

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.

---

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

## OPINION 2

Prison, may apply to the state department of public welfare for a commission to determine the mental condition of an inmate of that institution for the purpose of commitment to a different state institution where the said mental condition can be better treated, \* \* \*."

Section 2 of Chapter 302 of the Acts of 1945 (Burns Revised Statutes, Section 22-309, 1950 Replacement) provides that:

"Upon receipt of the report of such mental commission by the state department of public welfare, said department shall, if fully satisfied of the lunacy or other mental condition of the said person for whom the examination and diagnosis was had and as to the wisdom and justice of the proposed transfer, issue an order committing said person to one of our state insane hospitals if such person is found to be insane or to one of our feeble-minded schools if the person is found to be feeble minded and is an inmate of one of the said state institutions not training the feeble minded, and prepare the proper papers for the transfer of such person to the proper kind of institution as shown by the report of the commission appointed to determine the necessity for or propriety of such transfer, the commitment for such transfer to be forwarded to the institution to which such inmate is committed by the order of the state department of public welfare and a copy thereof to the other institution to become a part of the records of the case and to be kept on file as records are kept."

Section 3 of Chapter 302 of the Acts of 1945 (Burns Revised Statutes, Section 22-310, 1950 Replacement) provides that:

"If the inmate so committed to a mental institution, by the state department of public welfare for the better treatment or training of said person, shall recover or improve mentally before the termination of the term for which said person was committed by the court, or otherwise admitted, in the first instance,

so as to be properly returned to the institution to which said person was committed by said court, or otherwise admitted, the state department of public welfare, upon the request of the official in charge of the receiving institution, may return the said person to the institution from which the inmate was transferred, to be under the charge and custody of the superintendent and board of trustees thereof for the remainder of said period, until furloughed, paroled, discharged or otherwise disposed of in accordance with the regulations of the institution and the statutes governing the same. If the inmate does not improve sufficiently mentally to be returned to the said institution, to which said inmate was originally committed or sent, before the term of the said commitment or period of training has expired, then said person shall remain at the institution to which the commitment was made by the state department of public welfare as long as said inmate may be improved, trained, benefited, or better cared for in any way by the treatment or training in said institution and to be considered, held, furloughed or discharged as any other inmate sent there in the first instance by a court."

Section 2 of Chapter 266 of the Acts of 1913 (Burns Revised Statutes, Section 13-707, 1942 Replacement) provides that:

"Hereafter, no girl under the age of ten (10) years shall be committed to the Indiana Girls' School and the maximum age for such commitment is hereby extended to eighteen (18) years. Such girls shall be committed to the custody of the board of trustees of the Indiana Girls' School, to be confined by it at that institution, or at such other place as may be designated by said board of trustees where they can be most faithfully and properly cared for, and they shall be confined therein until they reach the age of twenty (20) years unless sooner released by said board of trustees, subject to such rules and regulations as said board of trustees may establish. No commitments shall be for a shorter period than until such girls shall attain respectively the age of twenty (20) years. \* \* \*"

## OPINION 2

Chapter 302 of the Acts of 1945, pertinent portions of which have been set out, provides the only mode of transfer in the class of cases to which you refer. Regardless of the status of the custody of the girl, under Section 2 *supra*, your institution would not be responsible after a transfer to a mental institution unless and until the girl was returned as provided in Section 3.

The answer to your second question must be negative.

It has been decided many times by our courts that the departments of state and local government and the subdivisions thereof, and its boards or administrative officers possess only such powers, express or implied, as are provided for by statute.

- Department of Insurance *et al.* v. Church Members Relief Assn. (1940), 217 Ind. 59, 60;
- State *ex rel.* Van Hey, Treasurer etc. v. Able, City Treasurer (1931), 203 Ind. 44, 50;
- State of Indiana *ex rel.* Bingham v. The Home Brewing Company (1914), 182 Ind. 85, 91.

By the express language of Section 3, Chapter 302 of the Acts of 1945, *Supra*, the receiving institution has authority to furlough or discharge transferred inmates the same as any other inmate sent there in the first instance by a court, but only in those cases where the term for which said transferred inmate was committed by the court, in the first instance, has expired. This section also sets out the procedure for the return of the transferred inmate when such inmate has recovered or improved mentally before the termination of the term for which said person was committed by the court.