

1951 O. A. G.

OFFICIAL OPINION NO. 1

January 5, 1951.

Honorable Bernard E. Doyle,  
Chairman,  
Indiana Alcoholic  
Beverage Commission,  
201 Illinois Building,  
Indianapolis, Indiana.

Dear Sir:

This is in reference to your request for an opinion on the following question:

“Chapter 148 of the Acts of 1947 Section 2, provides: that no permit of any class shall be issued to any person who has been convicted of a felony.

“The question has been raised as to the intent of the Legislature and whether or not a permit should be denied, if the applicant had committed a felony, prior to the passing of this Act; or if this part of the Act applied only in cases where the felony was committed subsequent to the passing of the Act.”

Section 12-509 Burns 1942 Replacement, same being the Acts of 1935, Chapter 226, Section 10, Page 1056; 1937, Chapter 197, Section 4, Page 931 provides as follows:

“Beer retailers’ permits for the sale of alcoholic malt beverages may be issued as hereinafter provided.

“Except as otherwise authorized herein, no beer retailer’s permit for alcoholic malt beverages shall be issued to:

“(7) Any person who, within two (2) years preceding the date of the application for any retailer’s permit has been convicted of any violation of the laws concerning alcoholic malt beverages within the State of Indiana, or any other state, or who within such period of two (2) years has been convicted of petit larceny or of any felony against the laws of the State of Indiana or the United States of America, or in any

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case to anyone who within the last preceding one (1) year has been lawfully confined as punishment for any crime against any sovereignty.”

Section 12-442 Burns 1949 Pocket Supplement, same being the Acts of 1945, Chapter 357, Section 10, Page 1737; 1947, Chapter 148, Section 2, Page 454, and which is an Act concerning Alcoholic Beverages and the issuance of permits, provides as follows:

“In addition to other requirements of law concerning the issuance of permits, unless in conflict with provisions of this Act, the following requirements are hereby specified:

“No permit of any class shall be issued to any person who has been convicted of a felony, or who has within five (5) years of application for a permit been imprisoned upon conviction of a misdemeanor involving the unlawful manufacture, sale, transportation, disposition or possession of any intoxicating liquors, whether such offense be a violation of the laws of the United States of America, any other state, or the State of Indiana. \* \* \*”

Both the 1945 and 1947 Acts, *supra*, contains a repealing clause in the following language:

“All laws and parts of laws in conflict herewith but only to the extent of such conflict are hereby repealed.”

Under the earlier Act—Acts of 1935 as amended by the Acts of 1937, *Supra*, no permit could be issued to any person who had within two (2) years preceding the date of the application for any retailer’s permit been convicted of any felony against the laws of the State of Indiana or the United States of America.

Under the later Act of 1945, as amended by the Acts of 1947, *supra*, no permit of any kind shall be issued to any person who at any time has been convicted of a felony. The later Act is in conflict with the earlier Act, insofar as conviction for felony is concerned, and in my opinion the later Act supersedes or repeals the earlier Act in this respect. It

is to be noted that under the earlier Act, same pertained to the issuance of beer retailer's permit for the sale of Alcoholic Malt Beverages. However, the law then prescribed as now prescribes, one must receive a beer retailer permit in order to receive a liquor retailer permit or wine retailer permit.

As the law now stands, it is my opinion that no permit of any kind may be issued to one who has committed a felony at any time, prior to his application for said permit.

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OFFICIAL OPINION NO. 2

January 8, 1951.

Mrs. Mary Margaret Sumner,  
Superintendent,  
Indiana Girls' School,  
R. R. No. 2, Box 440,  
Indianapolis 44, Indiana.

Dear Madam:

I have your request for an official opinion regarding the responsibility of the Indiana Girls' School in those cases involving the transfer of a girl from your school to either a state mental institution or to a school for feebleminded, pursuant to a transfer being made through the State Department of Public Welfare.

Your specific questions are as follows:

"1. Is this institution still responsible since there has been no re-commitment to the mental hospital?

"2. Would our board have a right to legally release responsibility for a girl when she is transferred to a mental hospital, or a school for the feebleminded?

Section 1 of Chapter 302 of the Acts of 1945 (Burns Revised Statutes, Section 22-308, 1950 Replacement provides that:

"An officer in charge of the Indiana Boys' School, the Indiana Girls' School, the Fort Wayne State School, the Muscatatuck State School, the Indiana Soldiers' and Sailors' Children's Home or the Indiana Women's