An exception to the above general rule is recognized where certain incidental powers are implied for the purpose of carrying out the express powers given a public officer.

State *ex rel.* v. Goldthait (1909), 172 Ind. 210, 216, 87 N. E. 133;

43 Am. Jur., Public Officers, § 250.

I do not find that the right to specify the agency by the State Superintendent of Public Instruction is necessary for the carrying out of any duties enjoined upon him by the statute, and therefore the right to so specify such agency would not come within the exception of the general rule above stated.

I am therefore of the opinion, that while the statute clearly contemplates the inspection be made by some person competent to make an inspection of all heating systems and gas lines leading into any such school building, that the right to specify the agency to make such inspection is not the responsibility of or within the authority of the State Superintendent of Public Instruction.

OFFICIAL OPINION NO. 10

April 19, 1963

S. T. Ginsberg, M.D.
Mental Health Commissioner
Department of Mental Health
1315 West 10th Street
Indianapolis 7, Indiana

Dear Dr. Ginsberg:

This is in answer to your letter of March 6, 1963, wherein you request an Official Opinion. Your question pertains to payment of costs of medical, surgical and hospital care for patients in state mental hospitals when it becomes necessary for such patients to be sent to a non-state hospital for special medical or surgical care or hospital care.

The Acts of 1947, Ch. 300, Sec. 4, as amended and found in Burns' (1951 Repl.), Section 52-1134, reads as follows:

> "Any person who is an inmate of any penal, benevolent or correctional institution of the state of Indiana, and is found to be in need of medical, surgical or hospital care which cannot be provided by the institution, may be placed in any state owned or operated hospital or other public hospital for necessary medical, surgical or hospital care on written order of the superintendent or warden of the state institution wherein said inmate is confined, provided that such inmate shall not be placed in a public hospital other than a state owned or operated hospital unless the daily charge for hospitalization at such public hospital shall be less than that charged by the state owned or operated hospital."

The particular section of the statutes for which you request an interpretation is found in the Acts of 1947, Ch. 300, Sec. 5, as amended by the Acts of 1957, Ch. 262, Sec. 1, as found in Burns' (1962 Supp.), Section 52-1135 (b) which reads, in part, as follows:

> "(b) *The necessary costs and expenses* which may be incurred upon the placing of an inmate of an institution in a hospital *shall be paid by the state out of funds appropriated by section 5a* of this act. A certified and itemized statement of the cost of treatment shall be rendered to the penal, benevolent or correctional institution from which the inmate has been placed * * *" (Our emphasis)

Your specific question, pertaining to the subsection quoted immediately above, reads as follows:

> "Does the statement that the state *shall* pay preclude recovery of this cost from the responsible relatives of the patient?"

The language employed in Burns' 52-1135(b), *supra,* clearly and unequivocally places a mandatory responsibility on the state to pay for such special hospital care and expense. This subsection directs that *"The necessary costs and expenses * * * shall be paid by the state out of funds appropriated by section 5a * * *."* (Our emphasis) If the state is au-

thorized a right of recoupment it must be found in some other part of this act or in any acts which may be *in pari materia.*

In 26 I. L. E. Statutes § 130, page 340, it is said:

> "Statutes which relate to the same thing or general subject matter are in pari materia and should be construed together, although they have been enacted at different times, and by different Legislatures, and contain no reference to one another, provided they are consistent with each other."

See also: Huff v. Fetch (1924), 194 Ind. 570, 577, 143 N. E. 705;

Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 13 N. E. (2d) 568.

In the case of Walgreen Co. v. Gross Income Tax Division (1947), 225 Ind. 418, 75 N. E. (2d) 784, 785, it is stated:

> "Statutes are not to be considered as isolated fragments of law, but as parts of one great system.
>
> * * *
>
> "'A statute is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws * * *'"

An examination of the Acts of 1947, Ch. 300, *supra,* in all its parts, is essential in a determination of whether the Legislature intended that such costs should be recouped from responsible relatives of patients.

