1959 O. A. G.

virtue of such change of investment of such Common School Funds. It is my opinion that this does not constitute the changing of an advancement, as above considered, into a loan or the creation of an indebtedness.

It should be noted that the use of money from the Common School Fund in the manner provided in this Act, Chapter 379, Acts of 1959, is unique, and there are no Indiana judicial determinations to which we can refer for direct authority. Reasonable minds may differ on the question of the existence of an investment under these circumstances in which there is no existing security, and no obligation on the part of the borrower to repay except from funds to which it is not entitled at the time the loan is made, such funds to be determined and paid in the future by the State of Indiana, which likewise is not and could not be indebted to the Common School Fund.

A full consideration of the provisions of this statute in respect to school corporations eligible to receive such advancement from the Common School Fund also presents some question as to the constitutionality of the statute, but the General Assembly has herein provided the classification and authority for use of the Common School Fund, and the ultimate determination of validity of all statutes in respect to their compliance with the provisions of the Constitution of Indiana can only be made by the courts.

OFFICIAL OPINION NO. 23
June 12, 1959

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

Dear Doctor Ginsberg:

Your letter dated May 8, 1959, requests my opinion concerning two questions involving the transfer of inmates of correctional institutions to psychiatric hospitals for necessary care and treatment. The specific questions contained in your letter are quoted as follows:
"Question 1. Once an adult male inmate is transferred to the maximum security division of the Dr. Norman M. Beatty Memorial Hospital as required by Chapter 324, Acts of 1955, can the Commissioner, by virtue of his powers to transfer psychiatric patients, transfer such an adult male to another hospital or institution for necessary care and treatment?

"Question 2. If the Commissioner of Mental Health does not have such authority, under what means and by what authority can the transfer of such an adult male be effected for necessary care and treatment?"

In answer to the first question, it is necessary to note that the Commissioner of Mental Health is authorized to transfer psychiatric patients in state hospitals and institutions for the care of such patients from one such hospital or institution to another by Acts of 1945, Ch. 335, Sec. 2, as found in Burns' (1950 Repl.), Section 22-4202(6). This authorization for the transfer of patients was originally granted to the Indiana Council for Mental Health and subsequently conferred upon the Commissioner of Mental Health by Acts of 1953, Ch. 197, Sec. 204, as found in Burns' (1957 Supp.), Section 60-2024.

Acts of 1955, Ch. 324, as found in Burns' (1957 Supp.), Sections 22-4228 to 22-4235, provides, in general, that an inmate of a penal or correctional institution may be transferred by the chairman of the board of correction upon acceptance by the commissioner of mental health to a psychiatric hospital after recommendation has been made by the chief administrative officer of the penal or correctional institution and after examination has been made by a qualified psychiatrist.

Burns' 22-4230, supra, provides as follows:

"A psychiatrist, after examining any inmate of a penal or correctional institution, shall make a detailed report of his examination to the chairman of the board of corrections. This report shall include the diagnosis made by the psychiatrist, the signs, symptoms and conditions on which the diagnosis is based, and a complete history of said inmate as far as the same is obtainable. If, after receiving the report of the psychiatrist, the
chairman of the board of corrections is of the opinion that the inmate is in need of care and treatment in a psychiatric hospital, the chairman shall notify the commissioner of mental health of such fact and shall submit to the commissioner a detailed report of the case, which report shall include a psychiatric evaluation. After reviewing the report and/or examining the inmate, the commissioner may prepare an authorization for the acceptance of such inmate by the superintendent of any psychiatric hospital: Provided, however, That no adult male may be transferred to any psychiatric hospital other than to the division for maximum security of the Dr. Norman M. Beatty Memorial Hospital."

(Our emphasis)

The proviso of the above-quoted section appears to be plain and unambiguous and is not, therefore, susceptible to interpretation.

