I am, therefore, of the opinion that the persons referred to in your letter are employees of the State of Indiana and are subject to the statutes regarding the Public Employes' Retirement Fund and participation of state employees in the Federal Social Security Act.

OFFICIAL OPINION NO. 43

September 13, 1956

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

Dear Mr. Gusler:

This is in reply to your recent letter requesting my Official Opinion on the following questions:

(1) Does Chapter 338 of the Acts of 1955 *only* pertain to restoration to civil rights of a committed person?

(2) If the same Court which committed a patient to a hospital also has probate jurisdiction and appointed a guardian, is it necessary that a separate petition be filed to terminate the guardianship?

I understand that the cases which give rise to these questions are cases involving veterans' benefits in connection with the Veterans' Administration.

The Acts of 1955, Ch. 338, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Sections 22-4240 to 22-4244 provide for the discharge of patients other than criminal sexual psychopaths from psychiatric hospitals.

Burns' Section 22-4242, *supra,* contains the following provisions:

"Whenever any patient is discharged by the superintendent or an administrator for the reason that the patient is no longer a mentally ill person, it shall be the duty of such superintendent or administrator to send a verified certificate of the discharge to the clerk of the

court which committed such patient. The certificate shall contain the following information: 1. The name of the patient; 2. The date on which the patient was committed to the hospital; 3. The address of the patient at the time of commitment; 4. The date of the discharge of the patient; 5. The name of the person to whom the patient was discharged, if any; and 6. The fact that in the opinion of the superintendent or the administrator, the patient is no longer a mentally ill person.

"If at the time of the release of any patient from a federal psychiatric hospital the administrator was of the opinion that the patient had not been restored to mental health but subsequent to the release of such patient he has been rated competent by the veterans' administration, it shall be the duty of the manager of the regional office of the veterans' administration wherein such rating of competency is made to send a verified certificate to the clerk of the court which committed the patient. The certificate shall contain the following information: 1. The name of the patient; 2. The date on which the patient was committed to the hospital; 3. The address of the patient at the time of commitment; 4. The date of the release of the patient; and 5. That such patient has been rated competent by the veterans' administration.

"Upon receipt of either such certificate from any superintendent, administrator or manager of any regional office of the veterans' administration, the court having jurisdiction of such patient shall fix a time, date and place for the hearing of restoration proceedings. The clerk of said court shall notify in writing the following persons of such hearing:

"1. The patient, if over fourteen [14] years of age;

"2. The parents of said patient, if said patient is a minor, and the husband or wife of said patient;

"3. Any other person who has been appointed as a guardian for said patient or the person having the care and custody of said patient, if any;

"4. At least one [1] of the closest adult relatives of the patient by blood or marriage, if any be known;

"5. Any department, bureau or agency of the United States or of the state of Indiana or any political subdivision thereof, known to the court which makes or awards compensation, pension, insurance or other allowances for the benefit of the estate of the patient;

"6. Any department, bureau or agency of the state of Indiana or any political subdivision thereof or any charitable organization of this state, known to the court, which may be charged with the supervision, control or custody of the patient. Said notice shall be served by mail at least ten [10] days prior to the date set for the hearing. The hearing shall be conducted in an informal manner.

"Any statement of a superintendent, an administrator or a manager of a regional office of the veterans' administration certifying to the fact that a patient is no longer a mentally ill person, or has been rated competent by the veterans' administration, shall be prima facie evidence thereof and shall be admissible as evidence in any restoration proceedings.

"If, after the hearing, the court is of the opinion that the patient is no longer a mentally ill person, or if no person notified of the hearing makes an appearance, and the court by reason of the information contained in the certificate is of the opinion that the patient is no longer a mentally ill person, the court shall enter an order and judgment to that effect. Such order shall be entered upon the official records of the court and shall be incorporated into the commitment records of the patient. Nothing in this section shall preclude the courts from obtaining advice from any qualified psychiatrist. The court in its discretion may compel the presence of the patient.

