While the library board of a library district organized or operating under the Library Law of 1947 may not be a “true” political subdivision as above narrowly defined, it is certainly within the broad definition. Specification of all units of local government having a generalized function (with the possible exception of townships) would leave the meaning of “other political subdivision of this state” in Burns’ 53-1103, supra, practically meaningless unless the legislative intent was to include as a “public agency” those political subdivisions, broadly speaking, which have more specialized functions. A library district is a public corporation constituting a separate and independent taxing district according to Burns’ 41-905, supra. Under the circumstances, it is a political subdivision within the meaning of “public agency” as defined by the Interlocal Co-operation Act.

Therefore, it is my opinion that library districts organized and operating under the Library Law of 1947 are, under the Interlocal Co-operation Act, qualified to exercise any power capable of being exercised by them singly in co-operation with any other “public agency” capable of exercising such powers. Specifically, their library boards may contract with one another for co-operative purchasing of materials and supplies and co-operative employment of services needed in performing their function as public libraries.

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OFFICIAL OPINION NO. 35

August 25, 1960

Mr. Jay L. Foster
Indiana State Fire Marshal
145 W. Washington Street
Indianapolis, Indiana

Dear Mr. Foster:

This will acknowledge receipt of your request for an Official Opinion relating to your authority as State Fire Marshal over
1960 O. A. G.

a branch of the commercial movie industry which is commonly referred to as "drive-in movie theatres."

Your letter describes generally the arrangement of modern day drive-in theatres including the various buildings which may be found in connection with the projection room or, in some instances, adjacent to the projection room, and further describes such additional features as playgrounds, auditoriums for indoor viewing of the movie, rest rooms and similar features at drive-in theatres.

In addition to the above, your letter calls attention to 1937 Opinions of the Attorney General, page 491, wherein the Attorney General stated that free motion picture shows which, at that time, were prevalent in public streets, lots and other unenclosed areas were within the purview of Acts of 1937, Ch. 83. Thereafter, your letter reads as follows:

"The aforementioned opinion appears limited to free movies and additionally the statute therein cited has been amended. Acts of 1937, Ch. 83, Sec. 4, p. 435; Acts 1943, Ch. 268, Sec. 1, p. 761 (Burns Ind. Stats. 1950 repl, 20-1004.) Specifically, therefore, will you please advise whether pursuant thereto, this office has jurisdiction with reference to:

"1. Drive-in-Theatres with amusement park or playground.

"2. Drive-in-Theatres with indoor viewing room or auditorium.

"3. Drive-in-Theatres.

"If the answer to any of the above is affirmative, please further advise into which classification, A, B, or C, as set forth in the referenced statute, such theatre should be classified."

There are three previous Opinions dealing generally with the problem raised by your letter, one of which was 1937 O. A. G., page 491, cited in your letter and already referred to in this Opinion. Another 1937 Opinion dealing with a similar problem commences at page 456. The last named Opinion dealt primarily with carnivals and circuses operating under tents and with shows presented in public schoolhouses and
OPINION 35

held that the inspection and granting of permits by the State Fire Marshal was discretionary and the Fire Marshal could inspect if he deemed it necessary to insure adequate safety to the public.

In 1941 O. A. G., page 203, the Attorney General again rendered an Opinion with respect to outdoor moving picture shows for which no admission fee was charged. These shows operated without any buildings or other structures or facilities. Moreover, they were temporary or transient and used portable screens and projectors. The conclusion reached in the 1941 Opinion was that the "places" designated by the statute to be covered by permits were places of fixed location with buildings and other facilities. Without these aspects, the free outdoor movies could not be classified under Section 4 of the act and were, therefore, not within the purview of the act.

None of the facts presented in the earlier Opinions would describe the drive-in theatres which are in operation today, so those Opinions must be limited to the facts contained therein.

