Thus, any federal funds received by an agency under a grant-in-aid program are by this section appropriated for the uses and purposes provided by the federal law under which the grant-in-aid is made. In my opinion, the language found in Burns' 61-1304, *supra,* was specifically drafted to conform to the rules and regulations found in the *Federal Grants Manual,* set out in your letter.

Therefore, by way of summary and conclusion, in my opinion the State Board of Health, pursuant to Acts 1947, Ch. 178, *supra,* has the authority to make grants-in-aid to both official local health departments and to voluntary, not-for-profit organizations from funds appropriated by the state if such funds are appropriated pursuant to a matching grant from the Federal Government.

OFFICIAL OPINION NO. 60

October 8, 1964

Mr. Albert Kelly, Administrator
State Department of Public Welfare
701 State Office Building
Indianapolis, Indiana

Dear Mr. Kelly:

This is in answer to your letter of August 17, 1964, wherein you request an Official Opinion from me. Your questions pertain to the implementation and conformity of the Acts of 1963, Ch. 432, as found in Burns' (1964 Supp.), Sections 52-2001 to 52-2023, inclusive, with Public Law 86-778, commonly known as the Kerr-Mills Act, dated September 13, 1960. For ease and clarity of reference, in this Opinion, all further references to the 1963 Act herein, will be made by Chapter and Section number.

Your specific questions are stated as follows:

"1. Can the State Department of Public Welfare with the authority granted in Section 2(4), and Section 22 of Chapter 432, adopt Rules and Regulations to permit the approval of assistance to a person

who has not complied with the requirement of Section 4 of the same act?

"2. Can assistance be approved or payment for medical care made for an applicant for assistance who dies prior to the time the County Board takes action on his application?"

As you are aware, Ch. 432, *supra,* was vetoed by the Governor. However, as a result of the decision of the Supreme Court of Indiana in the case of Charles O. Hendricks, Secretary of State, etc. v. State *ex rel.* Northwest Indiana Crime Commission *et al.* (1964), — Ind. —, 196 N. E. (2d) 66, the act was published and circulated and became law.

Section 4 of Ch. 432, *supra,* reads as follows:

"An application for medical assistance for the aged under the provisions of this act shall be made to the county department of the county in which the applicant resides. *It shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department and shall be verified by the oath of the applicant. The application shall contain:*

"(1) A statement of the amount of property, both personal and real, which the applicant owns or in which he has an interest;

"(2) A statement of all the income which the applicant has at the time of the filing of the application; and

"(3) Such other information as may be prescribed by the state department by regulation." (Our emphasis)

The financing of the program, authorized by Ch. 432, *supra,* is to be a joint undertaking of the Department of Public Welfare of the State of Indiana and the Department of Health, Education and Welfare of the United States. Without the participation of the Federal agency, the assistance authorized by the act cannot become effective in Indiana. In addition, it is my understanding that a prerequisite to Fed-

eral participation, is the preparation and submission, by the Indiana State Department of Public Welfare, of a state plan for implementing the act, which is satisfactory to the Department of Health, Education and Welfare.

The following additional statements in your letter of August 17th are helpful in a consideration of your questions:

> "Section 8(a) of Title I of the Social Security Act provides that:
>
> > " 'All individuals wishing to make application for assistance shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals * * *'
>
> "The requirement listed in the Handbook of Public Assistance reads that 'a State Plan under Title I must, with respect to Medical Assistance for the Aged, provide for responding to and dealing with applications in emergency situations.'
>
> "This requirement has been interpreted by the Bureau of Family Services to mean that a State Plan will provide for making payments in behalf of otherwise eligible persons in an emergency situation where an applicant is too ill to sign or has no legal guardian to sign an application, or when an applicant dies before being able to sign, or before a legal guardian is appointed to sign the application.
>
> "We have proposed to meet this requirement by receiving a statement from a person having knowledge of the circumstances of a person who wishes to apply for Medical Assistance for the Aged but because of mental or physical disability is unable to sign the application. This statement would subsequently be replaced by the signed application of the applicant or his legally appointed guardian.
>
> *"Following a review of this proposal, we have been informed by the Regional Office, Bureau of Family Services, Department of Health, Education and Welfare, that the Central Office of the Bureau of Family*