"Any person aggrieved by such order and judgment shall have the right to appeal from such order and judgment to the Appellate Court of the state of Indiana in the same manner as appeals are had in civil cases:

Provided, however, That any such appeal shall be taken within thirty [30] days from the time of the entry of the order and judgment. No costs or fees of any kind shall be taxed, charged or collected in the proceedings provided for in this section."

The Acts of 1953, Ch. 112, Sections 1946 and 1947, which provide for the termination of guardianships and the final accounting by the guardian, were amended by the Acts of 1955, Ch. 258, Sections 12 and 13, and are found in Burns' Indiana Statutes (1953 Repl., 1955 Supp.), Sections 8-146 and 8-147.

Burns' 8-146, *supra,* reads as follows:

"(a) Unless otherwise directed by the court, every guardian of the estate shall file with the court biennially within thirty [30] days after the anniversary date of his appointment, and also within thirty [30] days after the termination of his appointment, a written verified account of his administration.

"(b) Notice of the hearing of every account in final settlement of a guardianship shall be given, unless waived, to the following:

"1. The ward in case of a minor who has reached the age of majority, or a minor who has married, and the guardianship is being terminated: Provided, however, That such guardianship was solely because of the minority of the ward; or

"2. The personal representative of the ward's estate, if any, in the event of the death of the ward; or

"3. The incompetent ward who has been restored to legal competency and the guardianship is being terminated on that account; or

"4. Any other person ordered by the court in the specific case or by general rule adopted by the court.

"(c) No notice of hearing shall be necessary when an intermediate account is filed, unless so ordered by the court, or unless the guardian or person making such account petitions that such account be made final as to

the matters and things reported therein, in which case notice shall be given. When an intermediate account is filed and no notice is given the court may approve the same ex parte, but such intermediate account may be reviewed by the court at any time thereafter and shall not become final until the account in final settlement is filed and approved by the court.

"(d) When notice has been given as provided in this section, the order of the court approving the intermediate account petitioned to be made final as to the matters and things reported therein or the final account, subject to the right of appeal, shall be binding upon all persons.

"(e) The provisions of sections 1601, 1603, 1604, 1605, 1607, 1609, and 1610 hereof as to accounting in decedents' estates shall apply to guardianship estates insofar as the provisions of these sections are applicable."

Burns' 8-147, *supra,* contains the following provisions:

"(a) A guardianship is terminated

"(1) If the guardianship was solely because of the ward's minority, by the ward attaining his majority;

"(2) If the guardianship was solely because of the ward's minority, the court in its discretion may order the guardianship terminated before such ward reaches the age of twenty-one [21] years, upon marriage of the ward.

"(3) By an adjudication of competency of the ward in a proceeding in the court having probate jurisdiction brought for the purpose of terminating the guardianship;

"(4) By the death of the ward.

"(b) A guardianship may be terminated by court order after such notice as the court may require.

"(1) If the guardianship is of the estate and the estate is exhausted;

"(2) If the guardianship is of the estate and the whole estate does not exceed the value of one thousand [$1,000] dollars;

"(3) If the ward's residence is changed to another state and a guardian has been appointed for the ward in that state;

"(4) If the guardianship is no longer necessary for any other reason.

"(c) When a guardianship terminates otherwise than by the death of the ward, the powers of the guardian cease, except that a guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the ward, and for expenses of administration. When a guardianship terminates by death of the ward, the guardian of the estate may make disbursements for expenses of administration. If the guardianship of the estate is terminated as provided in subsection (b) (2), the court shall authorize disposition of the assets in the manner provided in section 1950 [§ 8-150]."

I also call your attention to the Acts of 1953, Ch. 112, Sec. 2017, as found in Burns' Indiana Statutes (1953 Repl.), Section 8-217, which reads as follows:

"In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the veterans administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this act and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final

account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released."

