

OPINION 45

OFFICIAL OPINION NO. 45

June 11, 1953.

Honorable George N. Craig,  
Governor, State of Indiana,  
206 State House,  
Indianapolis, Indiana.

Dear Governor:

I have your letter of June 5, 1953, asking my opinion on the following two questions:

1. Your first question relates to the effect of Chapter 115 of the Acts of 1953 upon the confidential nature of the case records and the application of applicants and recipients of old age benefits under Chapter 3 of the Acts of 1936, as amended.

The Federal "Social Security Act," by Section 2 (U. S. C. A., tit. 42, § 703), provides in part as follows:

"A State plan for old-age assistance must \* \* \*

"(8) effective July 1, 1941, provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of old-age assistance;

"(9) provide that all individuals wishing to make application for old-age assistance shall have opportunity to do so and that old-age assistance shall be furnished with reasonable promptness to all eligible individuals; and

"(10) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions. \* \* \*"

The Acts of the General Assembly of 1936, Chapter 3, Section 14, as found in Burns' Indiana Statutes Annotated (1951 Replacement), Section 52-1113 provides:

“The state of Indiana hereby accepts all of the provisions and benefits of the federal ‘Social Security Act,’ enacted by the Congress of the United States and approved on August 14, 1935, which, by the provisions of this act, the state and county departments of public welfare are authorized to administer, and *shall observe and comply with all of the requirements of such act and the several amendments thereto* and the rules and regulations issued thereunder and in conformity therewith.” (Our emphasis.)

The Acts of the General Assembly of 1936, Chapter 3, Section 4, as amended, as found in Burns’ Indiana Statutes Annotated (1951 Replacement), Section 52-1103, paragraph (c) provides in part:

“(c) The state board shall be responsible for the adoption of all policies, rules and regulations for the government of the state department, and all administrative and executive duties and responsibilities of the state department shall be discharged by the administrator, subject to the approval of the state board. \* \* \*”

The Acts of the General Assembly of 1936, Chapter 3, Section 5, as amended, as found in Burns’ Indiana Statutes Annotated (1951 Replacement), Section 52-1104, provides in part:

“The state department is hereby charged with the administration or supervision of all of the public welfare activities of the state as hereinafter provided. The state department:

\* \* \*

“(f) May make such rules and regulations and take such action as may be deemed necessary or desirable to carry out the provisions of this act and which are not inconsistent therewith.

\* \* \*

“(h) Shall cooperate with the federal social security board, created under title 7 of the ‘Social Security Act’ enacted by the 74th Congress and approved August 14, 1935, and any amendments thereto, and with any other agency of the federal government in any reasonable

## OPINION 45

manner which may be necessary to qualify for federal aid for assistance to persons who are entitled to assistance under the provisions of that act, and in conformity with the provisions of this act, including the making of such reports, in such form and containing such information as the federal social security board or any other agency of the federal government may, from time to time, require and comply with such requirements as such board or agency may, from time to time, find necessary to assure the correctness and verification of such reports.

\* \* \*

The Acts of the General Assembly of 1947, Chapter 178, Section 1, as found in Burns' Indiana Statutes Annotated (1951 Replacement), Section 61-1301 provides as follows:

"The state, or any political subdivision thereof, are each hereby authorized and empowered to the full extent authorized by the Constitution of Indiana and not prohibited by law, to accept the provisions of any law of the Congress of the United States of America, or any rule, regulation, order or finding made pursuant thereto, now or hereafter in force, which, upon acceptance, authorizes the state, or any political subdivision thereof, to cooperate with the federal government, or to receive benefits for itself or any of its citizens; and the state, or any political subdivisions thereof, is hereby authorized and empowered to do any and all acts, and to make any rule, regulation, order, or finding, that may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law."

The Acts of the General Assembly of 1936, Chapter 3, Section 35, as found in Burns' Indiana Statutes Annotated (1951 Replacement), Section 52-1204 provides:

"Application for assistance by an aged person under the provisions of this act shall be made to the county department of the county or district in which the applicant resides. The application shall be in writing, or shall be reduced to writing, shall be made in the manner and upon the form prescribed by the state department, and shall be verified by the oath of the applicant. Every

such application shall contain a statement of the amount of property, both personal and real, in which the applicant has an interest and of all income which he may have at the time of the filing of the application, and such other information as may be prescribed by the state department."

The Acts of the General Assembly of 1936, Chapter 3, Section 93, as amended prior to 1951, as found in Burns' Indiana Statutes Annotated (1951 Replacement), Section 52-1262 provides:

"All records concerning any applicant or recipient of assistance contemplated in Part 3 of this act shall be confidential, and the use or disclosure thereof shall be restricted to purposes connected with the administration of assistance under this act; Provided, however, That applications for assistance, awards, modification or revocation of awards and amount of payments to recipients, shall be open to the inspection of duly elected state and county officials, and to township trustees for purposes connected with the administration of public assistance."

