of Section 704, referred to in your letter and found in Burns' 64-3251, supra, which is:

“All revenue derived from the imposition and collection of the tax on corporations imposed by this act shall be deposited in the general fund of the state in a special fund to be known as the ‘property tax relief fund.’” (Our emphasis)

In my 1961 O. A. G., pages 225, 230, No. 38, I quoted from the case of Board of Commissioners of County of Marion v. Board of School Commissioners of City of Indianapolis (1960), 130 Ind. App. 506, 515, 166 N. E. (2d) 880, 884, which reads, in part, as follows:

“‘There are many principles of statutory interpretation stated in the opinions of our courts. The one principle which we believe should be considered before any others may be resorted to, however, is that a statute which is clear and unambiguous must be given its apparent or obvious meaning * * *’”

The language employed by the Legislature in Burns' 64-3251, supra, is clear and unambiguous. The only revenue that could be “derived from the imposition and collection of the tax on corporations imposed” by the “Adjusted Gross Income Tax Act of 1963” must necessarily be the “overage” referred to in your letter. Therefore, I conclude that the position taken by your department concerning the manner of calculating the amount of revenue to be placed in the “Property Tax Relief Fund” is correct.

OFFICIAL OPINION NO. 39

July 20, 1964

Hon. Lawrin Prentice Dagley
State Representative
323 South Main Street
Clinton, Indiana

Dear Representative Dagley:

This is in answer to your letter of July 8, 1964, wherein you request an Official Opinion relative to certain definitions con-
tained in the Acts of 1963, Ch. 239, Sec. 3, as found in Burns' (1964 Supp.), Section 42-1450, pertaining to licensing of certain health facilities.

Your specific questions are stated as follows:

"1. Does the term 'health facility' as defined in the Acts of 1963, Ch. 239, Sec. 3, and found in Burns Sec. 42-1450, include nursing homes organized and maintained by a county in the State of Indiana.

"2. Does the term 'person' as defined in the Acts of 1963, Ch. 239, Sec. 3, and found in Burns Sec. 42-1450, include a county in the State of Indiana."

Burns' 42-1450, supra, reads, in part, as follows:

"As used in this act, and unless a different meaning appears from the context:

"(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 or 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: Provided, however, That the reception, accommodation, board, care or treatment in a household or family, for compensation of a person related by blood to the head of such household or family, or to his or her spouse, within the degree of consanguinity of the first cousins, shall not be deemed to constitute
the premises in which the person is received, boarded, accommodated, cared for or treated, a health facility:

Provided, further, That any state institution or any municipal corporation may specifically request such licensure and upon compliance with all sections of this act and upon compliance with all existing rules and regulations, the petitioning facility may then be so licensed under the provisions of this act.

“(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, and any hospital, sanatorium, nursing home, rest home, or other institution wherein any health care services and private duty nursing services are rendered in accordance with the practice and tenets of the religious denomination known as the Church of Christ, Scientist.

“(c) The term ‘person’ means, and shall be construed to mean, any natural person or persons, firm, partnership, corporation, company, association or joint stock association and the legal successors thereof.”

(Our emphasis)

To answer your questions, it is necessary to determine the scope intended by the Legislature in the use of the terms “health facility” and “person.” In order to arrive at the intention of the Legislature, the act, as a whole, and all parts thereof, must be considered.

Western Machine Works et al. v. Edwards Machine & Tool Corporation et al. (1945), 223 Ind. 655, 63 N. E. (2d) 535;

The State ex rel. Michener, Attorney General v. Harrison et al. (1888), 116 Ind. 300, 19 N. E. 300.
A rule of statutory construction particularly applicable in the instant case is found in 26 I. L. E. Statutes § 114, p. 317, wherein it is said:

"In construing a statute to ascertain the intention of the Legislature, the court should consider the object or purpose to be attained by the statute and the evils and mischiefs sought to be remedied * * *"

See also: Wedmore v. State of Indiana (1954), 233 Ind. 545, 550, 122 N. E. (2d) 1;

The legislative purpose and object in the enactment of the Acts of 1963, Ch. 239, supra, is set forth in Section 1 thereof, as found in Burns' (1964 Supp.), Section 42-1448, which reads as follows:

"The general welfare of our aging, chronically ill or infirm is of prime concern to the people of this state. Therefore, the purpose of this act is to preserve, protect and provide for the general welfare of said citizens."

An examination of the powers, rights and duties conferred upon the Indiana Health Facilities Council by Section 6 of said act, as found in Burns' (1964 Supp.), Section 42-1453, clearly indicates a legislative purpose to safeguard the aged, senile, ill and unfortunate by means of the regulatory and licensing power granted the council over such licensees as are designated in Burns' 42-1450, supra. Section 14 of said 1963 Act, as found in Burns' (1964 Supp.), Section 42-1461, contains penal provisions in connection with the enforcement of said act.

