

I am therefore of the opinion, since the records of the County Council are not required to be signed by the members of the Council, and that the pay for services of the members of the County Council is not conditioned upon their signing the official record of the said Council, that the pay of said members of the County Council could not be withheld pending their signing the record or journal of such Council.

OFFICIAL OPINION NO. 2

January 11, 1945.

Hon. Maurice N. O'Bannon, Superintendent,
Muscatatuck State School,
Butlerville, Indiana.

Dear Sir:

Your letter of December 27, 1944, received requesting an official opinion as to whether a sheriff of one of the counties in this State who has in his custody one of the boys who escaped from your institution, could return said boy to your institution on your request, thereby enabling the sheriff to collect a transportation fee for this service from the county.

Section 22-1743 Burns' 1943 Supplement, being Section 4 of Chapter 119, Acts 1939, provides in part as follows:

“* * * All persons admitted to such institutions shall, until properly discharged from the same, be under the custody and control of the superintendent thereof, and such superintendent, subject to such regulations as the trustees see fit to adopt, may restrain and discipline any patient in such manner as he may judge is demanded for the welfare of the patient and the proper conduct of the institution. Furloughs and discharges may be given to the patients as provided by such regulations.”

Under the above statute the superintendent of your institution, under authority given him by the Board of Trustees of said institution could request said sheriff to return said boy to the custody of your institution.

Under Section 10-1810 Burns' 1942 Replacement, same being Section 1, Chapter 103 Acts 1935, makes it a misdemeanor subject to a penalty for any person to entice or aid in the escape of any inmate or patient of any said institution caring for feeble-minded persons.

Section 49-1315 Burns' 1933, same being Section 1, Chapter 26 (in Special Session) Acts 1932, provides in part as follows:

"The sheriffs of the several counties of this state shall be entitled to charge and collect the following amounts on account of the services performed by such sheriffs, which shall belong to and be the property of the sheriff performing such service:

"(a) For removing persons to the state prison, reformatory, state farm, women's prison, boys' school, girls' school, any state hospital or other state institution, the following amount:

"1. If such persons be transported by a common carrier, the actual cost of transportation for the sheriff, for each person in custody and for each attendant allowed by law who may actually accompany such sheriff, together with any other expenses necessarily incurred.

"2. If such persons be transported by a conveyance furnished by the sheriff, the sum of eight cents (8c) per mile for each mile necessarily traveled, by each such conveyance, but not more than one (1) mileage shall be charged for any one (1) conveyance, although transporting more than one (1) person.

"(b) The sums to which the sheriff is entitled under the provisions of this Act shall be paid out of the county treasury on the certificate of the warden, superintendent or officer receiving such prisoner or other person in custody, showing the names of the officers or attendants and names of prisoners, and on the verified statement of such sheriff made and filed with the auditor of the county, who shall draw his warrant therefore, as provided by law. * * *"

Section 22-1810 Burns' 1933, same being Section 14, Chapter 94 Acts 1919, concerning clothing and traveling expenses

of inmates committed to your institution, provides in part as follows:

“The expense of clothing the patient, if not paid by himself or his relatives or friends, shall be paid by the county; and if furnished by the institution, shall be collected from the county, as now provided in the case of insane patients in the hospitals for the insane. The traveling or incidental expenses of the patient, and also the officer or person in charge of said patient, to and from said institution, shall be paid by the county.
* * *”

From a consideration of the foregoing statutes it is my opinion that where the Board of Trustees of your institution is charged with the care, custody, control and discipline of the inmates, and where a boy escapes from said institution and is taken in custody by a sheriff of one of the counties of this State, that it is your duty to request the return of said boy to the custody of your institution. If this boy is returned under such circumstances by the sheriff he would be entitled to the mileage fee specified in Chapter 49-1315 Burns, *supra*.

OFFICIAL OPINION NO. 3

January 12, 1945.

Mr. Otto K. Jensen, State Examiner,
Department of Inspection and Supervision
of Public Offices,
State House,
Indianapolis 4, Indiana.

Dear Mr. Jensen:

Your letter of December 22, 1944, has been received, requesting an official opinion on the following question:

“This department has been asked whether a member of the firemen’s pension fund of a city is entitled to receive the benefits of such fund if during the time when off duty as a fireman he engages in work or employment not in line with his duties as such fireman