Services is of the opinion that the proposed plan does not meet Federal requirements since it provides for the signing of an application under oath before payment of Medical Assistance for the Aged can be made." (Our emphasis)

In order that the Indiana plan can secure Federal approval, it appears evident that provision must be made in the plan for an *emergency situation,* namely, where because of mental or physical disability the person requiring such assistance is too ill, or otherwise incapable of signing and verifying the application referred to in Ch. 432, Sec. 4, *supra.*

The Federal agency has fully recognized the need for provisions to meet the emergency situation. Section M-3120 of "Handbook Supplement—Medical Assistance for the Aged," relating to Eligibility and Individual Payments, and transmitted by State Letter No. 463 contains the following language:

> "* * * Access to a medical institution or other medical service may depend upon certification of eligibility. Thus, promptness and adaptability take on elements of urgency when the applicant is acutely ill * * *
>
> "* * * Also, it may be necessary to accept an application through another person authorized to act in his behalf * * *"

In Section M-3130 "Requirements for State Plans," it is stated:

> "The requirements in Handbook IV-2331 and IV-A-2331, paragraph 2, apply to medical assistance for the aged; in addition, a State plan under title I *must,* with respect to medical assistance for the aged:
>
> "1. Provide that the application process shall include at least one interview with the applicant, or where such interview is impractical, the State plan must include methods for determining the emergency needs of the applicant.
>
> "2. Provide for responding to and dealing with applications in emergency situations."

In construing the provisions of Section 4, *supra,* certain rules of statutory construction are applicable. In 26 I. L. E. Statutes § 122, p. 329, it is said:

> "In construing a statute to ascertain the legislative intent, the act should be construed as a whole or in its entirety, each section being considered with reference to all other sections * * *"

See also: 1955 O. A. G., pages 81, 84, No. 23;
1960 O. A. G., pages 142, 145, No. 25.

In 26 I. L. E. Statutes § 115, p. 318, it is stated:

> "The intention of the Legislature as ascertained from the act as a whole will prevail over the strict literal meaning of any word or term used therein, and will control the strict letter of the statute. *In other words, the spirit or intention of the law prevails over the letter thereof.*
>
> *"The rule of construction according to the spirit of the law is especially applicable where adherence to the letter would lead to injustice,* absurdity, or contradictory provisions, and in adhering to this rule words may be modified or rejected and others substituted. Likewise the meaning of the words used in a statute may be enlarged or restricted according to their real intent." (Our emphasis)

In the case of Town of Kewanna, etc. v. Indiana Employment Security Board (1961), 131 Ind. App. 400, 404, 405, 171 N. E. (2d) 262, the court said:

> "In the construction of statutes, this court is bound by those definitions which are set out in the act and in this particular amendment, unless it appears that they are inconsistent or are repugnant to the manifest intention of the Legislature.
>
> "In construing an Act of the Legislature, its intention from a consideration of the Act, as a whole will prevail over the literal meaning of the terms used therein. *Stated differently it appears that the spirit*

or intention of the law prevails over the letter thereof. Brown v. *Grzeskowiak* (1951), 230 Ind. 110, 101 N. E. 2d 639; *Combs, Auditor, et al.* v. *Cook* (1958), 238 Ind. 392, 151 N. E. 2d 144. (Numerous other cases may be cited.) It likewise has been held that in a construction of a statute, *the important object is to seek, determine and carry out the purpose and intent of the Legislature,* and in order to determine that aim, the language used should first be considered in its literal and ordinary signification, and, if by giving the words used such a signification, the meaning of the whole instrument is rendered doubtful, or is made to lead to contradictions or absurd results, the intent, as collected from the whole instrument, must prevail over the literal import of the terms and control the strict letter of the law. *Decatur Twp.* v. *Board of Comrs. of Marion Co.* (1942), 111 Ind. App. 198, 38 N. E. 2d 479. *Northern Indiana R. Co.* v. *Lincoln Nat. Bank* (1910), 47 Ind. App. 98, 92 N. E. 384. (Other cases may be cited.)

