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commitment be involuntary, one has no right to imply such a requirement in limitation of the express intention of the Act.

Therefore, it is my opinion that payment of costs and expenses of persons voluntarily entering a state benevolent institution is an obligation of the county in which the inmate was resident prior to delivery into the charge of the institution, as prescribed under the Acts of 1947, Ch. 300, Burns' Section 52-1135 (b), *supra*.

OFFICIAL OPINION NO. 36

August 13, 1956

Honorable William J. Davey
Insurance Commissioner
Department of Insurance
240 State House
Indianapolis, Indiana

Dear Mr. Davey:

This is in answer to your request for an Official Opinion which raises the following questions:

"Since 1934 an Indiana corporation known as Laymen of the Church of God has been doing an insurance business in Indiana on the assessment plan. Said corporation was organized on June 26, 1934, under the Indiana non-profit Act of 1889. The attorneys for the corporation urge that this erroneous incorporation was due to information on the blanks provided by the Secretary of State to the effect that the non-profit Act of 1889 was appropriate for mutual benefit associations.

* * *

"The corporation desires to continue its insurance operations as in the past and wishes to make such changes as are required to make its business conform to law. The corporation proposes to re-incorporate under Acts of 1897, Ch. 195, Sec. 5, as found in Burns' Indiana Statutes, Sec. 39-425. You will note that such cited statute deals with companies doing an insurance business on the assessment plan. It is the view of the

corporation that re-incorporation is the solution to the corporation's problem of incorporating under the wrong statute.

"However, consideration must be given to Acts of 1935, Ch. 162, Sec. 272, as found in Burns' Indiana Statutes 39-5025. Such statute provides that from and after its effective date no company shall be organized or incorporated under any law to do insurance business on the assessment plan; but 'companies' doing an insurance business on the assessment plan retain the rights and powers under existing laws not repealed by the 1935 Act. * * *

"The question therefore submitted for your Official Opinion is: May the Laymen of the Church of God now reincorporate under the Acts of 1897, Ch. 195, Sec. 5, *supra*, to do insurance business on the assessment plan, in view of Acts of 1935, Ch. 162, Sec. 272, *supra*? * * *"

The statutes which are cited in your letter and upon which at least a part of the answer to your questions depend are as follows:

"Any domestic corporation, association or society, transacting business of life or accident or life and accident insurance and providing for the payment of total and permanent disability claims to living members upon the assessment plan, may be reincorporated or reorganized under the provisions of this act, under its existing corporate name, by filing with the auditor of state a declaration of their desire to do so, signed and duly acknowledged by a majority of its board of directors, trustees or managers, with a statement in like manner signed and acknowledged by them that such corporation, association or society, having insured the lives or provided for the payment of accident indemnity, has accumulated the fund required by section seven of this act, or having engaged in the business of accident insurance only, has accumulated the fund required by section eleven of this act, and that such funds are safely invested and held for the purposes for which the same were accumulated, as provided in the by-laws of such

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corporation, association or society, whereupon the auditor of state, if approved by him, shall file the same, together with his certificate of such approval, with the secretary of state, who shall issue to such corporation, association or society a certificate of such reincorporation or reorganization, under the seal of the state, and attach thereto copies of all papers so filed with the secretary of state, and the same shall be recorded in the office of the secretary of state, and copies thereof filed in the office of the auditor of state, and such corporation, association or society shall thereupon be deemed to be reincorporated and reorganized under the provisions of this act. It shall not be obligatory upon any such existing corporation, association or society to incorporate or reincorporate hereunder, and any such domestic corporation, association or society may continue to exercise all the rights, powers and privileges not inconsistent with this act, pursuant to its articles of incorporation or association, the same as if incorporated or reincorporated under this act."

Acts of 1897, Ch. 195, Sec. 5, as found in Burns' Indiana Statutes (1952 Repl.), Section 39-425.

