The 1947 Act at Section 22, provides in part as follows:

"Any retirement benefit provided by this Act shall be paid in equal monthly installments, and shall not be increased, decreased, revoked or repealed, except for error, or except where specifically otherwise provided by this Act."

The same provision appeared in the 1945 Act. There appears to be no claim of error by the employee in question and no specific provision by either Act that would grant the relief asked for by the employee.

Therefore, in view of the foregoing, it is my opinion that your board would be without authority of the Legislature to make the adjustment suggested.

OFFICIAL OPINION NO. 68

August 13, 1951.

Hon. Alfred P. Dowd,
Warden,
Indiana State Prison,
P. O. Box 41,
Michigan City, Indiana.

Dear Warden Dowd:

I have your request for an official opinion which asks the following questions:

1. In transferring inmates from the Indiana State Prison and the Indiana Reformatory to the Indiana Hospital for Insane Criminals, and back to the Prison or Reformatory after restoration to sanity, which department of State Government must give the final authorization for such transfers?

2. In the event an inmate, so transferred to the Indiana Hospital for Insane Criminals, has served beyond his maximum sentence of imprisonment before being declared sane, what procedure should be followed in effecting the final discharge of the inmate?

3. In the past it has been the procedure of the Indiana State Prison, when the necessity for a Lunacy Commission has arisen, to convene such commission pursuant to an
authorization by the Governor as provided for in the Acts of 1909, Chapter 87, Sections 8 and 9.

In view of the Acts of 1945, Chapter 358, as amended by Acts of 1951, Chapter 241, must such an authorization and the proceedings which follow now be directed to the Indiana Council for Mental Health?

Your question is directed to interpretation of the above mentioned Acts of 1951, Chapter 241, in view of the present circumstances.

A summary of that Act indicates the following:

There shall be created along with the Dr. Norman A. Beatty Memorial Hospital, the Division for Maximum Security. When the building is completed the Indiana Council for Mental Health, after being advised of such completion, shall transfer to this Division all inmates of the Indiana Hospital for Insane Criminals plus inmates from certain other named Institutions.

Whenever the physician of the Indiana State Prison or the Indiana Reformatory, or other named Institutions, certify to the Warden or General Superintendent that any inmate needs psychopathic treatment, then the said Warden or General Superintendent shall then report the case to the Indiana Council for Mental Health. The Council shall then direct the Warden or General Superintendent to convene a Lunacy Commission. This commission, after due examination, shall report the inmate's condition to the Warden or General Superintendent. This report is then transmitted by the Warden or General Superintendent to the Indiana Council for Mental Health.

After receiving this report, the Indiana Council for Mental Health, if satisfied of the inmate's condition, shall issue an order committing the inmate to the Maximum Security Division of the Beatty Memorial Hospital. The time then served in the Maximum Security Division of the Beatty Memorial Hospital shall be credited on the inmate's original sentence.

If any inmate so transferred has recovered his sanity before the expiration of his sentence, whether determinate or indeterminate, the Superintendent of the Beatty Memorial Hospital shall certify the fact to the Council for Mental Health. And upon satisfactory showing of such return to
sanity, the Council for Mental Health shall order the inmate transferred back to the Institution from which he was originally transferred.

In the event the inmate's period of confinement in the Maximum Security Division of the Beatty Memorial Hospital extends beyond the period of his original sentence, whether determinate or indeterminate, the inmate shall be kept in the Maximum Security Division until he recovers sanity. When the inmate does recover his sanity and the period of his maximum sentence, whether determinate or indeterminate, has expired, the Superintendent of the Beatty Memorial Hospital shall certify the fact of such recovery to the Council for Mental Health. If the Council is satisfied as to such recovery it shall order the inmate discharged and the discharge shall be reported by the Superintendent of the Beatty Memorial Hospital to the Institution from which the inmate was transferred and to the State Department of Public Welfare.

The preceding is, of course, a short summary of the main provisions of Chapter 241, Acts of 1951. That portion of the original Act, Acts 1945, Chapter 358, Sections 26 through 35, which concerned the erection of a Division of the Northern Indiana Hospital (Dr. Norman M. Beatty Memorial Hospital) to be called the "Division for Insane Criminals" has been changed by Chapter 241, Acts of 1951, to provide that the name of such division be called the "Division for Maximum Security". This same Act transferred the power previously vested in the Governor by Chapter 358, Acts of 1945, to the Indiana Council for Mental Health. These powers are specifically outlined in the preceding summary of Chapter 241, Acts of 1951.

The situation thus presented is as follows:

Although the General Assembly in 1945 and 1951 has made ample provision for the transfer and/or commitment of inmates from various institutions, including among which are the Indiana State Prison, Indiana Reformatory and the Indiana Hospital for Insane Criminals, to the newly authorized Maximum Security Division of the Beatty Memorial Hospital, still the fact is that no such Maximum Security Division of the Beatty Memorial Hospital is as yet constructed. Since this is so, it might appear that the provisions
of Chapter 358, Acts of 1945 as amended by Chapter 241, Acts of 1951 concerning the transfer of inmates are not yet operative and the old statute, Chapter 87, Acts of 1909, concerning the transfer of inmates to the Indiana Hospital For Insane Criminals must still be followed.

