OFFICIAL OPINION NO. 17

February 13, 1952.

Mr. Arthur G. Loftin,
Administrative Director,
Indiana Council for Mental Health,
1315 West 10th Street,
Indianapolis 7, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

> "There has been some reluctance by the health and peace authorities of certain counties to bring patients to the Norman M. Beatty Memorial Hospital under the provisions of Chapter 238, section 4 of the Acts of 1951, due to the fact that these people feel such action might result in their being sued for false arrest.
>
> "Also certain judges have challenged this law in so far as it 'deprives a man of his day in court.'
>
> "Therefore, an official opinion has been requested on this particular phase of the law, which is set out in Chapter 238, section 4 of the Acts of 1951."

Section 4 of chapter 238 of the Acts of 1951, to which you refer, same being Burns' 22-4134, reads as follows:

> "SEC. 4. 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. *The application for admission shall state the circumstances under which the individual was taken into custody and the reasons for the officer's action.* The superintendent of Dr. Norman M. Beatty Memorial Hospital may accept such person for admission to the hospital for a period of

observation not to exceed fifteen days. If during that time the superintendent of said hospital ascertains such person is mentally ill he shall notify the proper authorities in the county of the person's legal residence. If a proper commitment order is not delivered to such superintendent within twenty days after the person has been accepted in such hospital, such person shall be released. If the proper commitment order is delivered to such superintendent within such period he shall forthwith act in accordance with such order."

It was uniformly held under the Common Law that a person who was insane could, if dangerous to themselves or others, be temporarily restrained without judicial process. See *In re* Allen (1909), 82 Vt. 365, 73 Atl. 1078.

In this regard see *Ex parte* Romero (1947), 51 N. M. 201, 181 P. 2d 811, in which it was held that, although incarceration pursuant to a statute declared to be unconstitutional was improper, if the incarceration of a person dangerous to himself or others was in good faith, no liability ensued and time would be granted in which to institute appropriate action.

Similarly in the case of Warner v. State of New York (1948), 297 N. Y. 395, 79 N. E. 2d 459, (1947) 68 N. Y. S. 2d 60, it was held that, under a statute providing for summary imprisonment on a health officer's certificate, the failure of the health officer's certificate to show the necessity of confinement due to the dangerous condition of the person alleged to be insane made the incarceration wrongful, but by inference the court held the statute valid and the court specifically stated that a person may be temporarily incarcerated without judicial determination when necessary to protect himself or the public.

In the recent case of Jillson v. Caprio (1950), C.C.A.-D.C., 181 F. 2d 523, the court was dealing with the federal statute authorizing arrest without warrant of any person of unsound mind found in a public place or of any person of unsound mind not found in a public place on the affidavit of two physicians stating why it was dangerous for the person to be at large. In the case of Jillson, this procedure was not strictly followed. However, the Circuit Court of Appeals held that, if all persons involved acted in good faith in the belief that it was dangerous

for Jillson to be at large, no cause of action for damages existed against either the arresting officer or the instigators.

With these authorities in mind, it is necessary to examine the wording of section 4 of chapter 238.

First, the health officer or police officer must determine that the person believed to be mentally ill, because of his illness "should not be allowed to go unrestrained," pending examination and commitment. The fair import of the words "should not be allowed to go unrestrained" is that it would be dangerous for such person to be allowed to go unrestrained. Furthermore, the application to be filed by such officer must set out the circumstances under which the individual was taken into custody and reasons therefor. An additional check is provided by giving the superintendent of the Dr. Norman M. Beatty Memorial Hospital a discretion in accepting or refusing the individual sought to be committed. A further check is provided by the time limits set in the statute, that is, the requiring of a report by the superintendent within fifteen (15) days and mandatory release at the end of twenty (20) days if no commitment pursuant to regular procedure has been delivered to the superintendent. It is to be noted that even the normal commitment procedure in Indiana has been held not to be a judicial act.

