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must be construed to be a public institution. It is unimportant in answering this question to determine whether it is a public or private corporation for the reason that if it accepts appropriations of public or tax funds it thereby becomes subject to examination by reason of thereby becoming included within the statutory definition of public institutions for the purpose of the Public Accounting Law.

A refusal under such circumstances to permit the state examiner to examine all the accounts and financial affairs of such a public institution would constitute a misdemeanor under the combined provisions of Burns' Indiana Statutes Annotated (1951 Repl.), Sections 60-219 and 60-212, *supra*.

It is apparent from your letter that a levy of three cents is being collected during the current year by the Civil City of Elkhart; it is presumed that the collections as the result of this levy will be paid to the General Hospital Association during the year 1954.

Therefore it is my opinion the state examiner has the authority to examine personally or through the deputy examiners and field examiners all accounts and financial affairs of a hospital operated by an association which has been incorporated as a corporation not for profit where said hospital is maintained in part by public funds raised by taxation.

OFFICIAL OPINION NO. 107

November 27, 1953.

Hon. R. R. Wickersham,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

In your letter of October 20, 1953 you requested my official opinion in answer to the following question:

“Can an award be paid to any person for the return of an escapee to a school or other institution which is a part of the Department of Correction?”

In two previous opinions of this office, 1943 O. A. G., page 221, and 1949 O. A. G., page 429, No. 113, certain aspects of this question have already been raised and answered, as follows:

"1. In the absence of a specific statute expressly authorizing the payment of a reward for the arrest and return of runaway boys to the Indiana Boys' School, public policy forbids the payment of any reward by the Indiana Boys' School to any sheriff, police officer of any municipality, or member of the state police force, for arresting, detaining, or returning a runaway boy.

"2. In the absence of a specific statute expressly authorizing the payment of a reward for the re-capture of inmates who have escaped from the Indiana State Farm, police officers of the state and sheriffs are not entitled to additional compensation for performance of a duty enjoined on them by statute."

It is at once apparent that the question concerns the following matters not previously discussed:

1. Payment of rewards to private citizens of the state who arrest, capture, or return escapees from all institutions under the Department of Correction.

2. Payment of rewards to sheriffs, state police, or other police officers who arrest, capture or return escapees from the Indiana State Prison, the Indiana Women's Prison, the Indiana Reformatory, and the Indiana Girls' School.

In regard to the second matter, there can be no argument or serious contention that one rule of law applies to the Boys' School and the Indiana State Farm, and another rule of law applies to the Girls' School and remaining penal institutions. Without enabling legislation, a peace officer of the state, including sheriffs, state police, and municipal police officers of all kinds, may not be paid an award, or reward, for capturing, detaining, or returning a runaway boy or girl, from the said schools, or an escapee from the State Prison, Women's Prison, Reformatory, or State Farm.

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It will be helpful to note the following statutory provisions:

Section 1, Chapter 101, Acts of 1915, as amended, the same being found in Burns' Indiana Statutes Annotated (1942 Repl.), Section 10-1808, concerning escapees from the Indiana State Farm, provides that such an escape is a felony, and further provides that:

"* * * Such escaped person shall be pursued and arrested by the sheriff of said county, in which pursuit and arrest said sheriff shall be assisted by the officers of said farm and all sheriffs and police officers of the state."

Section 1, Chapter 59, Acts of 1947 as found in Burns' Indiana Statutes Annotated (1953 Supp.), Section 10-1815 provides that an escape from the Indiana State Prison, Indiana Reformatory or the Indiana Women's Prison is a felony.

Section 4, Chapter 171, Acts of 1909, as found in Burns' Indiana Statutes Annotated (1942 Repl.), Section 13-710, provides:

"Any fugitive from said Indiana Girls' School or from the home in which she has been placed may be arrested and returned to said institution by any officer or citizen."

Section 14, Chapter 18, Acts of 1883, as found in Burns' Indiana Statutes Annotated (1942 Repl.), Section 13-925, in regard to the Indiana Boys' School, provides:

"Any fugitive from said institution may be arrested and returned to said institution by any officer or citizen."