Your attention is further called to the manner of giving notice in the Acts of 1953, Ch. 112, as set out in Section 112, and as found in Burns' Indiana Statutes (1953 Repl.), Section 6-112. This section reads as follows:

"Unless waived and except as otherwise provided by law, all notices required by this code to be served upon any person shall be served as the court shall direct by rule or in a particular case, either:

"(a) By delivering a copy of the same to such person or by leaving a copy of the same at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein, at least ten [10] days before the hearing, if he is a resident of the state of Indiana.

"(b) If shown by affidavit that such person is a nonresident of the state of Indiana or that upon diligent inquiry, either the name or residence of such person is unknown, by publication once in each week for three [3] weeks consecutively in some newspaper printed and circulating in the county where said court is held, the first day of publication to be at least thirty [30] days prior to the date set for hearing; or in case there be no newspaper printed in said county, then in some newspaper published in this state and designated by the judge or clerk, circulating in the county where the proceeding is pending.

"In all cases where service or notice by publication is ordered, or is required by this code, such notice shall be deemed sufficient only if all persons so notified are also served by ordinary mail addressed to such person located in the United States at his address stated in the petition for hearing or affidavit of residence, and deposited in any United States post office in this state at lease fourteen [14] days prior to the date set for hearing in said notice. Such notice by mail shall be excused, however, in any case if it is shown by affidavit of a

person required to give such notice either that, upon diligent inquiry, the residence or name of such person is unknown."

I understand that your question, read in conjunction with the above cited statutes, raises a question as to the necessity or desirability for a separate notice and hearing for the purpose of restoring the patient to sanity and a separate notice and hearing for the purpose of terminating the guardianship, and an additional notice and hearing for the purpose of the guardians making a final accounting and his discharge following therefrom.

In examining and considering the Acts of 1955, Ch. 338, Sec. 3, *supra,* in relation to the other statutes cited above, it would appear, in answer to your first question, that the proceeding for termination of the guardianship is not contemplated at the hearing for the restoration to sanity for the reason that no notice of a hearing for the former purpose is provided in that Act.

It would, therefore, in my opinion, appear that the procedure to be followed in a given case, under the above cited statutes, would be along the following lines:

1. Upon receipt, by the Clerk of the Court which committed the patient, of a certificate of discharge from a mental institution or a certificate of competence from the Veterans' Administration, the Court is mandated by Burns' 22-4242, *supra,* to fix the time, place and date of hearing with regard to the patient's restoration of sanity and to provide notice thereof to the following, among others:

a. the patient;

b. the patient's spouse and/or parents;

c. the patient's guardian;

d. any agency of the United States under Federal advisory as the Veterans' Administration;

e. any agency of the State of Indiana charged with suspension, custody or control of patient.

2. At such restoration of sanity hearing following a determination that sanity has been restored to patient, upon motion of counsel and *if* notice of a hearing for the purpose of termination of the guardianship (as required by Burns' [1955 Supp.], Section 8-146 and Burns' 8-217, *supra*), is waived in accordance with Burns' 8-146 and 8-217, *supra,* the hearing *could* be then had with regard to the guardian's termination.

3. If such notice with regard to the hearing upon the termination of the guardianship is not waived upon such motion, then notice of hearing on termination of guardianship should be given at the hearing on the restoration of sanity, or as soon thereafter as possible.

4. At the hearing held for purposes of terminating the guardianship, had as specified in the notice, if so determined under Burns' 8-147, *supra,* the guardian should be ordered to file his final accounting and hearing should be had in conjunction therewith as required by the terms of Burns' 8-146, *supra.*

5. Upon hearing (in accordance with Burns' 8-217 and 8-146, *supra*) with regard to the final accounts of the guardian and the approval thereof together with the delivery of the assets to the former patient, the guardian is discharged.

It is true that the statutory procedural picture in relation to your question is not clearly spelled out with regard to the steps to be taken in accomplishing the restoration to sanity and termination and discharge of the guardian under Burns' 22-4242, 8-146 and 8-147, *supra.* By reason of this fact, and to prevent any legal question arising at some time subsequent to the patient's restoration and the termination and the discharge of his guardian, it is my opinion that under the statutes as above considered, good practice would dictate that separate petitions be filed.