"* * * In case of ambiguity in statutes, there are certain rules of construction to which the court resorts in arriving at the intention of the Legislature, but such rules have no application to a statute that is free from ambiguity. * * *"

Tucker v. Muesing (1941), 219 Ind. 527, 531, 532, 39 N. E. (2d) 207.

"It is only where the language of a statute, and the intent of the Legislature, is obscure that courts will resort to construction for the purpose of determining the legislative intention. * * *"

Leach v. City of Evansville (1936), 211 Ind. 444, 446, 7 N. E. (2d) 207.

Burns' Section 22-4230, supra, indicates that the Legislature contemplated transferring adult males from penal institutions only to the Maximum Security Division of the Dr. Norman M. Beatty Memorial Hospital. To interpret this section as allowing the removal of such a transferred inmate to another psychiatric hospital would render meaningless the requirement that the inmate be transferred only to the Maximum Security Division of the Dr. Norman M. Beatty Memo-
OPINION 23

In answer to the second question, a search of the statutes relating to the operation of state-owned and state-operated correctional institutions and psychiatric hospitals reveals Acts of 1917, Ch. 154, as found in Burns' (1950 Repl.), Section 22-301, which is quoted as follows:

"The governor of the state of Indiana is hereby authorized and empowered to cause the transfer of any ward or inmate of any penal, benevolent, charitable or reformatory institution of said state to any other state institution, at any time, in his discretion, upon petition filed with him by the superintendent or officer in charge of any such institution; provided, such transfer shall not increase any punishment or lengthen the time of servitude of any person so transferred."

It should be noted that the Governor's power to transfer inmates of any correctional institution from one correctional institution to another correctional institution is specifically transferred to the Board of Correction by Acts of 1953, Ch. 266, Sec. 5, as found in Burns' (1956 Repl.), Section 13-1505. Burns' Section 22-4230, supra, being a later specific statute, would be determinative of the procedure for a transfer.

"* * * General statutes must give way to special statutes upon the same subject matter. * * *"

Daly v. Carr (1934), 206 Ind. 554, 558, 190 N. E. 612.

"Concerning the construction of statutes, the rule of law obtains in this state that general statutes give way to special statutes upon the same subject-matter. * * *"

KINGAN & CO. v. OSSAM (1920), 190 Ind. 554, 557, 131 N. E. 81.

Therefore, in answer to your second question, it is my opinion that the Governor's power to transfer inmates of any penal, benevolent, charitable or reformatory institution has been superseded by Burns' Section 22-4230, supra, and that inmates of correctional institutions needing psychiatric care...
must be transferred to the Maximum Security Division of the Dr. Norman M. Beatty Memorial Hospital and cannot be transferred therefrom to another state psychiatric hospital.

OFFICIAL OPINION NO. 24
June 18, 1959

Mr. Joe McCord, Director
Department of Financial Institutions
410 State House
Indianapolis, Indiana

Dear Mr. McCord:

This will acknowledge receipt of your letter of May 22, 1959, wherein you ask for an Official Opinion. Your request is stated as follows:

"We now have an application for the establishment of a banking institution just outside the city limits of a city or town and we would appreciate your official opinion as to whether we have the authority or legal right to approve the establishment of a banking institution in an unincorporated community."

As noted in your letter, this request concerns the establishment of a banking institution as distinguished from the establishment of a branch office of an existing bank, such branch to be situated in an unincorporated community, which latter question has heretofore been considered in 1953 O. A. G., page 152, No. 33. I wish to emphasize that the ruling in the 1953 Opinion does not answer the question in the instant case for the following reasons: In the 1953 Opinion, the question was whether a branch office of an already established State chartered bank could be situated outside of the corporate limits of an incorporated city or town and was dependent upon language contained in Acts of 1933, Ch. 40, Sec. 224, as amended, as found in Burns' (1950 Repl.), Section 18-1707, which specifically requires that the branch office of any State chartered bank must be situated "in any city or town within the limits of the county in which the principal office of such bank or trust company is located." The section of the statute consid-