

distribution is being made to the officials apparently entitled to receive such funds and who are responsible, bonded public officials.

OFFICIAL OPINION NO. 26

June 13, 1956

Mr. Edgar K. Gusler
State Service Officer
Veterans' State Service Dept.
431 North Meridian Street
Indianapolis, Indiana

Dear Mr. Gusler:

I have your letter requesting an Official Opinion which reads in part as follows:

“Your attention is invited to Burns’ Statute, Sections 9-1704a and 9-1706a pertaining to the commitment of defendants in a criminal case to the maximum security division of the Norman Beatty Hospital and where the defendant is either found insane at the time of trial or before the trial is found not to have sufficient comprehension to understand the nature of the criminal action pending against him and make the proper defense.

“Will you please give us an official opinion as to whether or not those persons who are veterans and confined to the maximum security division at the Norman Beatty Hospital can be charged for their support and maintenance the same as inmates of other state mental institutions are charged for support and maintenance.”

The Acts of 1951, Ch. 238, Secs. 1 and 2, as found in Burns’ Indiana Statutes (1942 Repl., 1953 Supp.), Sections 9-1704a and 9-1706a, provide as follows:

“If, in any criminal action, the court or jury trying the cause finds the defendant not guilty on the ground of insanity, the court shall find as to the defendant’s sanity at the time of the trial, and if the court shall find

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that the defendant is insane at the time of the trial, he shall order the defendant, whether male or female, committed to the division for maximum security of the Dr. Norman M. Beatty Memorial Hospital; or if he shall find that the defendant is sane at the time of trial, but the recurrence of such an attack of insanity highly probable, he shall order the defendant committed as above provided. Such person shall be confined in such hospital until released as hereinafter provided."

"That when at any time before the trial of any criminal cause or during the progress thereof and before the final submission of the cause to the court or jury trying the same, the court, either from his own knowledge or upon the suggestion of any person, has reasonable ground for believing the defendant to be insane, he shall immediately fix a time for a hearing to determine the question of the defendant's sanity and shall appoint two [2] competent disinterested physicians who shall examine the defendant upon the question of his sanity and testify concerning the same at the hearing. At the hearing, other evidence may be introduced to prove the defendant's sanity or insanity. If the court shall find that the defendant has comprehension sufficient to understand the nature of the criminal action against him and the proceedings thereon and to make his defense, the trial shall not be delayed or continued on the ground of the alleged insanity of the defendant. (If the court shall find that the defendant has not comprehension sufficient to understand the proceedings and make his defense, the trial shall not be delayed or continued on the ground of the alleged insanity of the defendant). If the court shall find that the defendant has not comprehension sufficient to understand the proceedings and make his defense he shall commit the defendant, whether male or female, to the division for maximum Security of the Dr. Norman M. Beatty Memorial Hospital. Whenever the defendant shall become sane the superintendent of the insane hospital shall certify the fact to the proper court, who shall enter an order on his record directing the sheriff to return the defendant, or the court may enter such order in the first instance

whenever he shall be sufficiently advised of the defendant's restoration to sanity. Upon the release of any defendant so committed he or she shall then be placed upon trial for the criminal offense the same as if no delay or postponement had occurred by reason of defendant's insanity."

By the terms of the statutes, there is both a finding and a judgment as to sanity. If the finding and judgment be that the person is insane, such person shall thereupon be committed, as provided by the statute, and confined in the hospital until released or discharged. If, thereafter, there are further legal proceedings either connected with a criminal offense or a civil action, there must be, according to statute, a judicial adjudication of the restoration of sanity to enable the court to enter a finding and judgment of restoration.

Our statutes also provide for support and maintenance payments by inmates in our benevolent institutions or the responsible, obligated relatives. The Acts of 1935, Ch. 132, Sec. 1, as amended, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Section 22-401 defines the term "patient" as follows:

"(b) The term 'patient' shall mean and include any person confined in a benevolent institution for the purpose of custody, care and treatment, whether confined by an order of a court, voluntarily, or by a non-judicial proceeding;"

Likewise, Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Section 22-401a is a statute concerning reimbursement of the state for cost of maintenance. This Section reads as follows:

"All patients, or estates of patients, or guardians of patients, or other legal representatives of patients, and the families of patients are hereby declared to be bound to reimburse the state of Indiana for the cost of maintenance of any such patient, of not to exceed ten dollars [\$10.00] per week."