Official Opinion No. 5 of 1952 discusses commitment procedure pursuant to the regular commitment act and the necessity for judicial determination of return to capacity subsequent to release. In that opinion the case of *In re* Mast (1939), 217 Ind. 28, 31, 32, 25 N. E. 2d 1003, is discussed. In that case it was said, in regard to the normal commitment procedure:

> "As noted above the statute provides a full, complete, and comprehensive procedure for the examination and commitment of persons to the state hospital for the insane. The statute provides a summary proceeding to determine the necessity of admitting the person to a hospital for treatment. *The determination is not a conclusive judgment since it is subject to collateral attack by habeas corpus.* The fact that the statute directed that the hearing shall be had in chambers, either in term or in vacation, and that if the judge is disqualified to act he may appoint a judge *pro*

tempore to conduct a hearing, *discloses that this proceeding is not a trial or hearing in court.* It is quite evident that the statute was enacted for the purpose of obviating certain abuses of a preceding statute, which directed the inquest to be held by two justices of the peace and a physician. Clearly the act provides a special procedure for the determination of the necessity of admitting the person to the hospital for treatment, separate and apart from the regular and usual procedure in court where the code authorizes a change of venue, special judge, continuance, and other like procedure. The responsibility of determining whether a person is in need of such treatment and is a proper person to be admitted to the hospital for the treatment of the insane is placed upon the judge. The necessary steps are prescribed and do not depend in any sense upon the civil code of practice. * * *

"It frequently occurs in proceedings of this nature that time is an important element in committing the afflicted person to an institution for treatment. The Legislature created this special proceeding for the determination of that matter and carefully avoided the submission of the matter to the court. Change of venue, continuance, motion for a new trial, and appeal in many cases would cause delay detrimental to the health of the patient. *It is the opinion of this court that it was not the purpose and intention of the Legislature to create a court procedure in such matters, but to create a special hearing to determine the necessity of admission of the patient to the hospital for treatment; that neither a continuance, change of judge, nor an appeal is contemplated."*

It is also important to note that Section 12 of Chapter 69 of the Acts of 1927, same being Burns' 22-1212, provides a procedure for temporary incarceration of persons dangerously insane pending commitment.

In the procedure at hand the remedy of *habeas corpus* is available at any time prior to actual commitment, due to the fact that the limitations on that remedy in Indiana run only to challenging of court process (see Sec. 790, ch. 38, Acts

1881 (Special Session), same being Burns' 3-1918), and under the procedure outlined in Chapter 238 of the Acts of 1951, there would be no court process involved.

The commitment procedure anticipated by Chapter 238 is the same procedure outlined in Official Opinion No. 5 and discussed in the case of *In re* Mast, *supra*. Thus, after commitment, *habeas corpus* would be available by virtue of statutory authority.

It is a well-established rule of statutory construction that, if there is any doubt as to the constitutionality of the statute, the statute must be so construed as to resolve all doubts in favor of the constitutionality. Thus, section 4 must be deemed to be a legislative aid to the inherent authority of police and health officers to restrain dangerously insane persons pending appropriate actions to commit.

On the basis of the foregoing authorities and discussion, it is my opinion that section 4 of chapter 238 of the Acts of 1951 is valid and that persons acting in good faith under its authority do not incur personal liability.

OFFICIAL OPINION NO. 18

February 18, 1952.

Mr. Joseph McCord, Director,
Department of Financial Institutions,
Indianapolis, Ind.

Dear Sir:

I have your request for an Official Opinion which reads as follows:

> "This Department is in receipt of an application for the establishment of a trust company in which the proposed incorporators show that, in the event the charter is granted, the institution will engage in trust functions in connection with real estate transactions, involving titles, escrow accounts, etc., only. The institution does not propose to engage in the banking business or handle general trust accounts, such as estate accounts, guardianships or other ordinary trust business.