

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?"

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Tuberculosis is a communicable disease. (1947 O. A. G. 71.) The State Board of Health of Indiana Regulation HT5, Vol. II, Rules and Regulations 1947, page 1377, provides that every case of tuberculosis shall be reported within 24 hours of discovery to the health officer having jurisdiction over the locality in which the case resides. The State Board of Health was created by Chapter 352 of the Acts of the General Assembly of 1945, Section 1, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-102 and was unchanged by the Acts of the General Assembly of 1949, Chapter 157, Section 1, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-101. Rules of the State Board of Health created by the said 1945 Act were continued in full force and effect. (Chapter 157, Acts of the General Assembly of 1949, Section 222 as found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-223.)

Every officer who is in charge of a public institution and every physician who practices in the State of Indiana shall report every person afflicted with tuberculosis who comes to his attention or under his observation or care upon report forms prescribed and furnished by the State Board of Health of Indiana within 24 hours after diagnosis to the local health officer from whose jurisdiction the patient comes or to the State Board of Health of the state of residence of the patient. (Chapter 157 of the Acts of the General Assembly of 1949, Sections 818 and 819, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Sections 35-1211 and 35-1212.) An inmate prisoner of the Indiana Reformatory is therefore subject to the quarantine provisions of the Indiana Statutes hereinafter discussed.

The responsible officer of an institution has the duty to immediately report to the health officer designated by the State Board of Health of Indiana, being the local health officer in the jurisdiction of the county in which the institution is located, all cases of tuberculosis. The local health officer after notice of such communicable disease shall immediately place such necessary restrictions upon the movements of the patient and his contacts to prevent the spread of the disease. (Chapter 157 of the Acts of the General Assembly of 1949, Sections 800, 801 and 802, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Sections 35-1101, 35-1102 and 35-1103.)

The State Board of Health may establish quarantine and execute whatever measures that are reasonable and necessary for the prevention and suppression of disease. (Chapter 157 of the Acts of the General Assembly of 1949, Section 206, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-207.)

The local officer of health shall make an investigation of each person who has tuberculosis in a communicable stage to determine whether the environmental conditions and conduct of the person are suitable for proper isolation or contagious control of the case by any type of local quarantine. If he finds that the circumstances are not suitable for proper isolation or control by any type of local quarantine, he shall petition the Circuit Court of the county to order the admission of the person to any state owned and operated tuberculosis hospital, or sanatorium, or to any county hospital, or sanatorium in the state operated under the provisions of Chapter 176 of the Acts of the General Assembly of 1913, as amended, as found in Burns' Indiana Statutes Annotated (1950 Repl.), Sections 22-3301 and 22-3312 and Chapter 205 of the Acts of the General Assembly of 1933, as amended, as found in Burns' Indiana Statutes Annotated (1950 Repl.), Sections 22-3501—22-3516. Provision is made for the contents of the petition, hearing, counsel, evidence, finding of the court, order of commitment and the payment of the hospital expenses in Chapter 157 of the Acts of the General Assembly of 1949, Sections 823 through 830 as found in Burns' Indiana Statutes Annotated (1949 Repl.), Sections 35-1216 through 35-1223.

The statutes do not give the local health officer power to remove a person sick with a communicable disease such as tuberculosis from the Indiana Reformatory. (Chapter 157 of the Acts of the General Assembly of 1949, Section 805, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-1106.)

Admissions of patients to the Indiana State Sanatorium and Southern Indiana Tuberculosis Hospital, both state owned institutions, are restricted to persons who have been residents of the State of Indiana continuously for one year last past prior to the date of making application for admission thereto, with emphasis on those afflicted with recoverable pulmonary tuberculosis. (Chapter 125 of the Acts of the General Assem-

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bly of 1907, Section 14, as amended by Chapter 188 of the Acts of 1927, Section 2, as found in Burns' Indiana Statutes Annotated (1950 Repl.), Section 22-2112.)

Regulations for the admittance of patients to county tuberculosis hospitals are found in Chapter 176 of the Acts of the General Assembly of 1933, Section 5, as found in Burns' Indiana Statutes Annotated (1950 Repl.), Section 22-3306.

