> appear and defend against such charges in person or by counsel. If upon such hearing the secretary of state finds the charges to be true, he shall either revoke or suspend the license of the licensee. Suspension shall be for a time certain and in no event for a longer period than one [1] year. No license shall be issued to any person whose license has been revoked, for a period of two [2] years, from the date of revocation. Reapplication for a license, after revocation as provided, shall be made in the same manner as provided in this act for an original application for a license."

It is my opinion that a nonresident collection agency must file a financial statement, post a surety bond and agree to maintain at least one office in this state to qualify to be licensed to transact business in this state; and if the agreement to maintain the office as aforesaid is breached, such person subjects his license to suspension or revocation.

OFFICIAL OPINION NO. 7

April 27, 1965

Hon. Jack H. Mankin
Indiana State Senator
124 South Sixth Street
Terre Haute, Indiana

Dear Senator Mankin:

You have asked whether under Ind. Acts of 1917, ch. 144, as amended and supplemented, Burns IND. STAT. ANN., §§ 22-3115 to 22-3140, particularly Burns IND. STAT. ANN., § 22-3118 (Burns Repl. 1964),

> ". . . a board of Hospital trustees of a county hospital is authorized to lease or own and operate and maintain a nursing home for the long term nursing care of patients admitted thereto and specifically whether or not, under the above cited statute, such is an authorized hospital purpose."

You did not state in your letter whether the county hospital to which you refer was constructed under the provisions of the 1917 Indiana Act, *supra,* or pursuant to Ind. Acts of 1953, ch. 54, Burns IND. STAT. ANN., §§ 26-2501 to 26-2523 by a County Building Authority. Therefore, this Opinion applies only to a county hospital constructed under the 1917 Act.

Two separate questions are involved in your inquiry:

1. May the board of hospital trustees of a county hospital lease or own and operate a separate facility for hospital purposes?

2. Is long term nursing care of patients a hospital purpose within the meaning of the 1917 Act, *supra?*

The 1917 Act provides procedures under which an Indiana county may establish and operate a public hospital. A "site or sites" may be purchased, and "a public hospital and hospital buildings" may be erected thereon. Burns IND. STAT. ANN., § 22-3115. Said public hospital shall be governed by a board of hospital trustees who

> "shall have the exclusive control of the expenditure of all monies collected . . . for the purchase of site or sites, the purchase or construction of any hospital building or buildings, and the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, *leased* or set apart for that purpose . . ." (Emphasis added.) *Id.* § 22-3118.

The statute also states:

> "Whenever it shall be shown to the satisfaction of a board of county commissioners by the trustees provided for in section 2 of this act, that the hospital erected under the provisions of this act has become inadequate and insufficient in size to properly carry out the purpose for which said hospital was erected, then, in that event, said board of commissioners shall issue an order authorizing the enlarging or the building of an addition to said hospital . . . ." *Id.* § 22-3115.

From these sections of the Act, particularly § 22-3118, *supra,* it is my opinion that the county may lease as well as purchase land for hospital use. See also *Book v. Indianapolis-Marion Bldg. Authority,* 234 Ind. 250, 259, 126 N.E.2d 5 (1955).

The board of county commissioners is specifically authorized by the above sections of the statute to enlarge a hospital or make an addition to it. In 1952 O.A.G., page 232, No. 59, this section of the statute was construed to mean that a new hospital building at a new site would merely constitute an addition to an existing hospital, in reliance upon 1947 O.A.G., pages 264, 267, No. 53, which interpreted a similar act to mean that an established hospital could consist of one or more buildings which might or might not be physically in contact or immediately adjacent.

It is therefore my opinion that, upon issuance of an order by the board of county commissioners, the county may lease or own a hospital facility which is separate from its other buildings, and your first question, therefore, must be answered in the affirmative.

County officers have only "such powers as may be granted expressly by statute, or those necessarily implied to execute some expressed power. Where a statute provides the manner in which a power is to be exercised, the statutory directions must be followed to give validity to the act." *K. G. Horton & Sons v. Board of Zoning Appeals,* 235 Ind. 510, 514, 135 N.E.2d 243 (1956).

