authority to alter the specific statutory limitations on the authority of a savings bank to make loans.

In summation, it is my opinion that the statutes regulating the conduct of a savings bank clearly show that the Leg-

islature intended the deposits in such banks to be invested in government bonds, mortgages, and properly secured commercial paper. Realizing that the opportunity for such investments does not always exist, the Legislature provided that savings banks may make short-term loans rather than let the money deposited remain idle. However, no more than twenty percent of the deposits can be used for making loans, any individual loan must be repayable within twelve months, and all loans must be properly secured by bonds, stocks or other securities, life insurance policies, or farm produce or equipment. Since no provision is made for the charging of interest on, or the schedule of repayment of, such loans (other than the twelve-month restriction), savings banks may follow the provisions of the Installment Loan Act relating to those subjects. The restrictions placed on the power of savings banks to engage in the business of making installment loans can only be changed by legislation.

OFFICIAL OPINION NO. 56

December 28, 1967

OFFICERS, COUNTY—Obligation to Furnish Legal Defense in Civil Actions Where Officers Are Performing Official Duties.

Opinion Requested by Hon. Richard C. Bodine, House Minority Leader, General Assembly.

This is in response to your request for my Official Opinion regarding the responsibility of counties to provide a defense in civil suits against county sheriffs and their deputies under the "Civil Rights" statutes, 42 U.S.C., §§ 1981 through 1995. More specifically you ask the following questions: