

1937 Official Opinions of the Attorney General, page 43 held that the State Chemist under authority of Section 9 of the 1907 Act, *supra*, could not make rules and regulations inconsistent with the provisions of the Act itself. The legislature has specifically specified in what denomination tags and state chemist's stamps may be issued, *supra*.

It is therefore my opinion that the State Chemist may not legally issue a tag and State Chemist's stamp in denominations larger than one hundred (100) pounds for delivery to the consumer when feeding stuffs are sold in bulk.

OFFICIAL OPINION NO. 116

December 22, 1953.

Mr. Don Clark,
Director of the Budget,
302 State House,
Indianapolis, Indiana.

Dear Mr. Clark:

This is in reply to your letter of December 9, 1953 in which you inquire as to the following:

“Question: Would the State of Indiana be liable for payment of losses should an escaped inmate of a state institution break into and enter private property, and remove or destroy any personal property?”

It is fundamental that a suit may not be instituted against the State of Indiana unless it is with the State's consent. The act of an escapee inmate would be tortious in nature. The State of Indiana, not having given its consent to be sued for tort, could not therefore be held liable.

City of Indianapolis v. Indianapolis Water Company
(1916), 185 Ind. 277, 113 N. E. 369.

Further indication of non-liability is found in 41 Am. Jur. on “Prisons and Prisoners,” Section 16, page 895 which says:

“Since the conduct of a penal institution is a governmental function, to which the rule of *respondeat supe-*

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rior does not apply, it has been held that a county cannot be liable to a citizen for injuries sustained as a result of the negligence of a convict working on the roads."

It is therefore my opinion, taking into consideration the cases and authorities above cited, that the State of Indiana would not be liable for payment of losses should an escaped inmate of a state institution break into and enter private property, and remove or destroy any personal property.

OFFICIAL OPINION NO. 117

December 23, 1953.

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

Dear Mr. Wickersham:

I have your letter requesting my opinion which reads as follows:

"A county acquired certain parcels of real estate which it acquired either through foreclosure of School Fund mortgage loans or through forfeiture thereof. It is our understanding that these properties were offered as School Fund property and upon failure to sell, the county did pay the School Funds from an appropriation of County Revenue.

"A question has been presented to this office as to the proper law to be followed in disposing of such real estate.

"We request your official opinion on the following questions:

"1. Should property originally belonging to the School Fund, but for which the county has paid and now holds title, be sold under Section 28-254 of Burns'