The above section was amended by Section 1, Chapter 321, Acts 1951, and as amended the entire provision relating to said records being confidential was omitted. Thus there is at present no provision of the statute making such records confidential.

On August 10th, 1951, the State Department of Public Welfare adopted and promulgated Rule No. 1-107 which is as follows:

*"Regulation 1-107 Confidential Nature of Assistance Records*

"The case records and other information concerning applicants and recipients of assistance, under the Welfare Act of 1936, as amended, are confidential and their disclosure or use shall be confined to purposes directly connected with the administration of assistance."

This rule was adopted by virtue of the legislative authority granted in the sections of the statute above quoted to adopt

## OPINION 45

rules to conform to the federal act and within the Board's jurisdiction:

Burns', Section 52-1113, 1951 Replacement

Burns', Section 52-1103, 1951 Replacement

Burns', Section 52-1104, 1951 Replacement

Burns', Section 61-1301, 1951 Replacement

This brings us to the question of the effect of Chapter 115 of the Acts of 1953. Section 2 of said act provides in part:

"(1) The term 'public records' shall mean any writing in any form necessary, under or required, or directed to be made by any Statute or by any rule or regulation of any administrative body or agency of the state or any of its political subdivisions. \* \* \*"

Section 3 of said act then gives the right of inspection of "public records" as above defined.

The only provision of the welfare act which requires, or directs a "writing" is the above quoted provision relating to the application. Consequently Section 1 of the said 1953 act is not in conflict with the regulation making the records confidential in conformity with the requirements of the federal act except as applied to the written application but is in conflict therewith as applied to the said written application unless the same is within the exception of Section 5 of said Chapter 115 of the Acts of 1953. Said Section 5 is as follows:

*"Sec. 5. Nothing in this act contained shall be construed to modify or repeal any existing law with regard to public records which, by law, are declared to be confidential. Nor shall anything in this act be construed to modify or repeal any existing law, rule or regulation, with regard to the holding of executive sessions by any administrative body or agency. Provided, however, that no administrative body or agency shall, under the guise of holding an executive session, conduct public proceedings in such a manner as to defeat the declared policy of this act as set forth in Section 1 hereof."* (Our emphasis.)

This presents the specific question of whether the existing regulation making the said application confidential is an "existing law," with regard to public records, which "by law," declared said records confidential.

In the case of *Blue v. Beach* (1900), 155 Ind. 121, 56 N. E. 89, at page 130, the Supreme Court said:

"When these boards duly adopt rules or by-laws, by virtue of legislative authority, *such rules and by-laws, within the respective jurisdictions, have the force and effect of a law of the legislature*, and, like an ordinance or by-law of a municipal corporation, they may be said to be in force by authority of the State." (Our emphasis.)

In the case of *Wallace v. Dohner* (1929), 89 Ind. App. 416, at page 420, 165 N. E. 552, the court said:

"Courts have uniformly held, and the law is well settled, that *valid rules and regulations, when adopted by an administrative body in accordance with the provisions of the act by which the administrative body was created, are, in effect, a part of the statute*. *Chicago, etc. R. Co. v. People* (1907), 136 Ill. App. 2. However, a rule, to be valid, must be reasonable and within the authority delegated by the statute." (Our emphasis.)

In the case of *Coleman v. City of Gary*, 220 Ind. 446, at page 458, 44 N. E. 101, the court said:

"This rule, duly adopted by the commission under the authority of the 1939 Act, had the force and effect of law so long as it was in force. \* \* \*"

Under the above decisions of the Supreme and Appellate Courts of this state when a board adopts a regulation pursuant to statutory authority, such rule is in effect a part of the statute, it has the same effect as a law adopted by the legislature, it is as much the law of the state as an act of the legislature. It is therefore my opinion that said regulation No. 1-107 was and is a part of the "existing law" with regard to the welfare records, which "by law" made them confidential prior to said Chapter 115 of the Acts of 1953 and therefore

said regulation is still in force and effect under the exception in said Section 5.

What is above said does not apply to the provisions of Chapter 321 of the Acts of 1951, specifically making certain records relating to disbursements public as therein provided.

2. Your second question relates to the authority in Indiana for the fixing of standards for private and public institutions in which individuals who are the recipients of state old-age assistance are housed. The provision of the Federal Act to which your question applies is Section 2 of the "Social Security Act," as amended, the pertinent part being as follows:

"Sec. 2. (a) A State plan for old-age assistance must \* \* \* (10) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions."

A. Nursing homes are regulated by Chapter 172, Acts 1947 (Burns' 1952 Replacement, Section 42-1418 *et seq.*). Section 2 of said Act provides as follows:

"The purpose of this act (§§ 42-1418—42-1447) is for the development, establishment and enforcement of standards (1) for the care, treatment, health, safety, welfare and comfort of individuals in nursing homes and (2) for the construction, general hygiene, maintenance and operation of nursing homes, which, in the light of advancing knowledge, will promote safe and adequate accommodation, care, and treatment of such individuals in nursing homes."