"From and after the taking effect of this act, no company shall be organized or incorporated under any law of this state to make or to do an insurance business operating as Lloyds, or to make or to do an insurance business on the assessment plan. From and after the taking effect of this act, no company shall be organized or incorporated under any law of this state to make or do an insurance business on the reciprocal plan as interinsurers or individual underwriters unless such interinsurers or individual underwriters shall have in the case of casualty insurance over all policy liabilities a surplus of at least one hundred thousand dollars [\$100,000], and in the case of fire insurance a surplus over all policy liabilities of at least fifty thousand dollars [\$50,000], and in the case of an exchange which limits its business to subscribers engaged in one [1] class of business and residents of one [1] county it shall have a surplus over all policy liabilities of at least twenty-five thousand dollars [\$25,000]. Except as pro-

vided in this section and in Part 1 and Part 2 of this act, all companies operating as interinsurers or individual underwriters, or making insurance or doing an insurance business on the reciprocal plan shall have and exercise all the powers, rights and privileges conferred upon them by chapter 102 of the Acts of the Seventy-first General Assembly of the state of Indiana and chapter 172 of the Acts of the Seventy-sixth General Assembly of the state of Indiana. Except as provided in this section and in Part 1 and Part 2 of this act, all companies operating as Lloyds or making insurance or doing an insurance business on the assessment plan shall have and exercise all the rights, powers and privileges conferred upon them and be subject to the liabilities under any existing law not hereby repealed."

Acts of 1935, Ch. 162, Sec. 272, as found in Burns' Indiana Statutes (1952 Repl.), Section 39-5025.

I am of the belief that the principal question to be answered is: "What is the legal effect of Burns' Indiana Statutes (1952 Repl.), Section 39-5025 in relation to Burns' Indiana Statutes, Section 39-421 *et seq.*, and particularly, in relation to the Burns' Indiana Statutes, Section 39-425?" In order to determine this effect, it will be necessary to first determine the nature of the legislative intent with regard to each.

In 1934 the Laymen of the Church of God, in order to do insurance business on the assessment plan, incorporated under the so-called Non-profit Corporation Act of 1889, the same being Acts of 1889, Ch. 28, p. 141.

In 1935 the Indiana Legislature passed a bill which recited that it was to be known and cited as the Indiana Insurance Law. This Act is found in the Acts of 1935, Ch. 162.

Acts of 1935, Ch. 162, Sec. 276 specifically provided for the repeal of a long list of insurance acts in whole or in part. The sweeping effect of this revision of the general law on the subject of insurance and insurance companies in Indiana can be clearly seen from the index table on page 282 in Vol. 8, Part 1 of Burns' Indiana Statutes (1952 Repl.), covering the repeal of general insurance laws. The chapters and sections

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cited below are cited only by the Burns' citations in order to indicate clearly the scope and extent of the repeals in this area.

Burns' 1933—Table of Repealed Sections

| Sections | Sections | Sections |
|-----------------|-----------------|------------------|
| 10-2116 | 39-1001—39-1019 | 39-1901—39-1907 |
| 25-1201—25-1229 | 39-1101—39-1124 | 39-2201—39-2221 |
| 25-1301—25-1315 | 39-1201—39-1221 | 39-2301—39-2344 |
| 39-101—39-123 | 39-1401—39-1424 | 39-2401—39-2406 |
| 39-125—39-143 | 39-1501—39-1506 | 39-2501—39-2504 |
| 39-201—39-241 | 39-1601—39-1605 | 39-2604 |
| 39-301—39-305 | 39-1701 | 39-2901, 39-2902 |
| 39-501—39-506 | 39-1703—39-1716 | 39-3001—39-3004 |
| 39-601—39-603 | 39-1721—39-1728 | 39-3101—39-3105 |
| 39-701—39-703 | 39-1801—39-1807 | 64-702 |
| 39-801—39-806 | 39-1813 | |

It should be noted that the 1935 Legislature left intact the statutes concerning Assessment Companies, "Lloyds" insurance, and Reciprocal or Interinsurance Companies; Acts 1883, Ch. 136, Sec. 1, as found in Burns' Indiana Statutes (1933), Section 39-401; Acts 1919, Ch. 177, Sec. 1, as found in Burns' Indiana Statutes (1933), Section 39-2701 and Acts 1919, Ch. 102, Sec. 1, as found in Burns' Indiana Statutes (1933), Section 39-2801. This fact is particularly noteworthy for these three chapters of Burns' (1933) comprise the whole subject-matter of Burns' Indiana Statutes (1952 Repl.), Section 39-5025, as set out above.