The powers and jurisdiction of a local health officer are limited to the area in which he serves. The Madison County Health Officer shall enforce the health laws, ordinances, orders, rules and regulations of the Madison County Board of Health and of the State Board of Health. (Chapter 157 of the Acts of the General Assembly of 1949, Sections 400 and 401, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Sections 35-501 and 35-502.)

The local health officer shall have power and authority to enforce any orders made by him by an action in the Circuit or Superior Courts at law or in equity. (Chapter 157, Acts of the General Assembly of 1949, Section 412, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-513.)

Any violation of the Health Code by any person is made a misdemeanor subject to a fine to which may be added imprisonment for any determinate period not exceeding ninety (90) days. (Chapter 157 of the Acts of the General Assembly of 1949, Section 4, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-3904.)

Since your inquiry of February 27, 1953, Chapter 266 of the Acts of the General Assembly of 1953 became effective April 1, 1953.

Section 1 of Chapter 266, *supra*, created the Department of Correction and a Board of Parole for the Indiana Reformatory. (Section 27 of Chapter 266, *supra*.) All the powers and duties which were previously delegated to the Board of Trustees of the Indiana Reformatory, relating to the parole of any inmate were transferred to the new Department of Correction and Board of Parole. Section 23 of Chapter 266, *supra*, abolished the Board of Trustees of the Indiana Reformatory and the new Board of Parole for the Indiana Reformatory became a part of the Department of Correction.

Section 2 of Chapter 266, *supra*, created the State Board of Correction. Section 23 of Chapter 266, *supra*, gave the Department of Correction all the powers and duties now or hereafter transferred or granted to the Trustees of the Indiana Reformatory except for the powers and duties as relate to parole of any inmate of the Indiana Reformatory, and they were transferred to, imposed upon and vested in the Board of Parole created for the Indiana Reformatory.

Section 22 of Chapter 266, *supra*, continued the office of Superintendent of the Indiana Reformatory with the duties and authority heretofore provided by law for such official, except as expressly provided otherwise by said Chapter 266, *supra*, and he is subject to the supervision of the State Board of Correction.

Section 24 of Chapter 266, *supra*, further provides the custody and control of all prisoners now confined in or committed to the Indiana Reformatory, whether physically present therein or not, is hereby vested in the Superintendent thereof; and all commitments hereafter made to the Indiana Reformatory shall be to the custody and control of the Superintendent of the Indiana Reformatory.

By reason of Sections 22 and 24 of Chapter 266, *supra*, the Superintendent of the Indiana Reformatory has the duty to report to the health authorities all cases of tuberculosis as provided for and cited above in Chapter 157 of the Acts of the General Assembly of 1949, Sections 800, 801, 802, 818 and 819 as found in Burns' Indiana Statutes Annotated (1949 Repl.), Sections 35-1101, 35-1102, 35-1103, 35-1211 and 35-1212.

Section 29 of Chapter 266, *supra*, provides that the Board of Parole for the Indiana Reformatory shall be charged with the duty, in the manner provided by law, of determining what prisoners serving an indeterminate sentence may be released on parole and when and under what conditions. It shall be the duty of the members of such Board of Parole to study the prisoners confined in the reformatory to determine their ultimate fitness to be paroled. No particular period of assured employment shall be required in releasing prisoners on parole, but such Board of Parole may adopt rules and regulations with respect thereto. Section 30 of Chapter 266, *supra*, gives to

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the Board of Parole power to administer oaths, subpoena power to compel attendance of witness and records, and to conduct hearings to investigate the case of any prisoner seeking parole.

Section 31 of Chapter 266, *supra*, provides that at least one month prior to the expiration of the minimum term of each prisoner serving an indeterminate sentence who is eligible for parole, it shall be the duty of the Board of Parole of the Indiana Reformatory to cause to be brought before the Board all information with regard to such prisoner. Thus the facts that such inmate prisoner has the communicable disease of tuberculosis, and that health officers have placed restrictions upon the movements of the inmate and his contacts to prevent the spread of the disease, along with the records and doings of the health authorities, and the testimony of the Indiana Reformatory Superintendent and its doctor [as required by Chapter 157 of the Acts of the General Assembly of 1949, Sections 800, 801, 802, 818 and 819, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Sections 35-1101, 35-1102, 35-1103, 35-1211 and 35-1212; Chapter 53 of the Acts of the General Assembly of 1897, Sections 13-406 and 13-411, as found in Burns' Indiana Statutes Annotated (1942 Repl.)] will all be before the Board of Parole of the Indiana Reformatory at the time of their consideration of the diseased inmate's parole eligibility.