"It has likewise been held that the rule of construction according to the spirit of the law is especially applicable where adherence to the letter of the law would lead to injustice, absurdity, or contradictory provisions. *City of Indianapolis* v. *Evans* (1940), 216 Ind. 555, 24 N. E. 2d 776; *Peoples Trust & Savings Bank* v. *Hennessey* (1926), 106 Ind. App. 257, 153 N. E. 507." (Our emphasis)

In the case of Lewis v. Smith's Estate (1959), 130 Ind. App. 390, 395, 162 N. E. (2d) 457, the court said:

"* * * *Statutes must be interpreted in the light of the purposes with which they deal.* To hold otherwise than we do would defeat the express purpose of the statute." (Our emphasis)

In Adams v. Slater (1961), 132 Ind. App. 105, 175 N. E. (2d) 706, 709, the court said:

"* * * If it appears that more than one construction is possible then *it is the duty of this Court to give*

*the construction which will give meaning to its purpose or object * * *"* (Our emphasis)

Based on the above cited authorities, it is evident that a construction of Section 4, *supra,* which would permit a person other than one requiring medical aid to sign and swear to an application upon the determination that such person was incapable of signing an application, at that time, would effectuate the intention of the Legislature, remove absurdities which would arise from a strict literal construction thereof, and would be proper.

Such construction, shown above, gives meaning to that part of the law which sets forth the scope of authority given the State Department of Public Welfare for the implementation of such purposes. We can commence with the title of the act, which reads as follows:

> "AN ACT concerning medical assistance for the aged, providing the terms and conditions for such medical assistance, providing for the administration and enforcement thereof and the procedures thereunder, *implementing federal regulation,* providing penalties, and declaring an emergency." (Our emphasis)

In Section 2 of Ch. 432, *supra,* it is stated:

> "The state department *shall:*
>
> * * *
>
> "(4) *Cooperate with the federal government in matters of mutual concern pertaining to medical assistance for the aged, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;*
>
> * * *
>
> "(8) Comply with such provisions, rules, and regulations as the federal government, from time to time, may find it necessary to make to assure the correctness and verification of such reports, and" (Our emphasis)

Particular attention is invited to the provisions of Sec. 22 of Ch. 432, *supra,* which reads as follows:

"SEC. 22. It is the intent and purpose of this act to implement Public Law 86-778 commonly known as the Kerr-Mills Act, dated September 13, 1960, to conform to the provisions thereof and to authorize the state department to adopt *such rules and regulations and plans as may be necessary to comply with the provisions of said act and to receive the benefits thereof.* All provisions of this act shall be construed in harmony with such intent and purpose, and pursuant to such intent and purpose said state board is authorized to adopt such rules and regulations as may be necessary to comply with the provisions of said Public Law 86-778 to entitle this state to receive contributions from the United States for medical aid to the aged and to enable the state to qualify and participate in such contributions for medical assistance to the aged from the United States." (Our emphasis)

Section 22 clearly and concisely states the legislative intent and purpose of this act. The Legislature, by the provisions of this section, was very careful to provide and authorize the State Department of Public Welfare the power *"to adopt such rules and regulations and plans as may be necessary to comply with the provisions of said act* [Public Law 86-778] *and to receive the benefits thereof."* (Our emphasis)

In my 1961 O. A. G., pages 249, 256, No. 41, state participation in a federal aid program was under consideration. The following statements made therein, are particularly appropriate in the instant case:

"It is also particularly noteworthy that the Acts of 1947, Ch. 178, as found in Burns' (1951 Repl.), Section 61-1301 grants broad powers to the state, to the full extent authorized by the Constitution of Indiana and not prohibited by law, to accept the provisions of any federal statute and to cooperate with the federal government so as to receive the benefits of federal legislation for itself or any of its citizens, including the power to make necessary rules and regulations in order to so cooperate and effectuate the purposes of any such federal law. Section 1 of that act, as found in