It is clear that the 1935 Legislature intended and accomplished a sweeping revision of the general law on the subject of insurance in passing the Indiana Insurance Law. In considering the particularity with which that Legislature repealed only certain sections of some of these statutes, *supra*, and that it repealed some statutes basically similar to those which it conspicuously did not repeal, the care, scrutiny and consideration it gave to its revisionary task is emphasized.

As pointed out above, Burns' Section 39-5025, *supra*, deals with the prohibition regarding the organization or incorporation of Assessment Plan Insurance Companies, Lloyds insurance companies, and Reciprocal or Interinsurance companies.

No reference is contained therein as to the reincorporation or reorganization of these types of insurance companies.

Fletcher's Cyclopaedia of the Law of Private Corporations contains the following definitions of incorporation and reincorporation:

Incorporation is "* * * the performance of conditions, acts, deeds, and writings by the incorporators and the official acts, certifications, or records which gave the corporation its existence." Section 126 (1931 Rev. Vol.).

"Reincorporation * * * consists in the taking out of a new charter by a corporation in order to correct defects or errors in the original incorporation, or to enlarge the powers or limit the liabilities of the corporation, or to lengthen or revive the corporate life. In a sense it is but an amendment of the charter, and *generally, under the statutes, there is no new corporation but the company is the same as before the reincorporation.*" Section 7204 (1938 Rev. Vol.). (Our emphasis)

Under the definition of "incorporation" by Fletcher, *supra*, a *new* company is actually brought into existence for the first time. On the other hand, under Fletcher's definition of "reincorporation" the corporate identity of the old company continues, but it continues under the provisions of a statute different from the statute under which it was originally formed.

In the case of *Muller v. State Life Insurance Co.* (1901), 27 Ind. App. 45, 60 N. E. 958, the Court considered and interpreted Section 27 and Section 28 of the Acts of 1899, Ch. 28, which contained the identical import of Burns' Section 39-425, *supra*, but with regard to life insurance companies. The Court said at page 53:

"It is plain * * * that it was not the intention of the legislature that there should necessarily be a new company formed, but that the old company, without changing its corporate identity, or in any manner affecting its corporate rights or liability, might, by complying with certain requirements, be authorized to do business in the future in accordance with the provisions contained in that act."

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Taken in the light of the scrutiny, particularity, and consideration which the 1935 Legislature must have given to the then existing statutes dealing with insurance, it must be presumed that the Acts of 1897, Ch. 195 was *deliberately* excluded from the long list of those acts repealed. Furthermore, it must be presumed that inasmuch as Acts of 1897, Ch. 195, as found in Burns' Indiana Statutes, Section 39-425, was permitted to remain in force, the 1935 Legislature was well aware of the existence of Section 5 of that Act which dealt with "Reincorporation," particularly in view of the fact that the 1935 Legislature specifically repealed a whole Act which dealt with the *reincorporation* of foreign insurance companies; Acts of 1933, Ch. 267, Burns' (1933), Section 39-1721.

The inescapable conclusion on consideration of the foregoing, is that Burns' Section 39-421 *et seq.* was intended to remain in force as the law governing the actions of existing corporations already doing insurance business on the assessment plan, with Burns' Section 39-5025, *supra*, of the 1935 Act serving only to forbid the *formation* of *new* corporations desiring to do business on the assessment plan.

