

OPINION 67

OFFICIAL OPINION NO. 67

August 6, 1953.

Mr. Hugh P. O'Brien, Chairman,
State Board of Correction,
210 State House,
Indianapolis, Indiana.

Dear Mr. O'Brien:

This is in reply to your letter of June 30, 1953, which is as follows:

"Complying with the Governor's request that we expedite all avenues possible to correct the situation at Central State Hospital, we are contemplating using inmate labor for the purpose of rehabilitating the wards during this emergency.

"Will you please give us your opinion as to the feasibility of using inmate labor at this time."

The Constitution of the United States and of Indiana and statutes thereunder clearly show the limits within which inmate labor may be used. The 13th Amendment of the United States Constitution provides:

"§ 1. Slavery prohibited.—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Section 37 of Article 1 of the Indiana Constitution provides:

"§ 37. Slavery prohibited.—There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any Negro or Mulatto, made and executed out of the bounds of the State, shall be valid within the State."

In the case of *Butler v. Perry* (1916), 240 U. S. 328, 60 L. Ed. 672, 36 Sup. Ct. 258 the Supreme Court in commenting on the 13th amendment said:

“Utilizing the language of the Ordinance of 1787, the Thirteenth Amendment declares that neither slavery nor involuntary servitude shall exist. This amendment was adopted with reference to conditions existing since the foundation of our Government, and the term involuntary servitude was intended to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results. It introduced no novel doctrine with respect of services always treated as exceptional, and certainly was not intended to interdict enforcement of those duties which individuals owe to the State, such as services in the army, militia, on the jury, etc. The great purpose in view was liberty under the protection of effective government, not the destruction of the latter by depriving it of essential powers. (Citations omitted.)

“There is no merit in the claim that a man’s labor is property, the taking of which without compensation by the State for building and maintenance of public roads, violates the due process clause of the Fourteenth Amendment. That Amendment was intended to preserve and protect fundamental rights long recognized under the common law system.”

The 1953 Indiana General Assembly in Chapter 266, as found in Burns’ Indiana Statutes Annotated (1942 Repl., 1953 Supp.), Section 13-1517 made the following provision as to the employment of inmates under the jurisdiction of the Department of Corrections:

“The board of correction shall not, nor shall any other authority whatsoever, make any contract by which the labor or time of any inmate in any institution under the jurisdiction of the department of correction or the product or profit of his or her work shall be contracted, let, farmed out, given or sold to any person, firm, association or corporation, *except that inmates in said institutions may work for, and the products of their labor may be disposed of, to the state or any political subdivision thereof, or to any public institution owned or managed and controlled by the*

OPINION 67

state, or any political subdivision thereof." (Our emphasis.)

Section 16, Chapter 266 of the Acts of 1953, as found in Burns' Indiana Statutes Annotated (1942 Repl., 1953 Supp.), Section 13-1516 provides as follows:

"The department of correction may establish forestry or soil conservation camps independently of or in cooperation with other departments or divisions of state government. The establishment of such camps in cooperation with other departments or divisions shall be on such terms as may be agreed upon by such department or division and the department of correction. The board of correction may temporarily transfer such prisoners as it determines would derive the maximum psychological, physical, mental and moral benefit from such transfer, who are confined in any single correctional institution, to any such forestry or soil conservation camp. Prisoners so transferred shall continue to be subject to institutional discipline and within the custody and control of the department of correction and the warden or superintendent of the institution from which they are transferred.

"They may be required to labor on the buildings and grounds of such camps, on the making of forest roads for fire prevention or fire fighting, on reforestation of public lands, on game and wild life projects, or to perform any other work or engage in any studies or activities prescribed or permitted by the department of correction.

"The department of correction may provide in cooperation with other departments of state government for the payment of wages to prisoners for constructive labor performed while housed in any farm, industry site or camp, the sum earned to be credited to the account of the prisoner or to the dependents of the prisoner or in any such manner as may be approved by the board of correction."

In the case of *Ove Gnatt Company v. Jackson et al.* (1932), 205 Ind. 51, 184 N. E. 553 the Supreme Court of Indiana said:

“The extent to which prison labor shall be used and the disposition of the products of such labor is an administrative problem lying within the control of the legislature. Our General Assembly has recognized that the inmates of our penal institutions should, insofar as possible, be employed in such work as will least interfere with outside labor and industry, and has enacted legislation expressly prohibiting the use of prison labor in certain industries and expressly authorizing its use in certain other industries.”

