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-
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The 1953 Opinion deals solely with the establishment of branch offices and has no application to the question of the required location of the principal office in establishing a new banking institution. No comparable statutory provision is present with respect to the establishment of a new bank.

The Acts of 1933, Ch. 40, Secs. 25 to 29, inclusive, as found in Burns’ (1950 Repl.), Sections 18-222 to 18-226, inclusive, deal with the procedure for making an application for the organization of certain designated types of banking institutions, notice of hearing on such application, hearing on application, investigation by the department and the expense of investigation. Burns’ (1950 Repl.), Section 18-227, provides a penalty for the violation of Burns’ 18-222, supra.

Burns’ 18-222, supra, reads as follows:

“No bank, trust company, building and loan association, savings bank, or credit union shall be organized or incorporated or engaged in business as such in this state unless and until the articles of incorporation of such proposed financial institution shall have been submitted to and shall have been approved by the department, and unless the department shall approve the organization and establishment of such institution in the city or town in which the incorporators proposed to establish such institution. The request to establish such proposed institution shall be set forth in an application which shall be furnished and prescribed by the department and shall contain such information as the department may require. No such application shall be approved by the department until a public hearing, after due notice thereof, shall have been had thereon, in the city or town in which the applicant proposes to establish such institution. If the proposed institution be a credit union said application shall be in lieu of such hearing, unless exceptions shall be filed to such approval, in which event such public hearing shall be held, which hearing may be had in the office of the department.” (Our emphasis)

Burns’ 18-225, supra, reads as follows:

“Upon the filing of such application, the department shall make, or cause to be made, a careful investigation
and examination relative to the financial standing and character of the incorporators or organizers, the character, and qualifications and experience of the officers of the proposed financial institution, of the public necessity for the financial institution in the community in which such proposed financial institution is to be established, and, if the institution is to be a bank or trust company, of the adequacy of the proposed capital thereof; and if the members of the department, after the hearing, as hereinbefore provided, shall determine either of such questions unfavorably to such applicants, the application shall not be approved, and if all such questions be determined favorably, the application shall be approved.” (Our emphasis)

In Section 25 of the Acts of 1933, as amended, supra, the phrase “in the city or town” expressly has reference to such either “in which the incorporators proposed to establish such institution” or “in which the applicant proposes to establish such institution.” While each of such references contemplates that the “incorporators” or “applicant” ordinarily will seek or “propose” to establish business in a city or town, apparently this is by reason of the fact that such locations always represent the center of compactness of population and thus are prima facie sites in which public necessity usually can be shown. However, the phrase “in the city or town,” as used in said section, is not used in the express sense of requiring that such designated financial institutions as banks, trust companies, building and loan associations, savings banks or credit unions must be organized in a city or town; nor do I find any other section of “The Indiana Financial Institutions Act” which makes such an express requirement. Instead, Section 28 of the Acts of 1933, as amended, supra, in specifying what elements the department shall find in order to approve an application, merely states that, among the elements which the department must determine favorably, is that there must be “public necessity for the financial institution in the community in which such proposed financial institution is to be established.” (Our emphasis) This latter section makes no reference to the bank being located in a city or town, but uses the noticeably different and broader phrase “in the community.”
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It should be borne in mind that the subject of your inquiry involves the establishment of a banking institution which you state to be "just outside the city limits of a city or town." (Our emphasis)

A fundamental rule of statutory construction is found in Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4705, p. 339, which reads as follows:

"'It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.' A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error."

It is interesting to note other provisions of the Acts of 1933, Ch. 40, as amended, as found in various sections of Burns' (1950 Repl.), for instance the following:

(a) The Acts of 1933, Ch. 40, Sec. 83, as amended, as found in Burns' (1950 Repl.), Section 18-412, reads in part, as follows:

"(a) The minimum amount of the capital stock of every bank or trust company organized or reorganized under the provisions of this act shall be as follows:

"(1) Where the principal office of the bank or trust company is located outside of the city or town or in a city or town having a population of not to exceed three thousand (3,000) inhabitants, the capital stock shall be not less than twenty-five thousand dollars ($25,000); * * *

(Our emphasis)

This provision of "The Indiana Financial Institutions Act" clearly recognizes the fact that the principal office of a bank or trust company may be located outside of a city or town. This section is a part of the same act, and was passed at the same time as Burns' 18-222, supra. In my opinion, this is a clear-cut recognition of the fact that it was the intention of the Legislature to permit the establishment of such designated
banking institutions outside of a city or town and that under the rule of construction, cited above, this wording must be read in conjunction with the provisions of Burns' 18-222, supra.

(b) It is also noted that another section, namely Burns' 18-503 of the Indiana Financial Institutions Act provides as follows:

"Every corporation shall maintain an office or place of business in this state, which shall be known as the 'principal office,' and which shall be located in the county in which such corporation conducts business. The post-office address of the principal office shall be stated in the original articles of incorporation, at the time of the incorporation. Thereafter the location of the principal office may be changed at any time, or from time to time, when authorized by the board of directors, and approved by the department, by filing with the secretary of state, on or before the day on which any such change is to take effect, a certificate signed by the president or a vice-president and by the secretary or cashier of the corporation, and verified by one of the officers signing such certificate, stating the change to be made and reciting that such change is made pursuant to authorization by the board of directors." (Our emphasis)

It is particularly noted that this section of the act merely requires that the principal office be "located in the county." There is no restriction that it be within the limits of any city or town. Here again, is a section of the same Acts of 1933, Ch. 40, supra, which must be read in conjunction with Burns' 18-222, supra.

It is my opinion, after consideration of the various sections of "The Indiana Financial Institutions Act" cited above, that the department is authorized to approve the establishment of certain designated banking institutions in an unincorporated community beyond the limits of a city or town, subject however, to investigation and approval by the department, "relative to the financial standing and character of the incorpora-
tors or organizers, the character and qualifications and experience of the officers of the proposed financial institution, of the public necessity for the financial institution in the community in which such proposed financial institution is to be established, and, if the institution is to be a bank or trust company, of the adequacy of the proposed capital thereof;" all as required by Burns' 18-225, supra.

OFFICIAL OPINION NO. 25
June 19, 1959

Mr. Paul Myers, Chairman
Board of Correction
210 State House
Indianapolis, Indiana

Dear Mr. Myers:

We have your request for an Official Opinion which poses the following question:

"The question has arisen among the Institutional Parole Board members at our penal institutions as to whether or not the time spent in jail within the confines of Indiana, under a parole violation warrant, counts as active time on an individual's sentence, or whether this time is classified as dead time.

"Will you please give us your opinion on the question posed?"

The statutes which cover parole from the Indiana State Prison are Acts of 1897, Ch. 143, Secs. 3 to 11 and Acts of 1899, Ch. 113, Sec. 1, as found in Burns' (1956 Repl.), Sections 13-246 to 13-255. The statute which covers parole from the Indiana Reformatory is Acts of 1897, Ch. 53, Secs. 11 and 12, as amended, as found in Burns' (1956 Repl.), Sections 13-410 and 13-411. An examination of these statutes, together with the cases interpreting them, clearly indicates that a prisoner is not given credit for the time which expires between the date delinquency is declared and the date he is returned to the custody of the warden pursuant to the warrant issued for his arrest as a parole violator.