Although it is clear that the board of hospital trustees is empowered by the 1917 Act only to operate a hospital for hospital purposes, the terms "hospital" and "hospital purposes" are not defined therein. However, the Act does state:

> "Every hospital established under this Act shall be for the benefit . . . of any person falling sick or being injured or maimed within its limits. . . ." Burns IND. STAT. ANN., § 22-3131.

A commonly cited definition of "hospital" is that in *Frax Realty Co. v. Kleinert,* 123 Misc. 455, 205 N.Y.S. 728, 729 (1924):

> "In common usage a hospital is an institution which is maintained for the purpose of providing a place to which persons may resort for medical or surgical treatment. The inmates may be treated by physicians or surgeons employed by the Hospital, or by those of their own selection, while the incidental nursing is usually provided by the Hospital; but in any case the fundamental idea underlying the common conception of a Hospital is that of a place for medical or surgical treatment."

A "nursing home" has been said to have the attributes of both a hospital and a boarding and lodging house. *Crain v. City of Louisville,* 298 Ky. 421, 182 S.W.2d 787 (1944).

"Hospital" has also been defined as "an institution for the reception and care of the sick, wounded, infirm or aged persons." 41 C.J.S. Hospitals, § 1. However, in construing together the Indiana statutes concerning the treatment of charitable patients and the establishment of county hospitals, 1956 O. A. G., page 140, No. 30 advanced the opinion that a county hospital may not construct or acquire with hospital funds a building to be used as a home for the aged.

I am in agreement with this opinion, particularly in view of the County Home Act of 1955, as amended, Burns IND. STAT. ANN., §§ 22-2801 to 22-2819, authorizing counties having a population of six hundred and fifty thousand [650,000] or more to establish and maintain a county home

> "for the support and care of persons who are aged, blind, destitute, homeless, infirm, or chronically ill or in need of nursing or convalescent care, not requiring hospitalization and within the available facilities of the county home. . . ."

Such an act would have been unnecessary if the Legislature had considered that counties were authorized by the 1917 Hospital Act to establish and maintain such homes as part of a county hospital.

Statutory definitions of "hospital" and "health facility," the latter of which includes "nursing homes," are contained in the hospital and health facility licensing statutes:

" 'Hospital' within the meaning of this Act shall be defined to be any institution, place, building, or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities, and equipment, for the use, in connection with the services of a physician, of persons who may be suffering from deformity, injury, or disease, or from any other condition, for which medical or surgical services would be appropriate for care, diagnosis or treatment. The term 'hospital' as used in this Act does not include convalescent homes, boarding-homes, or homes for the aged; nor does it include any hospital or institution specially intended for use in the diagnosis, care and treatment of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions; nor does it include offices of physicians where patients are not regularly kept as bed patients. The Council shall have the authority to determine whether or not any institution or agency comes within the scope of this Act, and its decisions in that regard shall be subject only to such rights of review as the courts exercise with respect to administrative actions. It shall be unlawful for any institution, place, building, or agency, to be called a hospital which is not a hospital as defined in this section." Acts of 1945, ch. 346, § 6, Burns IND. STAT. ANN., § 42-1606.

"(a) The term 'health facility' means and shall be construed to include any building, structure, institution, or other place, for the reception, accommodation, board, care or treatment extending beyond a continuous twenty-four [24] hour period in any week of more than two [2] unrelated individuals requiring, in apparent need of, or desiring such services or combination of them, by reason of age, senility, physical or mental illness, infirmity, injury, incompetency, deformity, or any physical, mental or emotional disability, or other impairment, illness or infirmity, not specifically mentioned hereinabove, and shall include by way of illustration, but not in limitation thereof, institutions or places furnishing those services usually

furnished by places or institutions commonly known as nursing homes, homes for the aged, retirement homes, boarding homes for the aged, sanitariums, convalescent homes, homes for the chronically ill, homes for the indigent . . . .

"(b) The term 'health facility' within the meaning of this act, shall not mean or be construed to mean or include, respectively, hotels, motels, or mobile homes when used as such, hospitals, mental hospitals, institutions operated by the federal government, boarding homes for children, schools for the deaf or blind, day schools for the retarded, day nurseries, children's homes, child placement agencies, offices of practitioners of the healing arts, offices of Christian Science practitioners, industrial clinics providing only emergency medical services or first aid for employees. . . ." Acts of 1963, ch. 239, § 3, Burns IND. STAT. ANN., § 42-1450 (1964 Supp.).