Judge Perkins of the Indiana Supreme Court in 1860 (*Helton and others v. Miller and others* (1860), 14 Ind. 576) had this to say about a statute allowing prison labor outside of prison walls:

“From what has been said it will be manifest that if the statute of the state does authorize the working of penitentiary convicts outside of the prison limits, and among the community, the statute is a bad one, considered as a permanent regulation. Such working for a temporary object, as the erection of a public building by the state, might be tolerated. But as a permanent measure of policy, the state should in our judgment, provide herself with grounds and buildings sufficiently extensive to accommodate at work and at repose all her convicts.”

In the absence of statutory permission prisoners may not be employed at hard labor since such employment would be the imposition of an additional punishment, but by virtue of a statutory provision a person sentenced to prison may be kept at hard labor.

72 C. J. S. on Prisons, Section 18, page 873.

A state or county is entitled to a convict's labor or service. The legislature, subject to constitutional restrictions, may authorize the employment of convicts on public works or leave the nature of the employment to the board of control, and may in their discretion, provide for compensation to them.

18 C. J. S. on Convicts, Section 13, page 113.

OPINION 67

As said beforehand the 1953 General Assembly specifically authorized the use of inmate labor for and on political subdivisions of the state and public institutions of the state. The Central State Hospital is a public institution owned and operated by the state, and as such is within the language of Burns' Indiana Statutes Annotated, Section 13-1517, *supra*.

Applying these principles to your questions, my opinion is as follows:

1. Section 309, Chapter 169, Acts of 1905, same being Burns' Indiana Statutes Annotated (1942 Repl.), Section 9-2235 provides as follows:

"Whenever any person is imprisoned in the state prison, he shall be kept at hard labor therein during the period for which he was sentenced."

Said Section would apply to any person sentenced to the state prison, and as to such persons they may be required to perform labor for the purpose of rehabilitating the wards at Central State Hospital.

2. Section 11, Chapter 336, Acts of 1913, same being Burns' Indiana Statutes Annotated (1942 Repl.), Section 13-510 provides as follows:

"It shall be the purpose of the state farm to employ the prisoners committed or transferred thereto in work on or about the buildings and farm and in growing produce and supplies for its own use and for the other institutions of the state; in preparation of road material; and in making brick, tile, paving material and such other products as may be found practicable for the use of the state or any municipal subdivision therein and for the proper and healthful employment of such prisoners."

Section 7, Chapter 53, Acts of 1897, same being Burns' Indiana Statutes Annotated (1942 Repl.), Section 13-406 provides in part as follows:

"* * * He shall have charge of the inmates of the institution, shall discipline, govern, instruct, employ and use his best efforts to reform them."

1953 O. A. G.

Section 12, Chapter 53, Acts of 1897, same being Burns' Indiana Statutes Annotated (1942 Repl.), Section 13-411 provides in part as follows:

"It shall be the duty of said board of managers (board of trustees) to adopt such rules concerning all prisoners committed to their custody, as shall prevent them from returning to criminal courses, best secure their self-support and accomplish their reformation.
* * *"

Thus the laws relating to persons sentenced to the state farm or the reformatory did not include a provision for hard labor, but prescribed labor on or about the respective premises. I do not believe persons sentenced thereto prior to the effective date of Chapter 266 of the Acts of 1953 could be compelled to perform labor for the purpose of rehabilitating the wards at Central State Hospital except upon their consent.

3. Persons sentenced to any penal institution after the effective date of Chapter 266 of the Acts of 1953 may, in my opinion, be required to perform labor for the purpose of rehabilitating the wards at Central State Hospital.

OFFICIAL OPINION NO. 68

August 31, 1953.

Mr. Jean Long, Superintendent,
Indiana Reformatory,
Pendleton, Indiana.

Dear Mr. Long:

I have your letter which presents the following two questions for an official opinion of this office:

"Can an inmate of the Indiana Reformatory who has active tuberculosis, or is a tubercular suspect, be released to parole supervision?"

"May an inmate of the Indiana Reformatory who has active tuberculosis, or is a tubercular suspect who is eligible to be released by the institution be released if arrangements were made whereby the subject could be entered into some tuberculosis sanatorium?"