Section 22-401c of Burns' Indiana Statutes concerns the cost

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of maintaining a patient and the determination of that cost. It is as follows:

“The Indiana council for mental health [Division of Mental Health] is hereby directed to determine the cost of maintaining a patient in each benevolent institution, within sixty [60] days after the effective date of this act, and at least once each year thereafter, taking into consideration such information as is available concerning the number of patients, actual expenditure for food, clothing, heat, housing, personnel and such advisory or supervisory expense as it may determine to be reasonable, allocable to each such institution; and such other expenditures or expenses as shall be determined to be occasioned by the operation of each such benevolent institution. In determining such cost of maintenance the council may use any approximations or formulae that they deem necessary or advisable.” (Our insert)

Section 22-401d of Burns' Indiana Statutes concerns payment of entire cost of care and maintenance by the patient, his estate or his family, and reads as follows:

“In the event that any patient, his estate or his family is financially able to pay for the entire cost of the care and maintenance of the patient, or a greater portion thereof than by the provisions of this act legally required to be paid, such patient, his guardian or legal representative, or his family may agree to pay such entire cost together with the cost of any unusual or special treatment, care or training actually received by such patient.”

In addition to the foregoing statutes concerning cost of support, care and maintenance within a psychiatric hospital we refer to the Acts of 1955, Ch. 339, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Sections 22-4216 to 22-4227. In these sections of the statute we have a further definition of a patient. A patient in a psychiatric hospital according to this statute is defined as follows: [Sec. 22-4216, Clause 4].

“A ‘patient’ means any mentally ill persons, or any person who appears to be mentally ill, who is in or

under the supervision and control of any psychiatric hospital, or who, because of mental illness, is under the supervision and control of any circuit or superior court of this state.”

Also, there is defined in this same section a responsible relative. The statute reads: [Sec. 22-4216, Clause 5].

“A ‘responsible relative’ means the husband or wife, or the parent of any patient in any psychiatric hospital, and shall include the adult child of any such patient, which adult child is legally responsible for the care and maintenance of such patient.”

In the same section this particular type hospital is defined as follows: [Sec. 22-4216, Clause 3].

“A ‘psychiatric hospital’ means any state-owned or operated hospital for the care, treatment, training or detention of persons who are mentally ill and which hospital is under the supervision and control of the division of mental health.”

The Norman Beatty Hospital, about which you inquire, is a hospital under the supervision of the Mental Health Division of the Department of Health of the State of Indiana.

An examination of Burns’ Indiana Statutes, Section 22-4221, *supra*, concerns the maintenance charges, the ability to pay, and provides for investigation.

Section 22-4223, *supra*, concerns a failure to pay maintenance charges and authorizes suit. Section 22-4224, *supra*, provides for compromise of certain claims for care, support and maintenance.

Since our Supreme Court in the case of Dowd, Warden v. Harmon (1951), 229 Ind. 254, 96 N. E. (2d) 902 has held that the hospital for insane criminals was, in fact, a benevolent institution, it would seem that the only logical construction would be that the Norman Beatty Hospital, Maximum Security Division, which replaced the old hospital for insane criminals, would likewise be a benevolent institution.

There are no statutes concerning insane veterans that con-

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flict in any way with existing statutes governing an ordinary non-veteran insane person. There is, however, in connection with insane veterans, a statute on the subject of veterans administration guardianships as found in the Acts of 1953, Ch. 112, Sec. 2001, as found in Burns' Indiana Statutes (1953 Repl.), Sections 8-201 to 8-218. There are no exceptions to be found in the statute concerning the general rules as to support, care and maintenance, nor does the status of a veteran in any way affect the general rule except in the matter of the appointment of guardians for same.

Where the Federal Government pays to an insane soldier a pension or gratuity reasonably commensurate with the disability, the purpose being that a soldier may pay for his care, maintenance and support, it would seem entirely proper for the superintendent of such institution to receive from the insane person or those statutorily designated as liable for the support, care and maintenance of such soldier the value of such care, maintenance and support; in fact, this necessarily results from governmental regulations. (See Ind. O. A. G., 1902, p. 138.) It is the policy of the Veterans' Administration that guardians of insane beneficiaries should expend funds received from the Administration for the comfort and care of their wards. While the estate should be protected in every way, the comfort of the insane beneficiary and his dependents is the primary object. See Amer. Law of Veterans, Sec. 119, pp. 83, 84.

In view of the foregoing my answer to your question is as follows:

Veterans confined to the Maximum Security Division at Norman Beatty Hospital under Burns' Indiana Statutes (1942 Repl., 1953 Supp.), Section 9-1704a, *et seq.*, *supra*, may be charged for maintenance as provided by law.