The 1947 Act provides special hospitalization for three general classes of applicants. These are:

(a) Commitments by a county department of public welfare;

(b) Emergency cases where hospitalization is necessary before an application can be filed and acted upon by the county department of public welfare; and

(c) Admissions on written order of the superintendent or warden of any penal, benevolent or correctional institution of the State of Indiana.

A section by section study of the 1947 Act shows no single instance wherein the superintendent or warden of a *penal, benevolent or correctional* institution of the State of Indiana is authorized or required to make any financial investigation to determine whether patients or persons legally responsible for the patients, are able to repay part or all of the cost of the hospitalization and medical care and treatment under this act. Conversely, the act specifically provides for such investigations and the duty for departments of public welfare to seek repayment of such costs and expenses. For example, the Acts of 1947, Ch. 300, Sec. 1, as amended and found in Burns' (1962 Supp.), Section 52-1131, provides, in part, as follows:

> "* * * Upon filing of an application by any person requesting the county department of public welfare to furnish medical, surgical or hospital care as provided for in this act the county department of public welfare shall investigate the financial resources of such applicant, or anyone chargeable under the law with the responsibility of furnishing medical, surgical or hospital care for such applicant; and if after such investigation, the county department of public welfare shall determine that such applicant, or anyone chargeable under the law with the responsibility of furnishing medical, surgical and hospital care for such applicant, is financially unable to defray the necessary expense of such medical, surgical and hospital care, the county department of public welfare may make such commitment as herein provided * * *"

The Acts of 1947, Ch. 300, Sec. 14, as added by the Acts of 1951, Ch. 154, Sec. 4, and found in Burns' (1962 Supp.), Section 52-1142, provides as follows:

> "The several county departments of public welfare are hereby authorized and empowered whenever they determine that patients or the persons legally respon-

> sible for the patients, are able to repay over a period of time, part or all of the cost of the hospitalization and medical care and treatment under this act, to enter into such agreements for repayment as appear to them to be just and reasonable, which agreements to repay are enforceable as other contracts and agreements are enforceable by civil action."

It is emphasized that there is no comparable provision anywhere in said Act pertaining to penal, benevolent or correctional institutions of the State of Indiana.

The Acts of 1947, Ch. 300, Sec. 15, as added by the Acts of 1951, Ch. 154, Sec. 5, as found in Burns' (1962 Supp.), Section 52-1143, provides as follows:

> "The expenses and cost of hospitalization and medical care and treatment furnished under this act for the last illness of any deceased person shall be recoverable from his estate as provided by law."

Insofar as patients from the institutions under your supervision and control are concerned, this section must be read in connection with the Acts of 1935, Ch. 132, Sec. 2d, as added by the Acts of 1953, Ch. 130, Sec. 5, and found in Burns' (1962 Supp.), Section 22-401d. This statute applies specifically to the institutions under your control. This last named section reads as follows:

> "In the event that any patient, his estate or his family, is financially able to pay for the entire cost of the care and maintenance of the patient, or a greater portion thereof than by the provisions of this act legally required to be paid, such patient, his guardian or legal representative, or his family *may agree to pay* such entire cost *together with the cost of any unusual or special treatment,* care or training actually received by such patient." (Our emphasis)

It is significant that all the other additions to the 1947 Act effected by the Acts of 1951, Ch. 154, *supra,* specifically refer only to financial procedures involving patients receiving the special hospitalization, where there is a duty pertaining to

the county department of public welfare. It is also significant that the language of Burns' 22-401d, *supra*, through the use of the words "may agree to pay" is permissive rather than mandatory and that the last named section was enacted in 1953.

