it is my opinion that the personal property housed in the terminal warehouse on March 1st of any given year is to be assessed in the township wherein said terminal is located. I do not believe that the residence of the agent of the company in another township would affect such assessment of tangible personal property.

OFFICIAL OPINION NO. 78

September 22, 1953.

Dr. Margaret E. Morgan,
Commissioner of Mental Health,
Division of Mental Health,
1315 W. 10th Street,
Indianapolis, Indiana.

Dear Dr. Morgan:

Your letter requesting an Official Opinion has been received and reads in part as follows:

> "The Division of Mental Health of the State Health Department frequently receives notice from county and city authorities that certain persons, believed to be mentally ill, are held in jail for long periods of time, because no relatives or friends of the persons are available to sign applications for insanity inquests.
>
> * * *
>
> "An official opinion is requested, therefore, in regard to the following questions:
>
> "1. When a person believed to be mentally ill has no known relatives or friends to sign an application for an insanity inquest and the person is being held in jail, who should sign the application?
>
> "2. When a person is believed to be mentally ill and no relative or friend is willing to sign the application, who should sign it?
>
> "3. Does a person who signs such an application, feeling it to be the best interest of the person believed to be mentally ill, risk litigation against himself?

"4. If your answer to question number three is in the affirmative, and the person who signs risks litigation, even though acting in good faith, what legal means can be taken to overcome the stalemate which arises if he refuses to sign?"

Chapter 69, Section 3, Acts of 1927, the same being Burns' Indiana Statutes Annotated (1950 Repl.), Section 22-1203 appears to answer your questions:

"A reputable citizen who is a resident of the county in which the person who is alleged to be insane resides, shall make a statement setting forth the name and address of such person, such additional facts in regard to such person as are required by the board of trustees of the hospital for insane to which such person, if adjudged to be insane, will be committed, and alleging that, in the opinion of such citizen, such person is insane. The allegation shall be accompanied by a statement by a reputable physician who is licensed to practice medicine in this state that he has examined the person who is alleged to be insane, and setting forth such facts in regard to the mental, physical and other condition of such person as shall be prescribed and required by the board of trustees of the hospital to which such person if adjudged insane, will be committed. The statement containing the allegation that such person is insane shall be signed and sworn to by the citizen making the allegation, and the statement concerning the mental, physical and other condition of such person shall be signed and sworn to by the physician who made the examination."

Your question number one, answered from the above quoted statute, requires that a person making application meet the following qualifications:

1. That he shall be a reputable citizen and;

2. That he shall be a resident of the county in which the person who is alleged to be insane resides.

Therefore, in my opinion anyone, be he sheriff, justice of the peace, city judge, police officer, doctor, private individual or otherwise, who meets these requirements is authorized.

Question number two is covered by the answer to question number one.

Your question number three must be answered in the affirmative. Anyone risks litigation in a proceeding of this nature. However, it is my opinion that if the application is made with lawful justification, liability will not result. There must be reasonable and probable cause for the belief of the applicant, from the surrounding circumstances.

> Treloar v. Harris (1917), 66 Ind. App. 59, 117 N. E. 975;
>
> Indiana Bicycle Co. v. Willis (1897), 18 Ind. App. 522, 48 N. E. 646;
>
> Lawrence v. Leathers (1903), 31 Ind. App. 414, 68 N. E. 179;
>
> Hutchinson v. Wenzel (1900), 155 Ind. 49, 56 N. E. 845.

It is to be noted that the statute requires the application be accompanied by a statement of a licensed physician that he has examined the person alleged to be insane which sets forth his findings in regard to the mental condition of said person. If this is followed, the probabilities of liability are remote.

Your question number four asks what legal means can be taken to overcome the stalemate if there is a refusal to sign. I call your attention to Section 4, Chapter 238, Acts of 1951, the same being Burns' Indiana Statutes Annotated (1953 Supp.), Section 22-4134, which provides in part as follows:

> "Any health or police officer who has reason to believe that a person is mentally ill and, because of his illness, should not be allowed to go unrestrained pending examination and certification by a licensed physician or pending court procedure to commit such person, *shall take* such person into custody and apply to the Dr. Norman M. Beatty Memorial Hospital for his admission, and transport him thereto." (Our emphasis.)

When the word "shall" is used in a statute, it is presumed to be used in its imperative sense.

Board of Finance of School of Aurora v. Peoples National Bank (1909), 44 Ind. App. 573, 89 N. E. 904.

If the health or police officer has reason to believe that a person is mentally ill, and because of such should not go unrestrained pending examination and certification by a licensed physician, then he must make application to the Dr. Norman M. Beatty Memorial Hospital for admission of said person.

The court in Russell v. Earl *et al.* (1894), 10 Ind. App. 513, 515, 38 N. E. 76 said:

> "* * * An officer who in good faith discharges the duties imposed upon him by law is exempt from liability for harm resulting to others by reason of such performance. For when the law requires a thing to be done, it impliedly extends its protection to the doer. * * *"

It is my opinion, therefore, that if the health or police officer acts in good faith and with reasonable belief of insanity in making the application he would be exempt from liability.

OFFICIAL OPINION NO. 79

September 30, 1953.

Mr. R. R. Wickersham,
State Examiner,
State Board of Accounts,
304 State House,
Indianapolis, Indiana.

Dear Mr. Wickersham:

I have your letter of July 27, 1953 in which you request my opinion on the following question:

> "Is it necessary to publish a city ordinance, which provides a penalty for violation of its provisions, in a newspaper or newspapers of general circulation, in addition to publication and distribution of such ordinance in pamphlet form?"