Section 31 of said Chapter 266, *supra*, further provides that the Board of Parole for the Indiana Reformatory shall "reach its own conclusions" as to the desirability of releasing any such prisoner on parole. No prisoner shall be released on parole unless such Board of Parole is satisfied that he will be suitably employed in self-sustaining employment if so released, or unless arrangements for his maintenance and care have otherwise been made.

Many city ordinances and state laws restrict and regulate the movements and employment of persons afflicted with a communicable disease such as tuberculosis and thereby limit and retard the ability of an affected paroled prisoner in gaining employment and securing proper treatment and care. Included among these laws are Chapter 157 of the Acts of the General Assembly of 1949, Sections 800, 801, 802, 823 through 830, as found in Burns' Indiana Statutes Annotated

(1949 Repl.), Sections 35-1101 through 35-1103 and 35-1216 through 35-1223; Chapter 176 of the Acts of the General Assembly of 1913, as amended, as found in Burns' Indiana Statutes Annotated (1950 Repl.), Sections 22-3301 through 22-3312; and Chapter 205 of the Acts of the General Assembly of 1933, as amended, as found in Burns' Indiana Statutes Annotated (1950 Repl.), Sections 22-3501 through 22-3516, all heretofore discussed in this opinion. In addition to these laws other laws of this state make it unlawful for school authorities to employ teachers, janitors, bus drivers or food handlers who have tuberculosis in an infectious stage. Chapter 157 of the Acts of the General Assembly of 1949, Section 810, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Section 35-1111, provides that a person who has a communicable or infectious disease shall not work in any building room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food. Chapter 157 of the Acts of the General Assembly of 1949, Sections 1302 and 1320, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Sections 35-2203 and 35-2221, provides no person suffering from any communicable disease and no person who is a "carrier" of any communicable disease shall be employed in any capacity in a locker plant or branch locker plant. (Chapter 157 of the Acts of the General Assembly of 1949, Sections 1474 and 1475, as found in Burns' Indiana Statutes Annotated (1949 Repl.), Sections 35-2416 and 35-2417.)

Section 32 of said Chapter 266, *supra*, provides that the Board of Parole for the Indiana Reformatory, in releasing a prisoner on parole, shall specify in writing the condition of parole and a copy thereof shall be given to the parolee, and if the parolee violates the conditions thereof, the parole may be terminated and he will be liable to arrest and reimprisonment. Such Board shall adopt general rules calculated to insure the proper readjustment to society of paroled prisoners of such institution, and may include among other things that he will carry out the lawful instructions of his parole officer.

Section 33 of said Chapter 266, *supra*, provides that no prisoner shall be released on parole merely as a reward for good conduct or efficient performance of duties assigned. The prisoner shall be released only if the Board of Parole of the Indiana Reformatory is of the opinion that there is reasonable

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probability that the prisoner will not violate the law while at liberty and that his release will not be incompatible with the welfare of society. If such Board of Parole shall so determine, such prisoner shall be allowed to go upon parole outside of the institution upon such terms and conditions as such Board shall prescribe, but while on parole said parolee will remain in the legal custody of the Superintendent of the Indiana Reformatory until the expiration of the maximum term of his sentence or until such time as he may be otherwise discharged by law.

The Board of Parole for the Indiana Reformatory shall have the power to establish rules and regulations under which prisoners of such institution may be allowed to go upon parole. (Chapter 53 of the Acts of the General Assembly of 1897, Section 11, as found in Burns' Indiana Statutes Annotated (1942 Repl.), Section 13-410.)

The Superintendent of the Indiana Reformatory by authority of Section 22 of said Chapter shall reside at such institution and shall be (*ex officio*) the secretary of the Board of Parole for such institution, take charge of all its books and papers and his books shall at all times be open to the inspection of the Board of Parole. (Chapter 53 of the Acts of the General Assembly of 1897, Section 7, as found in Burns' Indiana Statutes Annotated (1942 Repl.), Section 13-406.)

