In answer to your question as to whether or not a person committed as a criminal sexual psychopath must be restored in the same manner as a person committed to the institution for the insane, it is my opinion that said question should be answered in the negative.

It is my opinion that a person committed to a hospital as a criminal sexual psychopath may be discharged only in accordance with the Acts of 1949, Ch. 124, Sec. 8, *supra*, and his discharge from custody is not governed by the law providing for the discharge of persons who have been adjudged insane.

It is my further opinion that a person committed to a hospital as an alcoholic under the authority of the Acts of 1953, Ch. 194, *supra*, forfeits no rights as a citizen of the state or of the United States, and there is no necessity for court proceedings for the restoration of said alcoholic at the time of his discharge.

OFFICIAL OPINION NO. 46

October 20, 1955

Senator Willis K. Batchelet
321 N. Martha Street
Angola, Indiana

Dear Senator Batchelet:

This is in reply to your letter of September 21, 1955, in which you request my Official Opinion relative to court costs in estate matters. Your letter reads, in part, as follows:

"Questions have been raised from several sources regarding the proper interpretation of Section 3 of Chapter 133, Acts of 1955, as that section relates to the charging of fees by the Clerk of the Circuit Court in matters of estates, guardianships, etc., Section 3 provides as follows:

"'In any matter pending in any court of this state at the time of the effective date of this Act, the clerk of the circuit court of any county shall tax, charge and collect the fees as are provided and stipulated in this Act.'"
Let me present an illustration to bring out the point that I wish to have determined. Suppose that an estate with an inventory less than $5,000.00 was opened May 6, 1953, and no costs have been paid in the interim. When the administrator desires to pay the costs at this time, would the first two years be charged under the old schedule; that is, $6.00 for the first two years and a charge of $6.00 under the new schedule for the additional year? Or, should the costs be determined under the new schedule only; that is, at the rate of $6.00 for each year or a total of $18.00 for the three years?"

Acts of 1955, Ch. 133, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 49-1301 et seq. establishes a new schedule of court costs in specifically named matters. Section 1 of said Act provides that in estates with inventories of ten thousand dollars or less, there shall be a cost taxed of $6.00 for each year or part of same. Section 3 of said Act provides as follows:

"In any matter pending in any court of this state at the time of the effective date of this act, the clerk of the circuit court of any county shall tax, charge and collect the fees as are provided and stipulated in this act."

(Our emphasis)

Section 7 of said Act provides that such Act shall be in full force and effect from and after July 1, 1955.

The Acts of 1955, Ch. 133, supra, amended the Acts of 1927, Ch. 131, Sections 1, 2, 3 and 5, as found in Burns' Indiana Statutes (1951 Repl.), Section 49-1301 et seq. You will note that the cited 1927 Act established a court cost in estates with inventories of five thousand dollars or less by the following language:

"Estates with inventories of five thousand dollars [$5,000] or less, first two [2] years or part of same, six dollars [$6.00], each additional year or part of year, four dollars [$4.00]."

Under the facts given in your letter, the estate involved has an inventory of less than five thousand dollars. It was opened on May 5, 1953, and no costs have been paid in the interim.
The question is then whether the administrator of the estate in such circumstances will be assessed costs pursuant to the new 1955 schedule; that is, $6.00 for each year or part of same. If the new schedule so applies, the costs would amount to $18.00 for the two years plus part of a year. You present the further alternative of whether the old schedule will apply to the first two years and the new schedule for each additional year.

It is my conclusion that pursuant to Acts of 1955, Ch. 133, Sec. 3, supra, the clerk will assess costs of $18.00 in the situation described by you since it is my opinion that the costs must be determined exclusively under the new schedule. The question resolves itself to a determination of the meaning of the word "pending" contained in Acts of 1955, Ch. 133, Sec. 3, supra. Such section states that in any matter pending in any court at the time of the effective date of the Act, the clerk shall tax the costs provided in such Act.

I believe that this estate was a matter pending in a court of this state on the effective date, to-wit, July 1, 1955, and, therefore, the clerk must apply the new schedule exclusively. There has been no judicial construction of the word "pending" as used in this or any similar statute. There is a great amount of authority in other states that the word "pending" means not terminated. See 31 Words and Phrases, Permanent Edition, p. 641 et seq. Ballentine's Law Dictionary defines the term as meaning remaining undecided. Also, there are Indiana cases which have construed the word "pending" as it appears in other statutes. In Cincinnati, &c., R. Co. v. McCullom (1915), 183 Ind. 556, 564, 109 N. E. 206, the state Supreme Court approved and applied the dictionary definition of the term "pending"; such dictionary definition was quoted as "during the continuance of, * * * during the time intervening before; awaiting; until." In Cirtin v. Cirtin (1928), 199 Ind. 737, 164 N. E. 493, the Supreme Court held that the phrase "pending a petition for divorce" means that period of time intervening between the commencement of the action and the rendition of the final judgment by the trial court. It has even been held that the word "pending" can apply to an action in which final judgment has been entered but where such judgment remains unsatisfied. Gates v. Newman et al. (1897), 18 Ind. App. 392, 398, 46 N. E. 654.
I am unable to reach any other conclusion but that the estate described in your letter was a matter pending in court on July 1, 1955. Therefore, the clerk is mandated to assess the costs prescribed in the new 1955 schedule.

I conclude that in an estate now pending, where the costs have not been paid, the new 1955 costs schedule will apply from the date the estate was opened to the date of final disposition thereof by the court.