In so far as your questions are concerned, there are two separate acts which are applicable. First of all, there is Acts of 1913, Ch. 192, Sec. 1 et seq., as amended, and as found in Burns' (1950 Repl., 1959 Supp.), Section 20-801 et seq., which act sets forth the general duties and authority of the State Fire Marshal. In connection with these duties and authority, the State Fire Marshal must inspect buildings and premises used by the public for safety and prevention of fires and fire hazards. Moreover, the act places upon the State Fire Marshal the duty to make and enforce rules and regulations in conjunction with his safety and fire prevention duties. Specific portions of the act, here particularly applicable, are found in Burns' 20-807, supra, and read as follows:

"For the purpose of preventing fires and fire losses or in the interest of public safety to life and property or safety to adjoining property from fire or explosion the state fire marshal shall, not inconsistent with any existing law or laws of the state of Indiana, make, promulgate and enforce rules and regulations pertaining to stereopticon and moving picture machines and projectors, stationary or portable, their use and booths therefor, buildings and places in which such are used or intended to be used."
“It shall be the further duty of the state fire marshal to make, promulgate and enforce rules and regulations, not inconsistent with any existing law or laws of the state of Indiana, specifying the type, number and location of fire escapes, ways of egress or means of escape from fire, necessary for every building now or hereafter used in whole or in part as a public building, public or private institution, sanitarium, hospital, nursing home, surgical institute, asylum, school house, gymnasium, dormitory, church, theater, public hall, place of assembly, place of public resort, store, restaurant, factory, workshop, mercantile or other establishment, hotel, apartment house, boarding house, lodging house, club house or tenement house.

* * *

“Whenever any of said officers shall find any building or other structure or any property of any kind or any other thing of any kind or any place or any condition, which, for want of repairs, lack of or insufficient fire escapes or exits or automatic or other fire alarm apparatus or fire extinguishing equipment or by reason of age or dilapidated condition, or from any other cause or condition or for any other reason whatsoever is especially conducive or liable to fire or explosion or liable to cause a fire or explosion and which is so located or conditioned as to endanger it or other property or life; or whenever such officer shall find in or about any building or other place or property or thing any combustible or explosive matter or inflammable condition, or condition of any kind dangerous to the safety of such building, place, property or thing or to any adjoining property or to life, from fire or explosion, or shall find any other condition or thing of any nature that is liable to cause a fire or explosion or conducive to fire or explosion; he or they shall order such condition or thing to be remedied or such building or buildings or place, property or thing to be repaired, remedied, or removed, and such order shall forthwith be complied with by the owner, occupant or lessee of such premises, place, property, building or thing * * *.”
Attention is invited to the fact that the Fire Marshal’s duty to inspect, and necessarily his jurisdiction, is extended beyond the confines of a building or a part of a building. The broad language used is indicative of the fact that the Legislature intended to require the Fire Marshal to inspect any place or area which might be a fire hazard because of the use or presence of combustibles, explosives or inflammable substance or materials.

The second act which is pertinent to your questions is Acts of 1937, Ch. 83, Sec. 1 et seq., as amended, and as found in Burns’ (1950 Repl.), Section 20-1001 et seq. This is the specific act cited in your letter and it deals with the inspection and granting of permits to places of amusement and entertainment. It is to be noted that there is no general authority for establishing rules and regulations in that act and therefore all rules and regulations applicable to such permits must come under the authority of the Fire Marshal’s general duties in Burns’ 20-801 et seq., and the portions cited above from Burns’ 20-807, supra.

The title to the 1937 Act, Burns’ 20-1001 et seq., supra, is extremely broad in describing those places which the Fire Marshal must inspect and regulate, as is the first section of the act which retains this broad language, and reads as follows:

"On and after the first day of July, 1937, it shall be unlawful for any person, firm or corporation to operate any moving picture show, dance hall, cabaret, night club, or any other place of public amusement or entertainment in any building, theater or hall, to which the public is admitted, or to operate any other place of public entertainment or amusement within the state, unless the owner, lessee, occupant or agent of such building, theatre, hall or place of amusement or entertainment has the approval of the state fire marshal to use such building, hall or place for such purpose, and has been granted a permit, as herein provided. All inspections made by the state fire marshal by virtue of the provisions of this act shall be made in strict compliance with the provisions of this act and all of such buildings, halls, theatres and other places shall conform
with the rules and regulations of the state fire marshal.”
(Our emphasis)

Section 10 of the 1937 Act, Burns’ 20-1010, *supra*, dealing with permits, is further evidence of the legislative intent to subject any type of motion picture show or exhibition to the inspection and jurisdiction of the Fire Marshal. This section reads as follows:

“No film distributing agency or booking agency shall supply or deliver films or entertainment for exhibition purposes to any premises in the state of Indiana unless such premises have been inspected and approved and unless the owner, manager or lessee thereof is in possession of a permit authorizing the exhibition of moving pictures. No motion picture machine shall be operated upon a public street or on an open space less than one hundred [100] feet distant from any building, unless noninflammable film is used, then the distances shall be twenty-five [25] feet.”