The Superintendent of the Indiana Reformatory shall, when any prisoner is received in such institution, record the date of admission, his estimate of condition of the prisoner and the best probable plan of treatment. The physician of such institution shall make a careful examination of the prisoner and record the results thereof. All changes affecting the standing or status of the prisoner and subsequent facts which may be brought officially to the attention of the physician or superintendent bearing upon the question of the parole or final release of said prisoner shall be recorded. (Chapter 53 of the Acts of the General Assembly of 1897, Section 12, as found in Burns' Indiana Statutes Annotated (1942 Repl.), Section 13-411.)

The power of the Superintendent of the Indiana Reformatory to transfer an inmate of such institution upon the Superintendent's written order to any state owned or operated hospital or other public hospital for necessary medical, surgical or hospital care when such afflicted inmate is found to be in

need of such care, which the Indiana Reformatory cannot provide therein. Chapter 300 of the Acts of the General Assembly of 1947, Section 4, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 52-1134 is unchanged by Sections 5 and 39 of Chapter 266, *supra*, of the Acts of the General Assembly of 1953.

It is well established by rule that a parole must be accepted by the convict before it becomes effective to secure to him his liberty; that is, it is for him to elect whether he will accept the parole with its conditions or reject it and remain in prison. If he prefers to serve out his sentence as originally imposed, rather than to accept a parole or suspension of his sentence by subjecting himself to the conditions nominated in the parole, he has a clear right to do so. (Section 89, Am. Jur., page 576, Vol. 39, Pardon, Reprieve and Amnesty.)

The powers and duties of the Board of Parole of the Indiana Reformatory are not limited nor in conflict with the powers and duties of the local health officer and the State Board of Health in quarantining inmates with communicable diseases. An inmate cannot be ordered or mandated by the Board of Parole to accept a parole or to leave the institution on parole, and therefore an order of quarantine to the inmate to remain in the institution cannot conflict with the Board of Parole's action but is binding on the inmate.

In my opinion an inmate of the Indiana Reformatory who has active tuberculosis, and who is not under quarantine order from the Madison County Health Officer or the State Board of Health, or is a tubercular suspect not under quarantine, can be released to parole supervision. This action is dependent on the conditions that the Board of Parole for the Indiana Reformatory is of the opinion there is reasonable probability that if such prisoner is released, he will live and remain at liberty without violating the law and that his release is not incompatible with the welfare of society. Such Board of Parole can release the prisoner upon such terms and conditions including that the parole take effect when arrangements are made whereby the prisoner could be entered into a tuberculosis hospital for treatment until the disease is arrested or cured. However, the prisoner shall remain in the legal custody of the Superintendent of the Indiana Reformatory until the

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expiration of the maximum term of his sentence, or until such time as he may be otherwise discharged by law.

In my opinion an inmate of the Indiana Reformatory, who is under lawful quarantine restriction to the institution by an order of the Madison County Health Officer or the State Board of Health, who is granted a parole by the Board of Parole of such institution, cannot leave the institution until the quarantine is released. Said period of quarantine may not exceed his maximum sentence.

OFFICIAL OPINION NO. 69

August 21, 1953.

Mr. George M. Davidson, Member,
House of Representatives,
5304 Graceland Avenue,
Indianapolis, Indiana.

Dear Mr. Davidson:

This is in reply to your letter of August 7, 1953 which is as follows:

"I have received, this date, a letter from R. T. Stevens, Secretary of the Army, that is quoted, in full, in order that I might obtain your opinion concerning the possibility of accepting the appointment. The letter follows:

"During the past years the successive Secretaries of the Army have been using a system of Civilian Aides as a means of liaison with the American public. The primary purpose of this system has been to provide the Secretary of the Army with a ready means of determining public opinion with regard to Army programs. In addition, the Aides have acted as civilian representatives of the Secretary in the field, interpreting when necessary the reasons for Army policies which have an impact upon the life of the civilian population. In general, the activities of Civilian Aides have provided a constructive