I am of the opinion, therefore, that Burns' Section 39-5025, *supra*, does not prohibit the reincorporation under Burns' Section 39-425, *supra*, of an existing corporation doing business on the assessment plan.

Aside from the seeming problem of Burns' Section 39-5025, *supra*, and but for the decision in the case of National Colored Aid Society v. State *ex rel.* Wilson (1935), 208 Ind. 380, 196 N. E. 240, there would seem to be no reason why the last sentence of Burns' Section 39-425 would not have obviously controlled your situation. This sentence reads as follows:

"* * * It shall not be obligatory upon any such existing corporation, association, or society, to incorporate or reincorporate hereunder, and any such domestic corporation, association or society may continue to exercise all rights, powers and privileges not inconsistent with this act, pursuant to its articles of incorporation or association, the same as if incorporated or reincorporated under this act."

The Wilson case, *supra*, however, determined only that a corporation which was doing the business of insurance was not properly incorporated under the Non-profit Corporation Act of 1889, *supra*, and that such a corporation must abide by the regulatory powers of the state relating to the insurance laws of the state.

In this light, it would appear that it is proper for the Laymen of the Church of God to bring themselves within the regulatory statutes relating to insurance; such statute being Burns' Section 39-425, *supra*.

It is true that the Acts of 1897, Ch. 195, Sec. 6, as found in Burns' Indiana Statutes (1952 Repl.), Section 39-426, provides that certain defined insurance acts are deemed to be an engagement of insurance business on the assessment plan and that there is a proviso thereto which reads as follows:

“* * * but nothing herein contained shall be construed as applicable to any association of religious or secret societies, or to any class of mechanics, express, telegraph or railroad employees, or ex-Union soldiers, formed for the mutual benefit of the members thereof and their families exclusively, or to any secret or fraternal societies, lodges or councils that may be organized, or that are now organized and doing business in this state, which conduct their business and secure members on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges or councils, and which are under the supervision of the grand or supreme body, nor to any association organized solely for benevolent purposes and not for profit.”

The purpose of the Laymen of the Church of God, as reincorporated, would necessarily differ from that class of religious, non-profit, secret, and/or fraternal associations contemplated in Burns' Section 39-426, *supra*. While the membership of the Church of God apparently forms the basis for membership in the Laymen group, under the Wilson case, *supra*, the reincorporated organization is a corporation for profit, and the organization is not predicated upon any secret, ritualistic, or lodge-type fraternal system.

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I am of the further opinion that the proviso clause of Burns' Section 39-426, *supra*, is limited to that section and has reference to an exclusion of that class of insurance business of a general *fraternal nature* from the inclusion in the first part of Burns' Section 39-426, *supra*. In other words, fraternal type insurance companies were not intended to be included in that type of insurance business deemed to be on the assessment plan by the first part of Burns' Section 39-426, *supra*, inasmuch as they were specifically covered by separate statutes, such as the Acts of 1877, Ch. 4, Sec. 1 *et seq.*, and that the proviso clause was inserted merely to prevent the inclusion of fraternal benefit associations organized under the *lodge system* from being deemed an assessment plan company under this act.

It is, therefore, my opinion that the Laymen of the Church of God can reincorporate under the provisions of the Acts of 1897, Ch. 195, Sec. 5, in face of the provisions of the Acts of 1935, Ch. 162, Sec. 272, Burns' Section 39-5025, *supra*, by meeting the requirements of the Acts of 1897, Ch. 195, Sec. 5, Burns' Section 39-425, *supra*.

OFFICIAL OPINION NO. 37

August 14, 1956

Hon. Wilbur Young
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Young:

I have your letter of July 24, 1956, in which you request an Official Opinion as follows:

"Our office is the Distributing Agency for federal government donated foods under the U. S. D. A. Donated Commodity Program. We are authorized to distribute commodities to institutions defined as charitable, nonpenal, nonprofit and tax-exempt.

"At this time we have an application for participation from the Lake County Detention Home. We are requesting an opinion from you concerning the status of this institution. It must be determined whether or