whether such property is exempt from taxation. Therefore, in conclusion, I wish to emphasize that the duty remains upon said students to list such property and pay taxes thereon in the county of their domicile and such liability is a continuing one in their home counties.

OFFICIAL OPINION NO. 17

February 27, 1958

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

Dear Doctor Ginsberg:

In your letter of January 31, 1958, you request an Official Opinion on the following question:

"In consideration of Sec. 1, (b), Ch. 262, Acts of 1957, is the State of Indiana liable for payment of the cost when a patient, while on convalescent leave and physically absent from a state mental hospital, is wounded by action of county and state police officers and is hospitalized in another hospital at the direction of an official of the state mental hospital?"

In order to answer this question, it is first necessary to refer to the Acts of 1947, Ch. 300, Sec. 4, as amended, as found in Burns' (1951 Repl.), Section 52-1134, which reads in part as follows:

"Any person who is an inmate of any penal, benevolent or correctional institution of the state of Indiana, and is found to be in need of medical, surgical or hospital care which cannot be provided by the institution, may be placed in any state owned or operated hospital or other public hospital for necessary medical, surgical or hospital care on written order of the superintendent or warden of the state institution wherein said inmate is confined, provided that such inmate shall not
be placed in a public hospital other than a state owned or operated hospital unless the daily charge for hospitalization at such public hospital shall be less than that charged by the state owned or operated hospital.” (Our emphasis)

Burns’ 52-1134, *supra*, in essence, authorizes the superintendent or warden of certain state institutions to place inmates thereof in public hospitals, including state owned or operated hospitals.

The Acts of 1947, Ch. 300, Sec. 5(b), as amended, as found in Burns’ (1957 Supp.), Section 52-1135(b), provides in part as follows:

“The necessary costs and expenses which may be incurred upon the placing of an inmate of an institution in a hospital shall be paid by the state out of funds appropriated by section 5a of this act. A certified and itemized statement of the cost of treatment shall be rendered to the penal, benevolent or correctional institution from which the inmate has been placed * * *.” (Our emphasis)

The question of whether patients who are on convalescent leave and physically absent from a state mental institution are included within the purview of this statute, would depend on whether these persons can be defined as “inmates.”

“* * * Words and phrases must be given their plain, ordinary, and usual meaning, unless a contrary purpose is clearly manifested.”


See also Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4919, p. 429.

Webster’s New International Dictionary, 2nd Edition, defines the word “inmate” as follows:

“1. One who lives in the same house or apartment with another; formerly, specif., one hiring lodgings in another’s house; a lodger; hence, an alien or stranger.
2. One of a family or community occupying a single dwelling or home; as, the *inmates* of a private house; an *inmate* of a convent; now esp., one confined or kept in an institution such as an asylum, prison, or poor-house. 3. An indweller; inhabitant.”

See also Ballentine’s Law Dictionary which defines “inmate” as “a co-lodger; a person who lives in the same abode with another or other,” and 43 C. J. S. Inmates, which says in part that an “inmate is * * * one of the occupants of an asylum, hospital, or prison.” (Our emphasis)

Therefore, in my opinion, patients absent from the hospital on convalescent leave are not inmates of the hospital; and hence, the state is not liable when such persons are hospitalized in any public hospital including a hospital which is state owned or operated.

Another aspect of your question deals with whether the State of Indiana can incur responsibility for the payment of such costs of hospitalization under the terms of the Acts of 1957, Ch. 262, Sec. 1(b), Burns’ 52-1135(b), *supra*. The Indiana cases and authorities have repeatedly held that “a person dealing with a state officer whose power to bind the state depends on the statute, is charged at his peril with notice of the scope of the power under the statute.” Hord v. State (1906), 167 Ind. 622, 79 N. E. 916.

“According to the decisions on the question, the governor and other executive officers of a state have no general authority to contract in its behalf and can bind the state only within the power specially conferred upon them by statute * * *.”

81 C. J. S. States § 113.

“Since the powers of state officers are fixed by law, all persons dealing with such officers are charged with knowledge of the extent of their authority or power to bind the state, and are bound, at their peril, to ascertain whether the contemplated contract is within the power conferred * * *.”