The Acts of 1955, Ch. 339, Sec. 2, as amended in 1959 and found in Burns' (1962 Supp.), Section 22-4217, contains the latest statutory provisions for the computation of per capita costs of patients in the state hospitals and schools under your supervision and control. It is emphasized that in this prescribed procedure no mention is made for the consideration or addition of special costs such as might accrue due to need of medical, surgical or hospital care which cannot be provided by your institutions. Burns' 22-4217, *supra*, reads as follows:

> "(a) Each patient in a psychiatric hospital of this state, the estate of the patient, the guardian of the patient, or the responsible relatives of the patient, individually or collectively, are liable for the payment of the costs of maintenance of such patient *in an amount to be fixed by the division of not to exceed the lowest per capita cost of the operation of any of the psychiatric hospitals of the state; Provided, that the liability for the payment of the cost of maintenance of such patient in a school for the retarded of this state, namely Fort Wayne State School, Muscatatuck State School, and any other school hereafter created, shall not exceed fifteen dollars [$15.00] per week.*
>
> "(b) *The per capita cost of operation shall be computed by taking the annual cost of operation of each psychiatric hospital of the state and dividing it by the total number of patient days per year in such hospital.*
>
> "(c) On or before the first day of August 1959, and at such time each and every year thereafter, the commissioner of the division of mental health, or some person authorized to act for and on behalf of said commissioner, shall compute the per capita cost of the operation of each psychiatric hospital of the state for the preceding fiscal year. *Each patient in a psychiatric hospital of this state, the estate of the patient, the*

guardian of the patient or the responsible relatives of the patients, individually or collectively, shall be required to pay, for the ensuing fiscal year, an amount not to exceed the lowest per capita cost so computed.

"(d) As used in this section, *the term 'cost of operation' shall mean and include the expense of personal service and all other operating expenses:* Provided, that the term 'cost of operation' shall not include the cost of new construction or remodeling, or the purchase of equipment." (Our emphasis)

The Acts of 1955, Ch. 339, Sec. 5, as found in Burns' (1962 Supp.), Section 22-4220 make provision for agreements to accept a lesser amount of maintenance cost or a cancellation thereof. The Acts of 1955, Ch. 339, Sec. 6, as found in Burns' (1962 Supp.), Section 22-4221, provides for the investigation by the department of mental health as to the financial condition of each person liable under this act. The Acts of 1955, Ch. 339, Sec. 7, as found in Burns' (1962 Supp.), Section 22-4222 provides as follows:

"The division is authorized to accept any additional amounts in addition to the financial liability expressed in this article which any patient, estate of a patient, guardian of a patient, or responsible relative of a patient may wish to pay."

In summary, an examination of all parts of the Acts of 1947, Ch. 300, *supra*, together with all statutes *in pari materia*, fails to show any legislative intent to alter or modify the clearly expressed mandatory responsibility contained in Burns' 52-1135(b), *supra*, for the necessary costs of such medical, surgical or hospital care to be paid by the state out of funds appropriated by Section 5a of the Act as shown in Burns' (1962 Supp.), Section 52-1135a. There is no statutory provision requiring recoupment or reimbursement to the state for any such costs. There is no indication that such action was intended by the Legislature. However, the statutes, herein before cited, do authorize a patient, his guardian or legal representative, or his family to agree to pay the cost of any

unusual or special treatment and your department is authorized to accept any such additional amounts.

Therefore, it is my opinion that the mandatory provision of Burns' 52-1135(b), *supra,* does preclude recovery of the necessary costs of such medical, surgical or hospital care from the responsible relatives of the patient unless such relatives voluntarily agree to make such payments.

OFFICIAL OPINION NO. 11

April 22, 1963

Hon. William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Wilson:

Your letter of April 8, 1963, has been received requesting an Official Opinion and reads as follows:

> "I respectfully request an Official Opinion with reference to Chapter 264, Acts of 1963, on the following question:
>
> "In cases where a school corporation owns both body and chassis of one or more of its school buses, and owns the body only of one or more of its school buses, and owns no part of one or more school buses transporting school children in this corporation, may the corporation employ school bus drivers, as other non-instructional employees are employed, for the school buses where the corporation owns both the body and chassis, and at the same time continue contracting with drivers for the remaining school buses?"

The Acts of 1963, Ch. 264, amends the school bus contract statute, Acts of 1945, Ch. 210, as found in Burns' (1948 Repl., 1962 Supp.), Section 28-3930 *et seq.* by adding a new section thereto to be known as Section 10, which, in part, reads as follows: