Bill be amended by striking the words "* * * in cities of the first class * * *" from the second proviso, which gives rise to your question, the 1945 language of Burns' 36-2819, supra, having read, in part:

"* * * and, Provided, further, That in cities of the first class, at least fifty [50] per cent of such fund shall be budgeted and spent for construction, reconstruction, repair, widening and/or grade separation * * *" (Our emphasis)

Thereafter, Engrossed House Bill No. 152 was referred to the Senate Committee on Finances, which reported the Bill back to the Senate with the recommendation that the fifty [50] per cent provision in the second proviso be stricken and seventy-five [75] per cent be inserted in lieu thereof. As so amended, the Engrossed Bill passed the Senate and the House.

Thus, it becomes quite clear that the House Committee on Cities and Towns, and the General Assembly as a whole, deliberately intended that the second proviso, as set out in your question, be applicable to all cities and towns and not just to cities of the first class, despite the implication to the contrary presented by the peculiar form of the punctuation.

It is, therefore, my opinion that the second proviso contained currently in Burns' 36-2819, supra, was intended by the 1959 General Assembly to be applicable to all cities and towns, and not only to cities of the first class.

OFFICIAL OPINION NO. 9

February 5, 1964

Mr. Robert R. McClarren
Director, Indiana State Library
140 North Senate Avenue
Indianapolis 4, Indiana

Dear Mr. McClarren:

This is in reply to your request of January 24, 1964, for an Official Opinion pertaining to the Acts of 1961, Ch. 168, Sec. 1, as found in Burns' (1963 Supp.), Section 41-1101.
Your questions are stated in paragraphs two and three of your letter which read as follows:

"Specifically, does the phrase 'within fifteen days' mean that the written notice to return overdue material (book, newspaper, etc.) must be sent to the delinquent borrower within fifteen days of the expiration of the specified time within which the borrower agreed to return the library material? Or does 'within fifteen days' mean that within fifteen days after the receipt of the written notice to return the overdue book, newspaper, etc. the delinquent borrower must return the material?

"Then, would the thirty day period ('within thirty days') date from the day the materials were due or would the period date from the giving of the written notice that the materials were delinquent?"

Burns' 41-1101, supra, reads as follows:

"Whoever borrows from any library or gallery, museum, collection or exhibition, any book, newspaper, magazine, manuscript, pamphlet, publication, recording, film or other article belonging to or in the care of such library, gallery, museum, collection or exhibition, under any agreement to return the same, within a specified time, and thereafter fails to return such book, newspaper, magazine, manuscript, pamphlet, publication, recording, film or other article, shall be given written notice, which shall bear upon its face a copy of this section of this act, mailed or delivered in person to his last known address, to return such book, newspaper, magazine, manuscript, pamphlet, publication, recording, film or other article, within fifteen [15] days, and in the event that such person shall thereafter wilfully and knowingly fail to return such borrowed article within thirty [30] days, or shall fail to reimburse said library, gallery, museum, collection or exhibition for the value of such borrowed article, such person shall be guilty of a misdemeanor and upon conviction shall be liable to a fine of not more than fifty dollars [$50.00]
or imprisonment for not more than ten [10] days.”
(Our emphasis)

An examination of Burns’ 41-1101, supra, indicates uncertainty and ambiguity as to the effective commencement date of the time requirements covered by the phrases “within fifteen [15] days” and “within thirty [30] days.” This ambiguity necessitates a resort to the recognized rules for statutory construction to determine the legislative intent of the phrases herein above set forth.

Burns’ 41-1101, supra, is a penal statute. This section provides time limits, through the medium of written notice, within which the return of borrowed books and other enumerated material, must be returned to the library in order to avoid guilt under the penal provision of said section.

The Supreme Court of Indiana, in the case of Caudill v. State (1946), 224 Ind. 531, 69 N. E. (2d) 549, 550, stated, as follows:

“To be enforceable a criminal statute must clearly and definitely define the crime so that an ordinary person may know with certainty when he is violating it. Lanham et al. v. State, 1935, 208 Ind. 79, 86, 87, 194 N. E. 625, 195 N. E. 73; Stone v. State, 1942, 220 Ind. 165, 175, 41 N. E. 2d 609.

“As a general rule penal statutes are to be interpreted strictly against the state and liberally in favor of the accused. The rule is founded on the tenderness of the law for the rights of individuals. Its object is to establish a rule of certainty, by conformance to which the individual will be safe, and the discretion of the court limited. 50 Am. Jur. § 407, Penal Statutes, pp. 430, 431; Booth v. State, 1913, 179 Ind. 405, 409, 100 N. E. 563, L. R. A. 1915B, 420 Ann. Cas. 1915D, 987.”

See also: 26 I. L. E. Statutes § 175, Penal Statutes, p. 366.

The Indiana Civil Code, in the Acts of 1881 (Spec. Sess.), Ch. 38, Sec. 849, as found in Burns’ (1946 Repl.), Section 2-4704, provides:
"The times within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded."

The Indiana Criminal Code in the Acts of 1905, Ch. 169, Sec. 344, as found in Burns' (1956 Repl.), Section 9-2407, provides:

"In all criminal cases where no special provision has been made in this act, the rules of pleading and practice in civil actions shall govern, so far as applicable."

Therefore, in my opinion, the rule for computation of time contained in Burns' 2-4704, supra, is applicable in the instant case, and should be so used.

Burns' 41-1101, supra, provides that such borrower "shall be given written notice * * * mailed or delivered in person to his last known address to return such book * * *" This wording is vague and uncertain, as to the commencement or starting date for the computation of the fifteen days. The only reasonable basis for determining the date on which the stated periods should be based must necessarily refer to either the mailing or receipt of the notice and not to any other date based on library procedures. There is no indication, in said wording or section, as to whether the starting day is the date of posting notice or the day of delivery where personal delivery of the notice is made or whether it is the day of receipt of notice at the borrower's last known address. The authorities herein above cited and quoted require this statute to be interpreted strictly against the state and liberally in favor of the accused, namely, the borrower in the instant case. The construction which will reasonably give the borrower the more lengthy period before being guilty of a misdemeanor will be in harmony with the principles stated in Caudill v. State, supra, and will give consideration to the word "thereafter" as used in the statute.

Therefore, in my opinion, the answers to your questions are as follows:

(1) The starting date for the computation of the fifteen day notice means the day such written notice is actually de-
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livered in person to the borrower's last known address or, if mailed, the day on which delivery and receipt of such notice could normally be expected.

(2) The thirty day period commences immediately after the expiration of the fifteen day period, following the notice, as required by law, for the return of delinquent materials. In the computation of time the provisions of Burns' 2-4704, supra, should be observed.

OFFICIAL OPINION NO. 10

February 6, 1964

Mr. Harry E. McClain
Insurance Commissioner
509 State Office Building
Indianapolis 4, Indiana

Dear Mr. McClain:

You have requested my Official Opinion on the following questions:

"This Department desires your official opinion whether the Indiana Insurance Laws, as found in Burns' Indiana Annotated Statutes, Sections 39-401 through 39-446, contemplate that the subject companies may transact the business of health insurance as well as the life and accident insurance specified therein.

"In reviewing Section 39-421, we note authorization is given for the insuring of partial and permanent disability. Does this authority extend to disability caused by health conditions as well as accidents? If such disability caused by health conditions is authorized to be covered, can a company organized under this act also provide insurance benefits for health conditions which are not disabling? In other words, could such a company provide medical benefits for physical treatments, laboratory tests, minor surgery, etc., where the individual was not disabled? We will appreciate your opinion at your earliest convenience."