In a consideration of the scope of the definition of the term "health facility," particular attention is invited to the proviso contained at the end of Burns' 42-1450(a), supra, which reads as follows:

"* * * Provided, further, That any state institution or any municipal corporation may specifically re-
quest such licensure and upon compliance with all sections of this act and upon compliance with all existing rules and regulations, the petitioning facility may then be so licensed under the provisions of this act.” (Our emphasis)

In 20 I. L. E. Municipal Corporations § 1, p. 326, it is said:

“The term ‘municipal corporation’ is a generic term, and in its broader aspects is not limited to civil cities or towns, but includes counties * * *”

It is emphasized that the word “may,” as distinguished from the word “shall,” is used in the proviso. A reading of the statute indicates it to have been the legislative intent to use the word “may” in a permissive rather than mandatory sense, thus making it discretionary with a county as to whether such municipal corporation wished to come under the provisions of the act.

Therefore, in answer to your question No. 1, it is my opinion that the definition “health facility,” as stated in Burns’ 42-1450, supra, does not include nursing homes organized and maintained by a county in the State of Indiana. However, any county, as a “municipal corporation” may exercise an option to avail itself of the licensing and regulatory powers of the Indiana Health Facilities Council by compliance with the provisions of said act.

Your question No. 2 is whether the term “person,” as found in Burns’ 42-1450 (c), supra, includes a county in the State of Indiana. This subsection reads as follows:

“The term ‘person’ means, and shall be construed to mean, any natural person or persons, firm, partnership, corporation, company, association or joint stock association and the legal successors thereof.”

The term “person,” as defined in Burns’ 42-1450, supra, may have two different meanings. First, when considered solely on the basis of the definition contained in Burns’ 42-1450 (c), and, secondly, when considered both on the basis of the definition contained in Burns’ 42-1450 (c), supra, and with the context of Burns’ 42-1450 (a) where the proviso is
made that "any municipal corporation may request such licenseure." (Our emphasis)

When the term "person" is considered solely on the definition contained in Burns' 42-1450(c), supra, the rule of construction stated in the case of Shupe v. Bell et al. (1957), 127 Ind. App. 292, 298, 141 N. E. (2d) 351, is applicable, wherein it is said:

"* * * One of the oldest maxims of the law is, 'The express mention of one person or thing is the exclusion of another.' Wharton's Legal Maxims, p. 11. Otherwise stated, 'What is expressed makes what is silent to cease.' Coke Litt., 210a; Woodford et al. v. Hamilton et al. (1894), 139 Ind. 481, 39 N. E. 47. 'When the law is in the affirmative that a thing should be done by certain persons or in a certain manner, this affirmative manner contains a negative that it shall not be done by other persons or in any other manner.' 26 Am. and Eng. Ency. Law (2nd ed.), 605, and cases cited therein; State ex rel. v. Home Brewing Co. (1914), 182 Ind. 75, 95, 105 N. E. 909."

In Adkins et al. v. Indiana Employment Security Division et al. (1946), 117 Ind. App. 132, 137, 70 N. E. (2d) 31, the court stated:

"Furthermore, where the legislature has defined the meaning of words used in a statute, the courts are bound by that construction, though otherwise the language would be held to mean a different thing. State, ex rel. v. Grange, supra; Gr. Inc. Tax Dept. v. Harbison-Walker Ref. Co. (1943), 113 Ind. App. 695, 48 N. E. (2d) 834."

The 1963 Act, supra, is the enactment of Senate Bill No. 442. It is interesting to note that when this bill was introduced subsection 3(c) read as follows:

"(c) The term 'person' means, and shall be construed to mean, any natural person or persons, state or local governmental agency, firm, partnership, cor-
The Committee of Public Health, to which said bill was assigned, recommended that the words "state or local governmental agency" be stricken from said subsection. The Indiana Senate Journal, 1963 Regular Session, page 436, shows that "Report adopted." This action was indicative of a legislative intent not to include a "state or local governmental agency" in the usual concept of said definition solely as contained in said Burns' 42-1450 (c), supra.

However, it is emphasized that when the definition in Burns' 42-1450 (c), supra, is considered in connection with the context of the proviso for municipal corporations, contained in Burns' 42-1450 (a), supra, the term "person" may properly include a municipal corporation such as a county, and it is apparent that it was the legislative intent so to do.

Therefore, in answer to your second question, it is my opinion that the definition of the term "person" contained in Burns' 42-1450 (c), supra, does not include a county in the State of Indiana unless said county has exercised an option for licensure as provided for in the proviso of Burns' 42-1450 (a), supra, and when such option is exercised and a license obtained, the term "person" then does apply to a county.

OFFICIAL OPINION NO. 40
    July 28, 1964

Mr. George E. Goodwin
Executive Director
Indiana State Highway Commission
1101 State Office Building
Indianapolis, Indiana

Dear Mr. Goodwin:

You have requested my Official Opinion on the following questions:

"1. Does the Lake County Plan Commission qualify as a 'public agency' as defined under Sec. 3 of the 'Interlocal Cooperation Act of 1957'?"