Burns' (1951 Repl.), Section 61-1301, provides as follows:

> " 'The state, or any political subdivision thereof, are each hereby authorized and empowered to the full extent authorized by the the Constitution of Indiana and not prohibited by law, to accept the provisions of any law of the Congress of the United States of America, or any rule, regulation, order or finding made pursuant thereto, now or hereafter in force, which, upon acceptance, authorizes the state, or any political subdivision thereof, to cooperate with the federal government, or to receive benefits for itself or any of its citizens; *and the state, or any political subdivision thereof, is hereby authorized and empowered to do any and all acts, and to make any rule, regulation, order or finding, that may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law.*' (Our emphasis)

"Under either Burns' Section 52-1104(f) or 61-1301, *supra,* the rules and regulations therein authorized are to be adopted and promulgated according to the provisions of the Indiana Acts of 1945, Ch. 120, as found in Burns' (1951 Repl.), Section 60-1501 *et seq.*"

Burns' 61-1301, *supra,* is further specific proof of the emphasis our Legislature has placed on the rule-making power to insure harmony and compliance with requirements of the Federal Government in participating programs involving the granting of federal aid.

The Indiana Adjusted Gross Income Tax Act of 1963, being the Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 117, as found in Burns' (1964 Supp.), Section 64-3217, provided for the implementation of this act with the Internal Revenue Code. This section provides, in part, as follows:

> "* * * Insofar as pertinent to this act, rules and regulations promulgated pursuant to section 7805(a)

> of the Internal Revenue Code and *in effect on January 1, 1963*, shall be regarded as rules and regulations promulgated by the department under and in accord with the provisions of this act, unless and until the department promulgates specific rules or regulations in lieu thereof." (Our emphasis)

The cut-off date of "January 1, 1963" in said Burns' 64-3217, *supra*, is particularly emphasized. This section was considered in my 1964 O. A. G., No. 32, issued on July 3, 1964. A key question considered in that Opinion was whether the Indiana Department of State Revenue is bound by the January 1, 1963 date. The importance of respecting the cut-off date established by the Legislature, is shown in the following statement from the 1964 O. A. G., No. 32, *supra:*

> "Thus, it is clear that the Indiana Legislature by the enactment of the 'Adjusted Gross Income Tax Act of 1963,' being the Acts of 1963 (Spec. Sess.), Ch. 32, approved on April 20, 1963, adopted the particular, 'referred to' provisions from the 'Internal Revenue Code' as defined in Section 111, *supra*, as stated in Section 117, *supra*, together with all other provisions from that code in effect on January 1, 1963, 'which are necessary to give full effect and implementation to the provisions specifically referred to,' *but did not adopt, and could not have constitutionally adopted, the amendments to the 'Internal Revenue Code' which were passed by the Congress of the United States in 1964, nor other future amendments thereto.* Moreover, the same answer is required with respect to rules and regulations promulgated pursuant to Section 7805(a) of the 'Internal Revenue Code' and in effect on January 1, 1963, in that amendments to such rules and regulations were not adopted by the enactment of the Acts of 1963 (Spec. Sess.), Ch. 32, *supra*."

Inasmuch as the Acts of 1963 (Spec. Supp.), Ch. 432, *supra*, does not contain a specific cut-off date, it is my opinion that it was the legislative intent, that state rule-making authority for conformity in implementation, with the Federal Government, be limited to Public Law 86-778, together with such

amendments thereto and rules and regulations the Federal Government had promulgated in connection therewith, as were in effect as of the date the provisions of Ch. 432, *supra,* became effective, namely, the 24th day of February, 1964, at 12:20 p. m.

