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
mean any person over 21 who has satisfied the residence requirements of Article 2, Section 2 of the Indiana Constitution?"

(2) "If 'legal voter' means the latter, then how can the number of legal voters be determined in order that one-third of the legal voters may sign a petition requiring the town board to adopt a resolution submitting to the voters of such town the question whether the Town of East Gary shall become a city of the fifth class."

In my opinion, the key to answering your question No. 1 is not to be found merely by referring solely to Burns' 48-1005, supra, and the use therein of the words "legal voters" standing alone. The solution must come from an interpretation of the legislative purpose in the use of the phrase "legal voters thereof," in said section. The employment of the adverb "thereof" brings the phrase within the rule of statutory construction for determining the relationship of modifying phrases known as the doctrine of the "last antecedent." This rule is stated in 82 C. J. S. Statutes, § 334, p. 670, as follows:

"Section 334. Relative and Qualifying Terms and Relation to Antecedents.

"By what is known as the doctrine of the 'last antecedent,' relative and qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding * * *." (Our emphasis)

The last antecedent or noun in the instant case is the word "town." It is therefore apparent that the Legislature was referring specifically to "legal voters of such town." Consequently our immediate task is to determine who are the legal voters of a town.

In any consideration of voter qualifications it is important to bear in mind that there is a distinction between voter qualifications for a town election, as such, as distinguished from a primary, general or city election. A town election is defined in the Indiana Election Code, Acts of 1945, Ch. 208, Sec. 2, as found in Burns' (1949 Repl.), Section 29-2802, as follows:
"The words * * * 'town election' shall mean an election held in any such municipality at which the electors of the municipality either choose by ballot public officials for such municipality or vote upon some question lawfully submitted to them."

Nowhere in our Constitution, statutory law or case law, in Indiana, do I find a definition of "legal voters." The only statutory definition of the word "voter," in Indiana, is in the "Indiana Election Code" in the Acts of 1945, Ch. 208. In Section 2 thereof as found in Burns' 29-2802, supra, the word "voter" is defined as follows:

"* * * The words * * * 'voter' shall mean a person qualified to vote at any primary, general or city election held in this state. * * *" (Our emphasis)

and in Section 73 thereof as found in Burns' 29-3428, supra, the word "voter" is defined as follows:

"The term 'voter' and the personal pronoun used in connection with the term 'voter' as used in this article, shall be construed to mean any person either male or female, who is entitled by law to vote at any primary, general or city election held in this state. * * *" (Our emphasis)

The Legislature when it enacted the Indiana Election Code was well aware that there was also a class of election known as "town election," for not only is such type of election defined in this same Section 2, supra, but Sections 161 through 174 inclusive, of the Election Code, as found in Burns' (1949 Repl.), Sections 29-4401 to 29-4414 inclusive, concern exclusively the subject of town elections. Therefore, applying the doctrine of "expressio unius est exclusio alterius," we can only conclude that the Legislature had a definite intention not to include "town election" in their enumeration of "primary, general or city election," in their said definition.

In 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201 provides, in part, as follows:

"The construction of all statutes of this state shall be by the following rules, unless such construction be
plainly repugnant to the intent of the legislature or of the context of the same statute:

"First: Words and phrases shall be taken in their plain, or ordinary and usual sense. * * *"

In Ballentine's Law Dictionary, Second Edition, page 739, "legal voter" is defined as follows:

"legal voter. A person authorized by law to cast his ballot at an election."

In 29 C. J. S. Elections, § 1 (h), page 18, it is stated:

"Legal voter. A legal voter is one duly qualified; one invested by law with the right to vote at an election; one qualified by law to vote and who does vote. Where the term is defined by statute, such definition is controlling.

"As used in statutes, the term 'legal voter' must be taken in its ordinary and usual sense, in the absence of qualifying language. However, the meaning may depend on the subject matter of the legislation and the particular context. Within certain constitutional and statutory provisions a legal voter does not mean a registered voter, but within other constitutional and statutory provisions one is not a legal voter unless he is registered as a voter in accordance with the statutory regulations; and in some instances the terms 'legal voter' and 'registered voter' have been treated as synonymous." (Our emphasis)

If it were within legislative contemplation in Burns' 48-1005, supra, to limit the invocation of the statute to legal voters who were also registered, it is but fair to assume that direct language, free of all ambiguity, would have been employed.

The Indiana Constitution, Art. 2, Sec. 2, provides as follows:

"In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty
days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside."

The Indiana Constitution, Art. 2, Sec. 14, authorizes the General Assembly to "provide for the registration of all persons entitled to vote." In accordance with this authority, the Legislature, in the Acts of 1945, Ch. 208, Sec. 45, as found in Burns' (1949 Repl.), Section 29-3401, provided as follows:

"Hereafter it shall be unlawful for any person to vote at any general, primary or city election held in this state unless such person is, at the time of such election or primary, a registered voter under the requirements of this article." (Our emphasis)

It is significant that the word "town" is not mentioned in this section.

In the "Town Election Laws of Indiana" (1959) issued under the authority of the State Election Board, it is stated on pages 41 and 42 as follows:

"Qualifications of Voters at Town Elections.