Each act specifies that the terms are defined for that act alone. My predecessor, in 1960 O. A. G., page 230, No. 39, advised the State Health Commissioner that an institution physically connected with and operated by a hospital, primarily for the care of the aged, who would be removed to the hospital proper if in need of hospitalization, should be licensed under an act since repealed which pertained to nursing homes (Acts of 1957, ch. 136) unless the aged in the home were, in fact, furnished the services of a physician and medical services. He concluded that, construing the licensing statutes together, if hospitals were allowed, without a nursing home license, to operate separate "nursing homes" which did not supply hospital services, but were primarily homes for the aged, said operation would be subject to no regulation at all, which the Legislature could not have intended.

The 1963 Health Facility Licensing Act, *supra,* however, differs in several respects from the 1957 Nursing Home Licensing Act. State institutions and municipal corporations are now required to comply with the act in order to be licensed. The exclusion of hospitals from the term "health facility" is found in the Act, § 3(b), Burns IND. STAT. ANN., § 42-1450 (1964 Supp.). The council by the act is empowered to

issue cease and desist orders, *id.* § 42-1454, but the enforcement provided is a fine, *id.* § 42-1461 (c), and an injunction, *id.* § 42-1463. In the injunction section is the following exception:

> "but this section shall not be construed to alter or affect in any manner the provisions of Sections 3 (b) and 6 (g) of this act."

Thus an intention of the Legislature is evinced to exempt entirely hospitals from the provisions of the act when they are furnishing, as hospitals, services similar to, or the same as, those furnished by a health facility.

Although the definitions of "hospitals" and "health facilities" under the licensing acts purport to be mutually exclusive, there appears to be a broad area in which discretion must be exercised by the physician and the institution to determine in which type of institution a patient may be most suitably cared for, and there may well be many patients who could be suitably cared for in either type of institution.

It is suggested that all three of the licensing statutes were enacted to allow the state to regulate the practices of institutions in order to protect the members of the public for whom the institutions were caring, and were not primarily enacted in limitation or derogation of the powers of the boards of hospital trustees and county commissioners to extend hospital care to the public under an act passed twenty-eight years before the first of the licensing acts, and which act requires that a hospital established thereunder "shall be for the benefit . . . of any person falling sick or being injured or maimed within its limits," and requires the board of hospital trustees to designate a reasonable charge for "occupancy, nursing, care, medicine, or attendants." Burns IND. STAT. ANN., § 22-3131.

It is my opinion that the licensing acts do not in any way deprive a hospital of its powers to determine which persons requesting admission require hospitalization, even though they may be chronically ill, or convalescent, or in need of long term nursing care.

Since a county hospital is not deprived by the licensing laws of the power to accept the patients described above, it

is not thereby deprived of the authority to classify its patients as to type of care required, such as surgical, obstetric, orthopedic, geriatric, etc., and as to degree of care required, such as intensive care, ordinary care, and minimum care. There is no apparent statutory prohibition against a county hospital's physically grouping patients in a manner convenient to the hospital, either as to type of care or degree of care.

Your second question cannot be answered categorically, because the answer will depend upon the nature of the care offered by, and the structure of, the facility.

In my opinion, a county hospital operating under the 1917 Hospital Act may not have the authority to acquire, operate and maintain with public funds a "nursing home" completely separate in operation from the hospital, for the care of aged persons who do not require medical and physicians' services. Such a county hospital may, however, acquire, operate and maintain a separate facility, as a part of its hospital operation, for the care of those patients who require medical services and services of a physician, and may place in said separate facility those patients who require less intensive physicians' and medical services than other patients in the county hospital.

OFFICIAL OPINION NO. 8

May 3, 1965

Mr. B. B. McDonald, State Examiner
Indiana State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Sir:

This will acknowledge your letter of recent date, in which you request my Official Opinion on the following questions concerning Acts 1965, ch. 357, which authorizes any town operating one or more utilities to invest surplus utility funds for any single account to an amount of ten thousand dollars. Your first question reads as follows:

> "1. May such funds be invested in a bank which has not been designated as a depository for the town's