This act is administered under the State Department of Public Welfare which is empowered to license, inspect and regulate such homes (Sections 3 and 4). Said department is given rule making power by Section 9 of said act (Burns' 1952 Replacement, Section 42-1426) which section is as follows:

"The licensing agency with the advice of the Indiana Nursing Home Advisory Council, shall adopt, amend,

promulgate and enforce such rules, regulations and standards as may be deemed practicable, reasonable and necessary with respect to all nursing homes and/or different types of nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of this law in promoting safe, proper and adequate treatment and care of individuals in nursing homes in the interest of public health, safety and welfare. Such rules, regulations and standards may be established and classified according to the location, building, construction, size and facilities of nursing homes and the number and kind of patients and care offered or provided, and shall prescribe records to be kept, kind and frequency of reports and inventories to be made, and requirements for the protection, health, safety, hygiene, welfare and comfort of patients and standards and requirements for nursing care.”

Section 8 of Chapter 172 (Burns’ 1952 Replacement, Section 42-1425) provides in part:

“The licensing agency after notice and opportunity for hearing to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements, standards, rules and regulations established under this law.”

B. Hospitals may be either a private or public institution depending upon the method and type of organization. In either event it must be licensed by the State Board of Health and is subject to the regulations and standards under the provisions of Chapter 346, Acts 1945 (Burns’ 1952 Replacement, Section 42-1601 *et seq.*). Section 1 of said act provides:

“From and after the passage of this act (§§ 42-1601—42-1620) the state board of health shall be empowered to license and regulate hospitals. Such licensing and regulations shall be accomplished through a council to be created in the manner hereinafter provided, and such other employees as are hereinafter provided for.”

## OPINION 45

Section 10 of Chapter 346, Acts 1945 (Burns' 1952 Replacement, Section 42-1610) provides for suspending or revoking such license; said section provides in part:

"The board may suspend or revoke a license issued hereunder on the recommendation of the council on any of the following grounds:

"(a) Violation of any of the provisions of this act (§§ 42-1601—42-1620) or of the rules and regulations issued pursuant hereto;

"(b) Permitting, aiding or abetting the commission of any illegal act in such institution; or,

"(c) Conduct or practice found by the council to be detrimental to the welfare of the patients of such institution. \* \* \*"

C. Express statutory provision is made for standards of county homes in which one receiving old-age assistance is a voluntary inmate. Section 32 of Chapter 3, Acts 1936, as amended (Burns' 1951 Replacement) Section 52-1201 provides in part:

"\* \* \* A person otherwise qualified hereunder who is a voluntary inmate of a home or institution, other than penal or correctional, provided and maintained by the county for the support and care of persons who are aged, destitute, infirm, homeless or chronically ill, shall be eligible for assistance if the facilities of such home or institution with respect to construction, general hygiene, care and treatment are in conformity with standards established by the state board for the safeguarding of the health, safety, welfare and comfort of the inmates thereof; and assistance awarded to an inmate of such home or institution may be used by him to purchase care and maintenance therein. Standards may be established for homes or institutions in which inmates are granted assistance for needs personal to themselves and for homes or institutions in which assistance is granted for both personal, and care and maintenance needs."

D. Chapter 157, Acts 1949 provides many standards relating to health and welfare. This act is too lengthy to attempt to quote such statutory standards but they include sanitary standards for buildings, including plumbing, sewage, drainage, light and ventilation. They cover control of communicable diseases, food sanitation, water supply, mattresses and bedding and other matters. In addition a very large authority to make rules and regulations is given by this act to the State Board of Health. See Sections 212, 802, 803, 818, 1303, 1553 among others. This chapter by Section 2350 imposes a criminal penalty for violation of any of its provisions or of any valid rule of the board. Other sections provide for the making and enforcement of orders to cease or to comply and for their enforcement in court.

E. The State Fire Marshal has a very broad and comprehensive power to make rules, establish standards and enforce the same. This power and authority is set forth in Chapter 192, Acts 1913 as amended. See particularly Section 7 as amended (Burns' 1950 Replacement, Section 20-807). As this section is several pages in length it is not quoted but reference is made thereto.

F. The pertinent parts of Section 14, Chapter 3, Acts 1936, Burns' 52-1113 (1951 Replacement); Section 4, Chapter 3, Acts 1936, Burns' 52-1103 (1951 Replacement); Section 5, Chapter 3, Acts 1936, Burns' 52-1104 (1951 Replacement); Section 1, Chapter 178, Acts 1947, Burns' 61-1301 (1951 Replacement) were quoted previously in this opinion and are the statutory provisions authorizing and requiring the State Department of Public Welfare to "observe and comply with all of the requirements" of the federal act, and "to make any rule, regulation, order, or finding, that may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law," not prohibited by law.

What is said in this opinion relative to old-age assistance will apply also to blind assistance.