81 C. J. S., *supra*.
Your letter of January 29, 1958, raises, by inference, one final question. Namely, what governmental unit, if any, is responsible for payment of the cost of hospitalization of a patient wounded by action of county and state police officers as in the instant case. In cases in which the patient is financially able to pay the costs of his hospitalization, the statutes clearly contemplate that he should do so. The Acts of 1947, Ch. 300, Sec. 1, as amended, as found in Burns' (1957 Supp.), Section 52-1131, provides as follows:

"The county department of public welfare of each county in this state is hereby empowered to commit to any public hospital in the county or to any public hospital in an adjacent county or to any hospital operated by the trustees of Indiana University, any person having a legal residence in such county, who shall appear to the satisfaction of the department after examination and upon recommendation of a physician or surgeon holding an unlimited license issued by the board of medical registration and examination of Indiana to practice medicine in this state, to be suffering from a disease, defect or deformity, which may be benefited by treatment in such hospital, provided such person, or anyone chargeable under the law with the responsibility of furnishing medical, surgical or hospital care for such person is not financially able to defray the necessary expense of such medical, surgical and hospital care. Upon filing of an application by any person requesting the county department of public welfare to furnish medical, surgical or hospital care as provided for in this act the county department of public welfare shall investigate the financial resources of such applicant, or anyone chargeable under the law with the responsibility of furnishing medical, surgical or hospital care for such applicant; and if after such investigation, the county department of public welfare shall determine that such applicant, or anyone chargeable under the law with the responsibility of furnishing medical, surgical and hospital care for such applicant, is financially unable to defray the necessary expense of such medical, surgical and hospital care, the county department of public welfare may make such commitment as herein
provided: Provided, That no person shall be committed to a public hospital of a county unless the daily charge for hospitalization at such hospital shall be less than that charged at an institution operated by the trustees of Indiana University.” (Our emphasis)

Burns’ Section 52-1131, supra, clearly contemplates that only persons “financially unable to defray the necessary expense” of hospitalization are included within its terms. Furthermore, the statute is permissive in nature and not mandatory (note the word “may”) and thus the county department of public welfare is not mandated to make any commitment. The facts as indicated by your letter reveal that no commitment was made by any county department of public welfare. Therefore, no responsibility for the payment of the costs of hospitalization can attach to a county department of public welfare under the terms of Burns’ Section 52-1131, supra, since this statute requires both an investigation of financial resources of applicants and a commitment by the county department of public welfare.

It should be noted that Burns’ Section 52-1131, supra, does not require a commitment by a county department of public welfare before a patient may be hospitalized. It is perfectly conceivable that situations, such as emergencies, could arise in which hospitalization would be necessary in the best interests of the patient before an application could be filed and a commitment could be made by the county department of public welfare. Thus, a commitment by the county department of public welfare is not a condition precedent to the admission of an indigent person to any public hospital or any hospital operated by the trustees of Indiana University.

The Acts of 1935, Ch. 116, Sec. 5, as found in Burns’ (1951 Repl.), Section 52-148, provides as follows:

“The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a charge, and shall see that they are properly relieved and taken care of in the manner required by law. He shall, in cases of necessity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions; and shall also see that such
medicines and/or medical supplies and/or special diets and/or nursing as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished."

This statute amends the Acts of 1901, Ch. 247, Sec. 6, by adding "and/or medical supplies and/or special diets and/or nursing." By the terms of the above quoted section, a township trustee as overseer of the poor is made responsible for the medical care of the poor in his township.

"* * * It may also be granted that the obligation does not arise upon the request of someone other than the overseer, but it is imposed by the statute, where the circumstances are such as disclose the necessity for prompt action by those who are capable of judging of the necessity and impending peril."

Newcomer et al. v. Jefferson Tp., Tipton County (1914), 181 Ind. 1, 103 N. E. 843.

See also Sherfey & Kidd Co. v. Board of County Comrs. (1901), 26 Ind. App. 66, 59 N. E. 186.

Therefore, in summary, it is my opinion that where a patient is physically absent from a state mental hospital on convalescent leave and not an inmate of the hospital, the state is not liable when such person is hospitalized in any public hospital including a hospital which is state owned and operated. Inasmuch as no commitment was made, in the instant case, by any county department of public welfare, it is my further opinion that if such person, or those charged with his care, are unable to pay for such hospital service the burden is then placed upon the township trustee to provide the necessary medical care for one of the poor of his township.