Mr. T. M. Hindman  
State Examiner  
State Board of Accounts  
304 State House  
Indianapolis 4, Indiana  

Dear Mr. Hindman:  

This is in reply to your recent letter requesting an Official Opinion on the following question:  

"May a County Hospital, organized under Indiana Acts 1903, Ch. 86, or Indiana Acts 1917, Ch. 144, provide for a system of Retirement Pensions for its employees under a plan underwritten by a Life Insurance Company licensed to do business in the State of Indiana, the contributions thereunder to be paid either in whole or in part out of public funds?"

The Acts of 1903, Ch. 86, as amended and found in Burns' (1950 Repl.), Section 22-3201 et seq., and the Acts of 1917, Ch. 144, as amended and found in Burns' (1950 Repl., 1960 Supp.), Section 22-3215 et seq., referred to in your question, provide for the establishment and maintenance of public hospitals by the counties. A hospital, established under another statute almost identical to those in question, was held to be an institution belonging to and maintained by the county as a public charity.

Crawfordsville Trust Co. et al. v. Elston Bank & Trust Co. et al. (1940), 216 Ind. 596, 25 N. E. (2d) 626.

It is well established in this state that counties are political subdivisions of the state, and, as such, act for the state under powers delegated by the Legislature.

State ex rel. Board of Comrs. of Hendricks County v. Board of Comrs. of Marion County (1908), 170 Ind. 595, 85 N. E. 513;

A state agency, municipality, or political subdivision of the state can exercise only the powers expressly granted to it under the organic act by which it is created, those necessarily implied powers incident to the powers expressly granted, and those powers essential to the declared objects and purposes of the corporation. The rule is stated as follows in 20 C. J. S. Counties § 49, page 802:

"As a county is a quasi corporation * * * and a governmental agency of the state, * * * with no independent sovereignty, it possesses only such powers as are expressly or impliedly conferred upon it by constitutional provisions or legislative enactments. Powers not conferred are just as plainly prohibited as though expressly forbidden; and, when a power is conferred to be exercised in a particular manner, there is an implied restriction upon the exercise of that power in excess of the grant, or in a manner different from that permitted."

A study of both the 1903 and 1917 Acts fails to disclose any express grant of authority to purchase insurance for or to provide a system of retirement benefits for employees of hospitals created pursuant to the terms of those acts. It is therefore necessary to determine if this power has been granted by some other statute or if implied authority may be found.

1954 O. A. G., page 180, No. 49, immediately concerned the authority of a county tuberculosis hospital to pay premiums on a group life insurance policy covering its employees. That Opinion qualifiedly determined that any agency, municipality or political subdivision having the power to fix, increase or decrease wages, could, as a part of that power, provide group insurance coverage for such employees, even though there was no specific statutory authority to do so. Such determination was made on the basis of foreign authorities in the absence of any decision by an Indiana court of appeal and the Opinion twice stated, at pages 183 and 188, substantially that "the only really safe protection for such a contract of insurance is to obtain Legislative sanction and authority therefor."

In 1955 the Indiana General Assembly passed emergency legislation expressly providing that the board of managers of
1960 O. A. G.
certain county tuberculosis hospitals could provide for a pro-
gram of group life insurance for the employees of such hos-
pitals, thus providing by enactment for the precise situation
involved in the 1954 Opinion. Thereafter, the Indiana Legis-
lature enacted the Acts of 1957, Ch. 296, as amended, as found
in Burns’ (1960 Supp.), Section 49-4001 et seq., which spe-
cifically authorized public employers, as defined in the act, to
contract for a variety of group insurance coverage for their
employees.

The term “public employer” is defined in Burns’ 49-4001,
supra, as a “city, town, county, township, school city, school
district or division or any department, division, facility or
establishment of a city, town, county, township, school city,
school district or division, having a payroll in relation to
persons it immediately employs even though such department,
division, facility or establishment is not a separate taxing
unit.” If a county hospital has a payroll in relation to its
employees, then such county hospital would come within this
definition of a public employer, and therefore could contract
for the group insurance permitted by the statute. Otherwise,
the county itself could contract for such group insurance.