"For a person to be entitled to vote at a town election in the town and precinct in which he or she resides, he or she must—

"(1) be a citizen of the United States;

"(2) be of the age of twenty-one years or upwards;

"(3) have resided in the state for six months, in the township sixty days, and in the ward or precinct thirty days immediately preceding the day of the election;

"(Constitution of Indiana, Art. 2, Sec. 2.)

"(4) not be a disfranchised person undergoing a sentence of imprisonment on conviction for a felony or misdemeanor. (Sec. 190) 29-4804."

It will also be noted in said publication under the "Grounds of Challenge" on page 44 that failure to register is not a ground for challenge in a town election. It is further stated on page 5 of said publication, in part, as follows:
"* * * However, since the law * * * does not require town general elections to be conducted according to the laws governing city elections, town elections will be conducted in the same manner as heretofore by town election officials and the registration of voters will not be required. * * *" (Our emphasis)

The following opportunities are presented to residents of a town, who are qualified by age and residence, to exercise their right of franchise:

(a) *Town Elections*—for which no registration is necessary;

(b) *Primary Elections*—only in towns that have a population of 3,000 or more and coinciding town and precinct boundaries, otherwise townspeople are still required to select nominees of the major parties in party conventions;

(c) *General Elections*—one of the necessary qualifications for voting in a general election, in a town, as elsewhere, is that the voter be registered.

The Election Code as shown in the Acts of 1945, Ch. 208, Sec. 161, as found in Burns' (1959 Supp.), Section 29-4401 reads, in part, as follows:

"Where any town shall hold an election at any time other than the time of a general election, such election shall be held in conformity with the provisions of this act * * *." (Our emphasis)

This provision thus requires that such town elections conform to the provisions of Burns' 29-3401, *supra*, which does not include "town elections" as one of the enumerated classes of elections requiring registration.

Therefore, it is my opinion that a legal voter in a town election is one who possesses the qualifications set forth in the Indiana Constitution, Art. 2, Sec. 2, *supra*, and inasmuch as town elections are not included within the registration requirements of Burns' Sec. 29-3401, *supra*, registration as a condition precedent to participation in such town elections is unnecessary. However, I wish to emphasize particularly that
in towns of 3,000 or more in population, if the town and precinct boundaries coincide, it is necessary to select candidates by means of a primary election, for which townspeople must be registered to participate, and I further emphasize that all voters in any general election in Indiana must be registered regardless of whether they live in a town or elsewhere.

Your question No. 2 is a query as to how the number of legal voters, of the town, can be determined in order that one-third of such legal voters may sign a petition as provided for in Burns' Section 48-1005, supra. Inasmuch as petitioners are limited to the legal voters of the town, a determination of who those legal voters may be can only be obtained by taking a poll of the voters qualified to vote in such town. The right to take such a poll is provided for in the Indiana Election Code in the Acts of 1945, Ch. 208, Sec. 184, as found in Burns' (1949 Repl.), Section 29-4701, which reads as follows:

"Any political or civic party, association or organization may, at any time prior to any general or other election, take a poll of voters qualified to vote at such ensuing election, in any district, county, township, municipality, ward, precinct or precincts of the state: Provided, That the chairman or president or other chief officer of the party, association or organization taking such poll shall issue to the person or persons employed in taking the poll a certificate showing the nature of such employment and the party, organization or association for which such poll is to be taken."

See also: "Election Laws of Indiana," 1960, pages 166, 167.

The Acts of 1945, Ch. 208, Sec. 185, as found in Burns' (1949 Repl.), Section 29-4702 makes it the duty of persons to furnish the proper information to the poll taker, and the Acts of 1945, Ch. 208, Sec. 186, as found in Burns' (1949 Repl.), Section 29-4703 provides as follows:

"It shall be the duty of each and every polltaker so appointed to make a full, true and complete list of all persons whose names are reported to him as voters, with such comments as he may deem proper as to their respective qualifications."
I have been advised by the State Election Board that it has consistently held, through the years, that registration is not required for town elections and that qualification for voting in town elections, as such, is determined from the poll lists prepared as heretofore indicated. The Supreme Court of Indiana laid down an excellent rule of construction in 1952, when it said:

"While not controlling, the contemporaneous construction of a statute by those charged with the administration of it is entitled to great weight, and should not be interfered with unless there are very cogent and persuasive reasons for departing from it. * * *"

Indiana Department of State Revenue, Gross Income Tax Division v. Colpaert Realty Corporation et al. (1952), 231 Ind. 463, 109 N. E. (2d) 415.

In summary, it is my opinion that:

(1) The term "legal voter," as used in Burns' 48-1005, supra, means legal voter of a town and thus one who possesses the qualifications set forth in the Indiana Constitution, Art. 2, Sec. 2, supra, plus the additional requirement that such individual not be a disfranchised person, all as enumerated by the State Election Board in its "Town Election Laws of Indiana," 1959 Edition, pages 41, 42, supra.

(2) The number of legal voters in any town can be determined by taking a poll in accordance with the provisions of Burns' 29-4701 to 29-4703, supra, and as set forth by the State Election Board in "Election Laws of Indiana," 1960, supra.