1951 O. A. G.
OFFICIAL OPINION NO. 30.
April 9, 1951.

Honorable Henry F. Schricker,
Governor of the State of Indiana,
State House,
Indianapolis, Indiana.

Dear Governor Schricker:

I have received your letter of March 2, 1951, requesting an official opinion as follows:

"I am in receipt of a letter from Mr. Hansford C. Mann, Chairman, Legal Redress Committee, Terre Haute Chapter N. A. A. C. P., requesting the release of Barney Patterson presently being held in the Indiana Hospital for Insane Criminals.

"The circumstances under which Patterson is being held are as follows: On October 14, 1935 Patterson was given a 1 to 10 year sentence for Vehicle Taking. On January 15, 1940 he was transferred to the Indiana Hospital for Insane Criminals under authority of Burns Indiana Statutes, Section 52-1104 N, on order of the Department of Public Welfare.

"Release of Patterson is sought on the ground that he has been held for a period extending beyond the maximum term of his sentence.

"I will appreciate having your official opinion as to whether the continued retention of Patterson in the Indiana Hospital for Insane Criminals is lawful and authorized by statute."

The transfer of the prisoner, who was originally legally committed to the Indiana Reformatory, to the Indiana Hospital for Insane Criminals was apparently accomplished under authority of Burns Indiana Statutes, 1949 Supplement, Section 52, 1104(n) which reads as follows:

"(n) May classify the patients and inmates of the respective institutions of the state and transfer patients and inmates (inmates) from one state institution to another, at will, when, in its discretion, it is deemed advisable for the welfare of the patient or
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inmate, but no patient or inmate of a benevolent institution shall be transferred to a penal or correctional institution except in carrying out a previous commitment of a court of competent jurisdiction.”

Upon expiration of the maximum ten (10) year sentence imposed in 1935 for vehicle taking the restraint of the prisoner in the Indiana Hospital for Insane Criminals continued. Such continued restraint was authorized under the authority of Burns Indiana Statutes, 1942 Replacement, Section 13-311, which reads as follows:

“Whenever the insanity of any convict confined as insane in the Indiana Hospital for Insane Criminals, continues beyond the expiration of his sentence, or beyond the maximum limit of his indeterminate sentence, he shall be kept in such hospital so long as his insanity continues, and in case any such convict shall recover his sanity after the expiration of his sentence or after the expiration of the maximum limit of his indeterminate sentence, the warden and physician in charge shall certify such recovery to the governor, who, having fully satisfied himself as to the fact of such sanity, shall forthwith order his discharge by the warden, which discharge shall be immediately reported by the warden to the Institution from which such convict was transferred and to the secretary of the state board of charities (state department of public welfare).”

Section 13-311 has now been supplemented by Burns Indiana Statutes, 1949 Replacement, Section 22-4128, which reads as follows:

“Whenever the insanity of any convict confined as insane in the Northern Indiana Hospital continues beyond the expiration of his sentence, or beyond the maximum limit of his indeterminate sentence, he shall be kept in such hospital so long as his insanity continues, and in case any such convict shall recover his sanity after the expiration of his sentence or after expiration of the maximum limit of his indeterminate sentence, the superintendent in charge shall certify
such recovery to the governor, who, having fully satisfied himself as to the fact of such sanity, shall forthwith order his discharge by the superintendent, which discharge shall be immediately reported by the superintendent to the institution from which such convict was transferred and to the state department of public welfare.”

At the present time the facilities provided for by statute, Burns Indiana Statutes, Section 42-4124, at the Norman M. Beatty Hospital are not available. Therefore, the transfer of the prisoner, whose insanity continues, to the Norman M. Beatty Hospital from the Indiana Hospital for Insane Criminals cannot be accomplished.

It will be seen from the examination of the above sections, that the Legislature does not contemplate release of insane persons convicted of felonies upon completion of their sentence. This position is further strengthened by the recent Supreme Court decision in the case of Alfred F. Dowd v. Herbert E. Harmon, Cause No. 28606, (1951), — Ind. —, — N. E. 2d —, which case holds that the Indiana Hospital for Insane Criminals is a benevolent institution and that the Indiana Mental Health Council may transfer the inmates of other mental institutions to the Hospital.

Continued confinement of Barney Patterson in the Indiana Hospital for Insane Criminals is clearly authorized by statute, even though he is presently being held beyond the maximum expiration date of his sentence. Since the restraint is lawful it may be continued.

OFFICIAL OPINION NO. 31

April 11, 1951.

State Election Board,
c/o Herbert M. Spencer,
616 Indiana Trust Bldg.,
Indianapolis, Indiana.

Gentlemen:

I am in receipt of your communication of recent date requesting an official opinion as to the eligibility of Judge