the state, neither the State or its agency, the Indiana State Police, is obligated to pay a fee for the said clerk's certificate. Since the Indiana State Police, as an agency of the State, is *not* required to pay this fee to the clerk, it is unnecessary to answer your questions 4 and 5.

OFFICIAL OPINION NO. 8

May 16, 1966

STATE DEPARTMENT OF PUBLIC WELFARE—Licensing and Regulation of Maternity Homes for Girls under 21 Years of Age—Definition of Maternity Hospital.

Opinion Requested by Mr. Albert Kelly, Administrator, Department of Public Welfare.

I am in receipt of your recent letter which reads:

> "Your official opinion is requested regarding whether or not there is any legal responsibility or authority vested in the State Department of Public Welfare to license maternity homes for girls under 21 years of age under the provisions of Chapter 185, Section 4, Acts of 1945."

Acts 1945, ch. 185, § 4, the same being Burns IND. STAT. ANN., § 42-1308, reads as follows:

> "A children's home or child caring institution is defined as any children's home, orphanage, institution or other place maintained or conducted by any group of persons, a firm, association or corporation engaged in receiving and caring for dependent, neglected, handicapped children, or children in danger of becoming

> delinquent or in operating for gain a private business of boarding children who are unattended by parents or guardian, or person in loco parentis."

Section 1 of the Act (Burns § 42-1305) requires institutions so defined to be licensed by the State Department of Public Welfare.

The answer to your question necessitates a quick review of statutes on this subject.

The earliest legislation pertinent to this inquiry was Acts 1909, ch. 154. Section 1 of that Act provided:

> *"Be it enacted by the general assembly of the State of Indiana,* That it shall be unlawful for any person, firm, corporation or association to conduct or maintain a maternity hospital, to conduct or maintain a boarding house for infants, to conduct or maintain a boarding home for children, or to engage in, or assist in conducting, a business of placing infants, as herein defined; without having in full force a written license therefor from the board of state charities: *Provided,* That nothing in this act shall apply to any state institution maintained and operated by this state."

Section 2 of that Act, the same being Burns IND. STAT. ANN., § 52-515, provided:

> "The term 'maternity hospital,' as used in this act, shall be held to mean a house or other place maintained or conducted by any one who advertises himself or holds himself out as having or conducting a maternity hospital or boarding house, or a house or any other place in which any person receives, cares for or treats, within a period of six [6] months, more than one [1] woman during pregnancy, or during or after delivery, except women related to him by blood or marriage: Provided, however, That nothing herein shall be construed to prevent a nurse from practicing her profession under the care of a physician in the home of the patient, or in a regular hospital other than a maternity hospital or boarding house for infants."

The powers given the Board of State Charities by the above Act were transferred to the State Department of Public Welfare by Acts 1936 (Spec. Sess.), ch. 3, § 11, as amended, the same being Burns IND. STAT. ANN., § 52-1110.

Therefore, the State Department of Public Welfare in 1937 had the power to license:

1. Maternity hospitals as defined above;
2. Boarding houses for infants;
3. Boarding homes for infants;
4. Infant placing businesses.

This power remained unchanged until 1945, in which year the Legislature passed two new Acts.

Acts 1945, ch. 346, concerns the regulation and licensing of hospitals. Section 1 of that Act, the same being Burns IND. STAT. ANN., § 42-1601, provides:

> "From and after the passage of this act the state board of health shall be empowered to license and regulate hospitals. Such licensing and regulations shall be accomplished through a council to be created in the manner hereinafter provided, and such other employees as are hereinafter provided for."

Section 15 of the Act, the same being Burns IND. STAT. ANN., § 42-1615, provides:

> "All hospitals, including such hospitals as are strictly maternity hospitals only, shall come within this act. This act shall not be construed in any way to restrict or modify any act pertaining to the placement and adoption of children."

This 1945 Act, then, specifically places "maternity hospitals" under the control of the State Board of Health. Furthermore, it is apparent from the second sentence of section 15 that the Legislature was fully cognizant of the definition given that term by the 1909 Act, and that that definition was to remain unchanged.

Acts 1945, ch. 185, concerns child caring homes and child placing agencies. Section 1 of that Act, the same being Burns IND. STAT. ANN., § 42-1305, provides:

> "It shall be unlawful for any person, firm, corporation or association to operate, maintain or conduct a boarding-home for children, a day nursery, a children's home or child-caring institution or to engage in or assist in conducting a business of placing children as herein defined, without having in full force a written license therefor from the state department of public welfare. Provided, That nothing in this act shall apply to any state institution maintained and operated by the state."

The above provision is very similar to the original 1909 statute, but it has one very obvious omission. No mention whatsoever is made of "maternity hospitals." Considering the two 1945 Acts jointly can leave no doubt but that the Legislature intended that any "maternity hospital," as that term was defined in 1909, was to be under the control of the State Board of Health.

