in my opinion, would affect the judicial interpretations given Burns' 55-601, Clause Fifth, *supra*, and, therefore, it is my opinion that the State Highway Department of Indiana may construct highways across the tracks and the operating right of way of a railroad without liability for compensation to the railroad.

OFFICIAL OPINION NO. 39

September 20, 1960

A. C. Offutt, M. D.
State Health Commissioner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis 7, Indiana

Dear Dr. Offutt:

This is in reply to your recent request for an Official Opinion which reads, in part, as follows:

"The 1945 Act, governing the regulation and licensing of hospitals, Burns' Section 42-1601, et seq., exempts 'convalescent homes, boarding homes or homes for the aged' from its provisions.

"On the other hand, the Indiana Nursing Home Licensing Law, the same being Chapter 136 of the Acts of 1957, as amended by Chapter 209 of the Acts of 1959, Indiana General Assembly *appears to specifically exempt any institution operated by a hospital from licensure under the provisions of the Indiana Nursing Home Licensing Law.* * * *

"It is respectfully requested that we have your official opinion relating to the authority in Indiana for the licensure and regulation of hospitals which own and operate a home for the aged, more commonly referred to as a 'nursing home,' and charge individuals for the use thereof." (Our emphasis)

There was enclosed with your letter of request a copy of correspondence received by you in which details of a proposed operation were set forth thus:
“The institution which Reid Memorial Hospital proposes to operate is primarily a home for the aged, commonly referred to as a ‘Nursing Home.’ While the building which will house the aged people will be adjacent to and physically connected to a new wing at the hospital, it is not planned to hospitalize patients in the Home. If an occupant of the Home became sick enough to require hospitalization, he or she would be transferred to Reid Memorial Hospital, or a hospital elsewhere as directed by the physician in charge.”

The first statute to which you refer is the Acts of 1945, Ch. 346, as found in Burns’ (1952 Repl.), Section 42-1601 et seq. Section 6 of that Act, as found in Burns’ 42-1606, supra, reads as follows:

“‘Hospital’ within the meaning of this act shall be defined to be any institution, place, building, or agency represented and held out to the general public as ready, willing and able to furnish care, accommodation, facilities, and equipment, for the use, in connection with the services of a physician, of persons who may be suffering from deformity, injury, or disease, or from any other condition, for which medical or surgical services would be appropriate for care, diagnosis or treatment. The term ‘hospital’ as used in this act does not include convalescent homes, boarding-homes, or homes for the aged; nor does it include any hospital or institution specially intended for use in the diagnosis, care and treatment of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions; nor does it include offices of physicians where patients are not regularly kept as bed patients. The council shall have the authority to determine whether or not any institution or agency comes within the scope of this act, and its decisions in that regard shall be subject only to such rights of review as the courts exercise with respect to administrative actions. It shall be unlawful for any institution, place, building, or agency, to be called a hospital which is not a hospital as defined in this section.” (Our emphasis)

The second statute to which you refer is the Acts of 1957, Ch. 136, as amended, as found in Burns’ (1959 Supp.), Sec-
As used in this act, and unless a different meaning appears from the context:

“(a) The term ‘nursing home’ means and shall be construed to include any building, structure, agency, institution, or other place, for the reception, accommodation, board, care or treatment not less than twenty-four [24] hours in any week of more than two [2] unrelated individuals hereinafter designated patients, who are unable sufficiently or properly to care for themselves, and for which reception, accommodation, board, care or treatment a charge is made: 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 first cousins, shall not be deemed to constitute the premises in which the person is received, boarded, accommodated, cared for or treated, a nursing home. The term ‘nursing home’ shall not include institutions operated by the federal or state governments or any municipal corporation, hospitals, institutions for the treatment and care of psychiatric patients, boarding homes for children, day nurseries, child-caring institutions, children’s homes and child-placing agencies, as defined under the laws of this state, nor hotels or offices of physicians.” (Our emphasis)

Grammatically speaking, the commas setting off the word “hospitals” in the last sentence of Burns’ 42-1450, supra, might signify either that hospitals were part of a series of operators of institutions excluded from the term “nursing home” or that hospitals were but a type of institution excluded, irrespective of the operators. All other institutions excepted from the provisions of the Acts of 1957, Ch. 136 by being excluded from the definition of “nursing home” in Burns’ 42-1450, supra, are otherwise subjected to governmental regulation. If the statutory interpretation of the Acts of 1957, Ch. 136 set forth in your letter is correct, then the proposed operation described above might not be licensed either as a “nursing
home” or as a “hospital,” merely because of its operator’s identity as a hospital.

It is my opinion that the Legislature intended only to exclude hospitals from the provisions of the Nursing Home Act, rather than institutions operated by them, partly because nursing homes and hospitals are both defined by statute as institutions (and are operated by natural persons, individually or as boards) so that, strictly speaking, a hospital cannot itself operate an institution, even though so described in common parlance. A further reason for holding that the word “hospitals,” as used in the Nursing Home Act, should not be included in the category of government-operated institutions, is that “hospitals” are themselves institutions which the Legislature has appropriately placed in the series of institutions which are intended to be excluded from the definition of a “nursing home.”

It is to be remembered that the purpose of the Legislature in enacting the Acts of 1957, Ch. 136, is in furtherance of the general welfare of persons unable to care for themselves, as is stated in Section 1, as found in Burns’ 42-1448, supra, and the Legislature is not likely to have intended to withhold protection afforded by regulation from those persons in an institution indistinguishable from regulated nursing homes except for the fact that the nominal operator of such institution is a hospital.

The above-quoted excerpt from correspondence relating to a specific operation indicates that the care proposed to be rendered for the aged by Reid Memorial Hospital is not hospitalization; however, it is well known that many aged persons suffer from conditions which require the services of a physician, and for which conditions medical services are appropriate for care or treatment. If it should appear, as a matter of fact, that such services were required and furnished, it is possible that the entire operation, that is, the present hospital and proposed addition, might fall within the statutory definition of a “hospital” set forth in Burns’ 42-1606, supra. If not, then it is possible that the operation would qualify for licensing as a “nursing home,” as that statutory term is here construed. Determination of these facts is the responsibility of the council provided for by the Acts of 1945, Ch. 346, supra, and cannot be controlled by the statements of outsiders.
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It is therefore my opinion that the true nature of the institution in question would determine whether the proposed operation should be included in the hospital license or separately licensed as a nursing home, irrespective of operation by hospital administrators.

OFFICIAL OPINION NO. 40

September 21, 1960

Hon. John I. Bradshaw, Jr.
State Representative
Chamber of Commerce Building
Indianapolis, Indiana.

Dear Representative Bradshaw:

This is in response to your letter of August 22, 1960, wherein you request an Official Opinion on an interpretation of the Acts of 1935, Ch. 240, Sec. 1, as amended and found in Burns' (1959 Supp.), Section 48-1005, which reads, in part, as follows:

"Any civil town having a population of more than one thousand five hundred [1,500], according to the last preceding United States decennial census, may become a city of the fifth class, and, except as herein provided, possess all the powers and duties and be subject to all the laws applicable to cities of the fifth class as now or hereafter may be provided, in the following manner:

"The board of trustees of any such town may, and upon petition of one-third [1/3] of the legal voters thereof, shall, adopt a resolution submitting to the voters of such town the question whether such town shall become a city of the fifth class, as herein provided. * * *"

Your questions, based upon an interpretation of Burns' 48-1005, supra, are as follows:

(1) "Does the term 'legal voter' as used in the above-quoted statute mean 'registered voter' or does it