Section 142, Chapter 169, Acts of 1905, as found in Burns' Indiana Statutes Annotated (1942 Repl.), Section 9-1024, provides:

"All judicial officers, sheriffs, deputy sheriffs, coroners, constables, marshals, deputy marshals, police officers, may arrest and detain any person found violating any law of this state, until a legal warrant can be obtained."

This section is declaratory of the common law as to the peace officers named, and their duty to make such an arrest, at common law, is not changed by this statute. *Hopewell v. State* (1899), 22 Ind. App. 489, 493, 54 N. E. 127. At common law, sheriffs, justices of the peace, coroners, constables, and watchmen were entrusted with special powers as conservators of the peace, and when a charge of felony was brought to their attention, supported by reasonable grounds of suspicion, they had a positive duty to apprehend the offender, *Doering v. The State* (1874), 49 Ind. 56, 60; 4 American Jurisprudence at page 17, Section 24.

“Escape” means to go away from or enjoy immunity from imprisonment without permission of someone in authority. *Wiggins v. State* (1923), 194 Ind. 118, 121, 141 N. E. 86. It may reasonably be said that one who is unlawfully at liberty from any of the penal institutions of the state is “violating” the applicable statute concerning escape, and thus may be arrested and detained under the provisions of Section 9-1024, above.

It is also true that when a public officer is clothed by statute with power to do an act which concerns the public interest, the execution of the power may be insisted on as a duty, though the statute creating it be only permissive in its terms. *City of Logansport v. Wright* (1865), 25 Ind. 512. Thus in respect to juveniles who have never been convicted of a criminal offense, and did not commit a criminal offense by their escape from detention at the Boys’ School or the Girls’ School, any peace officer has a duty to arrest and return the same to the school.

The duties of public officers may not be contracted to be done by third persons, as a matter of public policy. *State ex rel. Workman v. Goldthait* (1908), 172 Ind. 210, 87 N. E. 133. See also O. A. G. 1915-1916, p. 649, which opinion states that in the absence of an express provision in the law for the employment of so-called “tax ferrets,” the duties of the county assessor cannot be so let out by contract to such “tax ferrets.”

The offer of a reward for the performance of any service is a conditional promise; and if anyone comes within the terms of the offer, before its revocation, performing the service, a legal and binding contract results. *Harson v. Pike* (1861), 16 Ind. 140.

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The Department of Correction has only those powers which are given and conferred upon it by statute. There is no statutory power granted to such Department to offer and pay rewards for the return of escapees to any school or institution within that Department. In this regard it should be noted that the Legislature has considered enabling legislation necessary in this field, and in the case of cities, towns, and counties, such power has been granted. Acts of 1899, ch. 100, Sec. 1, p. 132, Burns' Indiana Statutes Annotated (1948 Repl.), Section 26-1104; and Acts of 1911, ch. 277, Sec. 3, p. 665, Burns' Indiana Statutes Annotated (1950 Repl.), Section 48-1413.

I am therefore of the opinion that in the absence of enabling legislation, the Department of Correction has no authority to offer and pay awards, or rewards, to either peace officers or private citizens, for the return of an escapee to a school or other institution which is a part of the Department of Correction.

OFFICIAL OPINION NO. 108

November 27, 1953.

John W. McConnell,
Col. Arty. Ind. NG,
Asst. Adjutant General,
212 State House,
Indianapolis, Indiana.

Dear Col. McConnell:

This is in reply to your letter of November 16, 1953 which is as follows:

“An official opinion is requested as to the disposition and utilization of funds derived from the sale of any State-owned armory under the jurisdiction of the State Armory Board in accordance with the sale procedure outlined in your Opinion No. 21, issued under the date of April 16, 1953.

“It is anticipated that such transaction will take place subsequent to 1 January 1954 and that Burns' 45-1917, 1953 Supplement will then be in effect.