The statute creating the Indiana Hospital For Insane Criminals, same being Section 13-301 if, Burns 1942 Replacement, contains provisions similar to those contained in Chapter 358, Acts of 1945. These concerned the transfer of inmates to the Indiana Hospital for Insane Criminals pursuant to approval and authorization of the Governor and the convening of the Lunacy Commission was subject to the Governor's approval.

It would seem that, through the passing years, there has been and continues to be increased enlightenment concerning the diagnosis and prescribed treatment for persons who are mentally ill. The General Assembly was well aware of this when in 1945, they created the Indiana Council for Mental Health, Chapter 335, Acts of 1945. In providing for membership of that Council the Legislature was explicit in stating that a physician "who has specialized in the treatment and care of mental diseases and has had experience in the teaching of mental diseases" in recognized medical schools, shall be a member of the Council. Thus, with a more cohesive and specially educated group of men acting in Council the aim of the Legislature was to particularize and treat specially the problem of mental health in the State of Indiana. With this aim in mind, the Legislature vested very broad authority in the Council to oversee the treatment of all patients in institutions for the mentally ill. Acts of 1945, Chapter 335, Section 2.

The Legislature, with the firm conviction that the Indiana Council for Mental Health should be the ultimate authority, pursuant to legislative direction, for the care, control, and treatment of mentally diseased, enacted Chapter 241, Acts of 1951 in furtherance of that conviction. Thus, the power previously held by the Governor concerning transfers of inmates to and from mental institutions and also his power to convene Lunacy Commissions has been transferred in toto to the Indiana Council for Mental Health. The fact that, as yet, there is no Maximum Security Division of the Beatty
Memorial Hospital, should make no difference as to the authorized procedure to be followed.

In reading the pertinent rules of statutory construction applicable to the present problem it must be kept in mind that all of the statutes concerning the Indiana Council for Mental Health are to be considered as remedial and therefore these statutes must be construed liberally to effectuate the purpose that the Legislature had in mind.

"In construing a statute, the courts will give effect to the intent of the Legislature, if discoverable, and, in seeking such intent, will look to the act as a whole, also to its general purpose and the evils or mischiefs it was enacted to remedy."

State Board of Medical Registration ex rel. v. Pickard (1931), 93 Ind. App. 171, 179.

It must be presumed that the General Assembly had in mind the fact that it would take some time before the Maximum Security Division would be erected and ready to receive patients. And it must be further presumed that, realizing this circumstance, they still felt the need of vesting in the Indiana Council for Mental Health the final authority to approve the transfer of inmates to and from Mental Institutions and to convene Lunacy Commissions which authority has been previously invested in the Governor. I say this because it would be in furtherance of their intentions to implement the plan to give better treatment to those persons who are mentally diseased. In other words, the Council for Mental Health would be exercising the authority given by Chapter 241, Acts of 1951. And despite the fact that no Maximum Security Division has, as yet, been constructed, the Council for Mental Health would have the power to authorize transfers of inmates from the Indiana State Prison or the Indiana Reformatory to the Indiana Hospital for Insane Criminals temporarily until the Maximum Security Division has been constructed; at which time, the Council for Mental Health would then have the power to authorize transfers from the Indiana Hospital for Insane Criminals to the Maximum Security Division of the Beatty Memorial Hospital. To construe Chapter 241, Acts of 1951, in any other manner would
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“defeat the policy of the legislature and lend itself to absurdity”.

3 Sutherland Statutory Construction 3 (Ed) Section 5505;
State ex rel. Fox v. Board of Commissioners, Carroll County (1931), 203 Ind. 23;
City of Indianapolis v. Evans (1939), 216 Ind. 555.

With the foregoing discussion in mind it is my opinion that:

1. Pursuant to Chapter 241, Acts of 1951, the Indiana Council for Mental Health must give the final authorization for transfers to and from the Indiana State Prison and the Indiana Reformatory to the Indiana Hospital for Insane Criminals.

2. Pursuant to Acts of 1951, Chapter 241, Section 6, upon an inmate’s recovery of sanity in the Indiana Hospital for Insane Criminals, after serving his maximum sentence of imprisonment, whether determinate or indeterminate, the Superintendent in charge of the Indiana Hospital for Insane Criminals shall certify the recovery of such inmate to the Indiana Council for Mental Health, which Council shall then order his discharge by the Superintendent of the Indiana Hospital for Insane Criminals and the Superintendent shall report such discharge to the Warden of the Indiana State Prison or the General Superintendent of the Indiana Reformatory and State Department of Public Welfare.

3. Pursuant to Acts of 1951, Chapter 241, Section 3, the authority to authorize the Warden of the Indiana State Prison or the General Superintendent of the Indiana Reformatory to convene Lunacy Commissions to inquire into the mental illness of any inmate of any institution is now vested in the Indiana Council for Mental Health.

It might also be said in passing that the answer to question 3 would apply also to inmates of the Institutions named in Acts 1951, Chapter 241, Section 3, that is the Indiana State Farm, Indiana Women’s Prison or any state correctional institution.