Therefore, as the first step in answering your question, section 4 of Acts 1945, ch. 185, does not empower the State Department of Public Welfare to license an establishment that falls within the definition of "maternity hospital" contained in Acts 1909, ch. 154, § 2, the same being Burns IND. STAT. ANN., § 52-515.

Several principles of statutory construction must also be employed in ascertaining the answer to your question.

The basic principle of statutory construction is a common law rule that has been adopted by statute. 2 R.S. 1852, ch. 17, § 1, the same being Burns IND. STAT. ANN., § 1-201 provides, in part:

> "The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:
>
> "First. Words and phrases shall be taken in either plain, or ordinary and usual, sense. But technical

> words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

Acts 1945, ch. 185, § 4, the statute with which you are concerned should now be reread with that principle in mind.

> "A children's home or child caring institution is defined as any children's home, orphanage, institution or other place maintained or conducted by any group of persons, a firm, association or corporation *engaged in receiving and caring for dependent, neglected, handicapped children or children in danger of becoming delinquent or in operating for gain a private business of boarding children* who are unattended by parents or guardian, or person in loco parentis." (Emphasis added.)

The language of the statute clearly indicates that a children's home or child caring institution is one established for children. That is, the institution must be one intended to house children rather than one intended to house the general public and which may or may not have one or more children in residence at any given time.

Thus the second step in answering your question is to conclude that the Department of Public Welfare does not have the power under Acts 1945, ch. 185, § 4, to license a maternity home established to serve the general public even if the home in the course of its business occasionally serves children. Whether a given maternity home is established to serve the general public is a question of fact to be decided on the basis of the actual operation of the home rather than on a mere statement of intent by the proprietor. Just as the occasional presence of a child does not make a maternity home designed to serve the general public a child caring institution, the occasional acceptance of a non-child as an inmate would not change a child caring institution into one serving the general public.

The final step in answering your question is determining what is meant by the word "children" and its various permutations as used in the statute.

Chapter 185 of Acts 1945 contained no definition of "children" nor any indication of how the term should be defined. In such circumstances it is proper to examine other Acts relating to the same subject matter, preferably Acts passed by the same Legislature. See *Olszewski v. Stodola*, 226 Ind. 639, 82 N.E. 2d 256 (1948), wherein the Supreme Court said, on page 643 (82 N.E. 2d at 257):

> "Laws passed by the same legislature and relating to the same subject matter are in pari materia and should be construed together. *Huff v. Fetch* (1924), 194 Ind. 570, 576, 577, 143 N.E. 705, 707; *Starr v. City of Gary* (1934), 206 Ind. 196, 188 N.E. 775."

Fortunately, the 1945 Legislature did pass another law relating to the care of children. The other law, Acts 1945, ch. 356, deals with juveniles and juvenile courts, and contains very specific definitions of the terms "child," "delinquent child," "dependent child," and "neglected child." In all instances a "child" is someone under 18. See Acts 1945, ch. 356, §§ 3 through 6, the same being Burns IND. STAT. ANN., §§ 9-3203 through 9-3206. Especially pertinent insofar as establishing the relevancy of that Act to the instant question are sections 5 and 6 (Burns §§ 9-3205, 9-3206) which provide:

> "The words [§ 5: 'dependent child'] [§ 6: 'neglected child'] as used herein, *or in any other statute concerning the care, custody or control of children* shall mean any boy under the age of eighteen [18] years or any girl under the age [18] years. . . ." (Emphasis added.)

The term "children" and its permutations as used in the statute with which you are concerned must be interpreted as referring to persons under eighteen years of age.

Therefore, in full answer to your question, there is no legal responsibility or authority vested in the State Department of Public Welfare to license maternity homes for girls under the provisions of Acts 1945, ch. 185, § 4, the same being Burns IND. STAT. ANN., § 42-1308, unless the method of operation of the home reveals both that it is intended for girls under eighteen years of age and that the home is not a

maternity hospital as defined by Acts 1909, ch. 154, § 2, the same being Burns IND. STAT. ANN., § 52-515.

OFFICIAL OPINION NO. 9

May 18, 1966

AUDITOR OF STATE—Payment of Salaries to Members of the General Assembly—Salary Payable to One Who Resigns Prior to Expiration of Term.

Opinion Requested by Hon. Mark L. France, Auditor of State of Indiana.

This is in reply to your letter which reads as follows:

> "The Board of Finance would like to obtain an Official Opinion concerning a claim submitted by Mr. Donald Foltz for his remaining salary for the 1961-62 legislative session.
>
> "He accepted an appointment in the Welsh Administration after the close of the legislative session in 1961 and therefore, was asked to, and did resign as a member of the Legislature in March of that year. Mr. Foltz was paid for the year 1961 in the amount of $1,800.00.
>
> "Does Mr. Foltz have a legal claim for his 1962 salary?"

You later indicated that Mr. Foltz's salary as a member of the General Assembly payable subsequent to his March, 1961, resignation is the salary to which your question is addressed. This opinion is therefore confined to the question submitted