As hereinabove stated Public Law 86-778, *supra,* as found in 42 U. S. C. A. (1963 Supp.), Public Health and Welfare § 302(a) (8), specifically requires the following:

> "(a) *A State plan* for old-age assistance, or *for medical assistance for the aged,* or for old-age assistance and medical assistance for the aged *must*—
>
> * * *
>
> "(8) provide that *all individuals* wishing to make application for assistance under the plan *shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;*" (Our emphasis)

Federal Regulation M-3130, *supra,* interprets Section 302(a) (8), *supra,* to require that a State plan *"must include methods for determining the emergency needs of the applicant"* and *"Provide for responding to and dealing with applications in emergency situations."* (Our emphasis)

In answer to your question No. 1, it is my opinion that it would be an injustice and contrary to the spirit or intention of the Legislature to make no provision, for the emergency case, and thus deprive an otherwise qualified person of required assistance because he or she is incapable of personally furnishing information and verifying his or her statements in an application. Therefore, it is my further opinion, that the State Department of Public Welfare may within the authority granted in Section 2(4) and Section 22 of Chapter 432, *supra,* adopt rules and regulations to permit approval of medical assistance to an aged person who, due to an emergency situation existing by reason of acuteness or nature of the illness, is incapable of personally complying with the requirements of Section 4, Chapter 432, *supra.*

In your question No. 2, you ask:

> "Can assistance be approved or payment for medical care made for an applicant for assistance who dies

prior to the time the County Board takes action on his application?"

In answer to this question, I find no statutory provisions or legal precedents to aid in a solution. However, unquestionably, any entitlement to assistance could not commence before a proper application was duly filed with the county department of public welfare of the county in which the applicant or the aged person requiring assistance resides. It is my opinion, in answer to your question No. 2, that this presents a question of policy, in which the State Department of Public Welfare must necessarily act in conformity with the Federal rules and regulations on the subject.

OFFICIAL OPINION NO. 61

October 13, 1964

Hon. Ralph H. Waltz
State Representative
Hagerstown, Indiana

Dear Representative Waltz:

This is in reply to your letter of September 8, 1964, wherein you request my Official Opinion upon the following question:

> "The question has arisen as to whether a chattel mortgage can be purged from the recorder's files under the provisions of the Commercial Code, Acts 1963, Chapter 317, Section 9-403. Apparently, under the old chattel mortgage law there was no provision for purging chattel mortgages from the county recorders records."

Acts 1963, Ch. 317, Sec. 9-403, of the Uniform Commercial Code, as found in Burns' (1964 Repl.), Section 19-9-403, cited in your letter applies only to financing statements filed pursuant to the Code. As you may know, the Code became effective on July 1, 1964. Section 10-102 of the Code among other things specifically repealed the "Chattel Mortgage Act of 1935," Acts 1935, Ch. 147, as amended and found in Burns'

(1951 Repl.), Section 51-501 *et seq.* However, Section 10-106 of the Code preserved all rights, duties and interests under the act of those persons who had properly recorded chattel mortgages prior to July 1, 1964.

See: 1964 O. A. G., No. 51.

Section 15 of the "Chattel Mortgage Act of 1935," as found in Burns' 51-515, *supra,* provides in part, as follows:

> *"A chattel mortgage executed under and pursuant to this act shall be invalid as against creditors, purchasers, junior mortgagees, other lienors and encumbrancers and third parties after the expiration of a period of three* [*3*] *years,* reckoning from the time of filing of said chattel mortgage or from the time of filing of a statement as herein provided for, unless before the expiration of such term the mortgagee or some one in his behalf shall file a statement containing the names of the parties to the mortgage, the time and place where filed, and the amount then due thereon for principal and interest, in which case the lien of the mortgage shall be extended for three [3] years from and after the date of the filing of said statement: *Provided, however, That any mortgage, deed of trust or other indenture encumbering, mortgaging or conveying both real estate and personal property to secure the full and final payment of the principal of and interest on any bonds, notes or other evidences of indebtedness, therein described or referred to, which has heretofore been spread of record, or which shall hereafter be spread of record, in the office of the recorder of the county or counties wherein such property is situated, shall create, be, and remain a valid and continuing lien, upon all the property, real, personal, and mixed, therein described or referred to, from the time of such filing to the expiration of a period of twenty* [*20*] *years from* and after maturity of the last instalment of all indebtedness secured thereby as shown by such record or by the record of any indenture supplemental thereto, and such mortgage, deed of trust or other indenture, whether heretofore or hereafter filed for rec-