

OFFICIAL OPINION NO. 33

April 19, 1945.

Hon. Alfred F. Dowd, Warden,
Indiana State Prison,
Michigan City, Indiana.

Dear Sir :

I have your letter of April 14, 1945, in which you inquire whether prisoners who die in the Indiana State Prison, and whose bodies are not claimed by relatives, but who have sufficient funds to their credit at said institution to bury them in the prison cemetery, may be buried therein or whether their bodies must be turned over to the State Anatomical Board.

Section 2, Chapter 31, Acts of 1903 (Burns' I. S. A., 1943 Replacement, Volume 11, Section 63-602), provides in part as follows :

"It shall be the duty of every public officer, agent and servant, and every officer, agent and servant of any and every county, township, city, town, village or other municipality, and of any and every almshouse, poorhouse, prison, morgue, hospital, asylum, jail, lockup, stationhouse, workhouse or other public institution, and of any and every charitable or benevolent institution supported in whole or in part at public expense, having in his or their possession, charge or control, the dead body of any person not claimed by any relatives or legal representative, as hereinafter provided, and which may be required to be buried at public expense or the expense of any one of such public institutions, excepting only the dead bodies of such persons as shall have died with smallpox, diphtheria or scarlet fever, and they are hereby required to notify said anatomical board or such person as may be designated by the said board or its duly authorized officer or agent whenever any such body or bodies come to his or their possession, charge or control for burial at public expense, or the expense of any one of such institutions. * * *"

The language of the above quoted part of the statute permits only one conclusion: that the Legislature intended that the only bodies which may be claimed by the Anatomical Board are those which are not claimed by relatives and those bodies which the laws of this State require to be buried at public or institutional expense. Accordingly, if the bodies of the prisoners in question are to be buried at public expense or at the expense of the Indiana State Prison and are not claimed by relatives, such bodies must be sent by you to the Indiana Anatomical Board under the provisions of the above quoted statute. If, on the other hand, the expense of burial of such bodies is not borne by the public or the Indiana State Prison, then you are not required to send such bodies to the Board, and you may bury them in your prison cemetery.

You suggest that the expense of burial of the prisoners in question be met by applying any sums due by the prison to the prisoners at the time of their death. However, there is no authority for you to do so, and you are required to handle such funds in the manner prescribed by Section 1, Chapter 28, Acts of 1931, as amended by Section 1, Chapter 223, Acts of 1937 (Burns' I. S. A., 1942 Replacement Volume 4, Section 13-115), which provides as follows:

"If any inmate of the Indiana State Prison, Indiana Reformatory, Indiana State Farm, Indiana Women's (Woman's) Prison, Indiana Boys' School, Indiana Girls' School who shall die, or who shall make his escape from such institution, or who shall make his escape while absent from such institution on parole, while serving a sentence in such institution; and any patient of the Central State Hospital, Evansville State Hospital, Madison State Hospital, Logansport State Hospital, Richmond State Hospital, Fort Wayne State School, Muscatatuck Colony, Indiana Village for Epileptics who shall die, or who shall have been discharged from such institution; and any student of the State School for the Deaf, Indiana School for the Blind who shall die, or who shall have graduated from such institution, shall have any money to his credit, on the books of such institution, at the time of his death, escape, discharge or graduation, and if there be no known heirs of such deceased, escaped, dis-

charged inmate or patient, or graduated student, such money shall be kept intact, to the account of such deceased, escaped, discharged inmate or patient, or graduated student, or his unknown heirs, for a period of two (2) years from the date of his death, escape, discharge or graduation, and if, at the expiration of such period of two (2) years, no heir shall appear to claim such money, or any part thereof, such money, or any unclaimed part thereof, shall be transferred to the recreation fund of such institution and shall be expended by the board of trustees in the purchase of books and periodicals for and in maintaining the library, or in such other recreational activities as, in the judgment of the board of trustees, will be beneficial to the inmates, patients or students of the institution: Provided, however, That all money credited on the books of such institution to the account of any inmate, patient or student shall be paid to him at the time of his discharge or graduation: Provided, further, That no money shall be transferred to the recreation fund of any institution if such inmate, patient or student is indebted to the state of Indiana for maintenance by such institution, then any money credited on the books of such institution to the account of any inmate, patient or student shall be applied against any indebtedness for maintenance, and the balance, if any, shall be transferred to the recreation fund."

Upon the death of the prisoner, the statute fixes the rights of the persons who may claim the funds, and such funds, by virtue of the statute, are held in trust for the beneficiaries named by the statute. Since no provision is made for burial expenses by the statute, you have no authority in such a case so to apply the funds.