The above language specifically brings outdoor moving picture shows under the Fire Marshal’s jurisdiction and leaves little or no doubt as to his authority over any public moving picture exhibition as a place of amusement within the provisions of Burns’ 20-1001 et seq., *supra*.

The broad authority in Burns’ 20-807, *supra*, in conjunction with the specific inspection and permit authority in Burns’ 20-1001 et seq., *supra*, leave no doubt as to the Fire Marshal’s authority over drive-in movie theatres. The two acts are in harmony and they complement one another. One gives general jurisdiction to inspect and promulgate rules and regulations for safety and fire prevention in areas of public use and assembly while the other prescribes the duty to inspect and grant permits to places of public amusement and entertainment.

In view of the foregoing, it is my opinion, in answer to your questions numbered 1, 2 and 3, that the State Fire Marshal does have jurisdiction over drive-in movie theatres and the buildings and facilities located on the premises and operated in conjunction therewith.

Your final question asks in what permit classification drive-in theatres would be placed under Burns’ 20-1004, *supra*. This
section of the act sets forth three classifications; A, B and C, based primarily upon area space or seating capacity. Classification C, however, is a catch-all provision which covers everything not subject to the provisions of A and B classification.

Burns' 20-1004, subsections (a), (b) and (c) define the classes into which places of public amusement must fall. Classes A and B as found in subsections (a) and (b) respectively include "moving picture shows" within their classifications and in each instance the phrase "in any building or part thereof" is used in conjunction with the place where the entertainment or amusement is held. Perhaps in the strict sense, drive-in movies are not held "in any building or part thereof." On the other hand, there are buildings and other structures or facilities on the premises which house the principal part of the theatre operation.

A drive-in theatre is both a motion picture theatre and a place of public amusement within the title and the language of the 1937 Permit Act, supra. Moreover, it is a place where motion picture machines and booths therefor are used as well as a place of public assemblage, as contemplated by the regulatory provisions of Burns' 20-807, supra. The real purpose of the legislation under consideration here is to insure greater public safety with respect to fires and, in furtherance of this purpose, the Fire Marshal is required to inspect and regulate premises subject to such a hazard and, if it be a place of public entertainment or amusement, to grant permits to places which have complied with regulations and passed inspection. The fact that moving picture shows not completely within a "building or part thereof" were intended to be subject to inspection, control and permits, is further evidenced by the language of Burns' 20-1010, supra.

The act dealing with classification of places of amusement and the granting of permits thereto by the Fire Marshal was passed for the protection of the public. It is for the safety and good of all the people in the state who might wish to avail themselves of entertainment. In this sense, it must receive a liberal construction so as to cover all things fairly within its terms although technically not within the precise letter of the act. In Milk Control Board of Indiana v. Phend (1937),
1960 O. A. G.

104 Ind. App. 196, 9 N. E. (2d) 121, the Court adopted the following statement with respect to statutory construction of regulatory acts passed for the public safety:

"'When the purpose of the legislative body sought to be accomplished is clear, such construction shall be given the statute as shall carry out such purpose, even though such construction is contrary to the strict letter thereof.' Northern Ind. R. Co. v. Lincoln Nat'l. Bank (1910), 47 Ind. App. 98, 92 N. E. 384."

In so construing Burns' 20-1004, supra, it is my opinion, in answer to your final question, that drive-in movie theatres having a fixed location, buildings, structures and other facilities on the premises can be classified as "moving picture shows" within Class A or B, depending upon a determination of the area or seating capacity of the theatre.

OFFICIAL OPINION NO. 36

August 26, 1960

Hon. Samuel H. Power
Indiana State Representative
900 East Clinton Street
Frankfort, Indiana

Dear Representative Power:

This is in answer to your recent letter wherein you request an Official Opinion concerning the appropriation of funds by a county council for bovine tuberculosis testing within such county as provided for by Acts of 1951, Ch. 80, Sec. 410, as amended by Acts of 1951, Ch. 178, Sec. 1, and as found in Burns' (1959 Supp.), Section 16-1801. Your specific questions are as follows:

"My questions are as follows: In light of part of Section 410 and part of Section 413 of the statutes which were in force immediately prior to the enactment of the present statutes, which prior statutes are quoted below (See Burns Indiana Statutes Annotated, 1959 Cumulative Supplement, Vol. 5, Part 1, pages 150 and 151 where the prior law is set out), after the Indiana