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
Peroni, Muncie Municipal Judge, to be a candidate for Mayor in the City of Muncie in the general election to be held in November.

It appears from your letter that the term of office of Judge Peroni will expire on December 31, 1951, and the term of Mayor of the City of Muncie begins on January 1, 1952. You especially wish to know whether Section 16 of Article VII of the Constitution of the State of Indiana would preclude the city judge from becoming the mayor of the City of Muncie.

You have well stated in your request that eligibility referred to in the constitutional provision has reference to eligibility at the commencement of the term of office and not to the time of the election. The Supreme Court of Indiana has in several cases construed this constitutional provision and has uniformly held that the eligibility referred to applies to the commencement of the term of office to which the candidate is elected and does not disqualify the candidate because he might be disqualified at the time of the election. We refer to the following decisions of our Supreme Court:

Smith v. Moore (1883), 90 Ind. 294;
Vogel v. State (1886), 107 Ind. 371, 8 N. E. 164;
Brown v. Gaben (1890), 122 Ind. 113, 23 N. E. 519;
Shuck v. State ex rel. Cope (1893), 136 Ind. 63, 35 N. E. 993;

These cases hold unequivocally that disqualification refers to the time when term of office begins. In the case of Brown v. Gaben referred to above, Judge Elliott wrote a very strong dissenting opinion but the majority of the court held as stated above and the Supreme Court has, since the rendition of that opinion, cited the majority opinion as being the correct law.

In conclusion, it is my opinion that, since the term of office the present judge of the Municipal Court expires prior to the commencement of the term of Mayor, the candidate would be qualified to hold said office.