Your letter specifically asks whether certain types of county
hospitals can provide systems of retirement pensions for their
employees under plans underwritten by life insurance com-
panies licensed to do business in Indiana. It is my opinion
that any plan that comes within the definition of “insurance”
in Burns’ 49-4001 (2), supra, could be provided for the em-
ployees of county hospitals organized under the 1903 or 1917
Acts, but the single fact that a plan is underwritten by an
insurance company would not necessarily make it such type
of insurance which can be contracted for under the group
insurance law although it is entirely possible that a plan under-
written by a life insurance company to provide retirement
benefits might come within the scope of Acts of 1957, Ch. 296,
supra. It would therefore be necessary to determine as a ques-
tion of fact in each instance whether a particular plan was
within the provisions of the act and thereby a proper exercise
of authority.

I am not aware of any other statutory provision which
could be construed to authorize a county hospital to set up a
retirement system underwritten by an insurance company. The question remaining for determination, then, is whether authority could be implied to provide a system of retirement pensions for county hospital employees in question in the event that the plan proposed by the insurance company should not be within the scope of Acts of 1957, Ch. 296, supra, the group insurance statute. The extent to which powers of a county may be implied is discussed in 20 C. J. S. Counties § 49, page 803, as follows:

"Extent of implied powers. Counties have only the implied power to do acts necessary to enable them to exercise their express powers, or to accomplish the objects for which they were created, and, in the absence of clearly expressed terms, it will not be inferred that the legislature has delegated to the county power to do that which would supersede general laws or render them unnecessary."

Counties are also given the option of providing membership for their employees in the Public Employes' Retirement Fund, which fund was created by the Acts of 1945, Ch. 340, amended and added to since its adoption and now found in Burns' (1951 Repl., 1960 Supp.), Section 60-1601 et seq. The definition section of the Act, Burns' 60-1604, supra, defines "municipality" to include "counties," but excludes from membership

"(d) Employees who are members of other pension or retirement funds or plans, excepting the federal social security program, maintained in whole or in part by appropriations by the state or municipality, or who are presently eligible for membership, or who by reason of their employment will become eligible for membership, in such other pension or retirement funds or plans;" (Our emphasis)

Thus any retirement plan for county hospital employees which is supported in whole or in part by appropriations would render the persons covered by such program ineligible for membership in the Public Employes' Retirement Fund.

When the Legislature has generally provided statutory opportunity for retirement benefits, the county, by use of an implied power, cannot create a retirement system in competi-
tion, or one which has the effect of superseding the general law or rendering it unnecessary. [20 C. J. S. Counties § 49, page 803, supra.] Likewise, since the Legislature has provided the power to obtain group insurance for public employees, it would appear that no implied authority could now be used to obtain insurance coverage in any manner different from that prescribed by statute.

The Legislature has provided two separate statutes by which employees of county hospitals may be given benefits in addition to their regular compensation. It would appear that the Legislature has considered this problem of retirement benefits and has taken the steps which the Legislature deemed most advisable to meet the problem. In view of these statutes, both last acted upon following the 1954 Opinion's implication of power coupled with a statement of need for legislation, any further implication of power becomes doubly difficult to support as necessary, indispensable or essential to exercise of the powers to maintain hospitals or to fix compensation for employees—tests which must be met in order to imply the power. [See McQuillin, The Law of Municipal Corporations, 3rd Ed., Vol. 2, § 10.12, page 603 et seq.]

Whether a county has a particular implied authority is, of course, a question for a court to determine in the exercise of its sound discretion. However, it should be noted that any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the municipal corporation, and the power is denied.


If, in its wisdom, the Legislature expressly grants counties additional authority in this area, such power could then be exercised without question. In the meantime, it is my opinion that county hospitals now have two statutory ways in which retirement benefits may be provided to their employees and that it is therefore highly questionable whether a county could imply the power to create a different retirement system for employees of such hospitals.