

OPINION 79

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?”

Section 52 of Chapter 129 of the Acts of 1905, as found in Burns' Indiana Statutes Annotated (1950 Repl.), Section 48-1406, provides for the publication of ordinances imposing a penalty for the violation thereof, as follows:

“Every ordinance imposing a penalty or forfeiture for the violation thereof shall, before the same shall take effect, be published, once each week for two (2) consecutive weeks, in a newspaper of general circulation printed in such city: Provided, That in case of insurrection, riot, pestilence, conflagration or in other case of urgent necessity requiring the immediate operation of any such ordinance, it shall take effect as soon as proclamation is made thereof by the mayor, and copies are posted in three (3) public places in each of the wards of the city: Provided, further, That whenever any city shall publish any of its ordinances in book or pamphlet form, such publication shall be of itself sufficient, and such ordinance or ordinances shall be in force in two (2) weeks from the date of publication of such book or pamphlet. * * *”

This statute was controlling as to your question until the Legal Advertising Act of 1927 was passed. This Act which is Section 4 of Chapter 96 of the Acts of 1927, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 49-704 provides in part as follows:

“In all cases where county, township, city, town and school officials are required by law to publish notices, ordinances and reports affecting county, township, city, town and school business, respectively, such officials are hereby required to publish such notices, ordinances and reports in two (2) newspapers representing the two (2) political parties casting the highest number of votes at the last preceding election published in such county, township, city or town. * * *”

This section of the Act also provides for methods of publication when it is physically impossible for ordinances and notices to be published in two (2) newspapers.

It has been held that the publication of ordinances in book or pamphlet form is not sufficient under the Legal Advertising

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Act which, to that extent, supersedes the 1905 Act and that ordinances containing penalties must be published as required by the Legal Advertising Act of 1927, *supra*. See *Bartley v. Chicago & E. I. Ry. Co.* (1939), 216 Ind. 512, 24 N. E. (2d) 405.

I would call your attention to Chapter 248 of the Acts of 1937 and Chapter 241 of the Acts of 1945, as found in *Burns' Indiana Statutes Annotated (1950 Repl.)*, Sections 48-8301 to 48-8307 and 48-8308 to 48-8310, respectively. These Acts provide for the codification of municipal ordinances. The latter Act vests the common council of every city with the power to codify and compile existing ordinances and all new ordinances not theretofore adopted or published, to incorporate said ordinances into one ordinance in book or pamphlet form, and further provides that such ordinance, when so codified and compiled, stated and published in book or pamphlet form by authority of the common council, need not be printed or published in any other manner.

I am of the opinion that this latter Act supersedes the 1927 Legal Advertising Act insofar as municipal codes are concerned.

In view of the foregoing, my answer to your question is as follows:

1. Municipal ordinances providing penalties for the violation thereof, which ordinances are not published in book or pamphlet form as a part of a municipal code under Chapter 241 of the Acts of 1945, *supra*, must be published in a newspaper pursuant to the Legal Advertising Act of 1927, the same being Chapter 96 of the Acts of 1927, except in case of insurrection, riot, pestilence, conflagration, or other cases of urgent necessity requiring the immediate operation of such ordinances, in which case the ordinances go into effect by proclamation thereof by the mayor and the posting of copies in three (3) public places in each of the wards of said city pursuant to Section 52 of Chapter 129 of the Acts of 1905, *supra*.

2. Ordinances which are published in book or pamphlet form, as a part of a municipal code, under and pursuant to

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Chapter 241 of the Acts of 1945 need not be published in a newspaper.

OFFICIAL OPINION NO. 80

September 30, 1953.

Mr. Ancil B. Morton, Director,
Bonus Division, State of Indiana,
141 S. Meridian Street,
Indianapolis, Indiana.

Dear Sir:

This is in reply to your letter of July 3, 1953 in which you ask the following question:

“Does House Enrolled Act 194 of the Acts of the General Assembly of 1953 in itself amend or repeal Sections of the 1949 Bonus Law, as amended, other than those sections specifically stated in House Enrolled Act 194 itself?”

“If your answer to the above question is in the negative would it be your opinion that the procedure we have outlined, paragraph 3, page 2 of this letter, be correct?”

House Enrolled Act 194, which is Chapter 231 of the Acts of the General Assembly of 1953, as found in Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Section 59-1402, was an act to amend Section 1 of an act to amend Sections 2, 3 and 13 of an act approved March 12, 1949.

Sub-section (c) of Burns' Indiana Statutes Annotated, Section 59-1402, *supra*, prior to amendment provided:

“(c) The term ‘next of kin’ means the widow or widower, who has not remarried, children, persons standing in *loco parentis*, mother, father (however if the mother, or father has abandoned, deserted or failed to exercise parental care to deceased while a minor, she or he will be removed from the line of succession within this definition), of any member of the armed forces of the United States, in the order named: * * *.”