

an option to purchase real estate for the benefit of the board of trustees of Logansport State Hospital.

In the authority to purchase real estate there is no requirement imposed that the land be contiguous to lands owned by the state for the use of the hospital. In that respect, discretion is vested in the board of trustees with the approval of the Governor as to the necessity or desirability of purchasing the particular land and if in the sound discretion of those officials it is necessary or desirable to purchase lands which are not contiguous, I am of the opinion that the purchase can be contracted providing the other legal requirements are met. The impression concerning the necessity of contiguity of land may have been obtained from the specific provisions of the law with respect to Richmond State Hospital. By Section 1, p. 58, Chapter 179 of the Acts of 1929 (22-1106 Burns' 1933 R. S.) the board of trustees of the Richmond State Hospital, with the approval of the Governor, is authorized to sell lands belonging to the hospital and to use the money derived from the sale for the purchase of other lands contiguous to the lands belonging to such hospital. That statute, however, did not apply to the Logansport State Hospital.

OFFICIAL OPINION NO. 87

August 24, 1945.

Hon. Albert E. Virgil, Superintendent,
Indiana State Farm,
Greencastle, Indiana.

Dear Sir:

I have your letter dated July 31, 1945, in which you ask an official opinion upon the following questions:

"We have an inmate of this institution who was committed here from both the circuit and city court for different offenses. Should he serve this time concurrently or consecutively? In the past where there has been more than one sentence from the same court the sentences have been served concurrently even though the court ruled they were to run consecutively.

It is my understanding these sentences should be served as the court orders.

“We have also found that some counties will accept payment of costs after the days and the fine have been served. Others refuse payment of costs unless fines are also paid. Are these counties legally required to accept payment of costs where a fine cannot be paid?”

Your first question was the subject of an official opinion of the Attorney General of Indiana reported in 1935 Ind. O. A. G., p. 399. In that opinion the statutes of Indiana and the decisions of the courts of this state are discussed at length. It was held in that opinion that the general rule is that sentences run concurrently. It was said in that opinion as follows:

“From the statement of the above decisions and statute, it, therefore, results that in the absence of an express statute authorizing the court to fix some future date at which the judgment and sentence of the court shall become effective, that the judgment and sentence must become effective from the day of conviction and sentence and that in the absence of express statutory authority, courts are not permitted to impose sentences to become effective at some future date.”

See also:

Goldstein v. Daly (1936), 209 Ind. 16.

Based upon the foregoing opinion of the Attorney General, it is clear that the general rule is that sentences run concurrently unless the statute under which the person was convicted expressly provides otherwise.

In your first question you do not specify for what offenses the prisoner was committed so that I am not able to advise you as to whether the particular statutes under which the prisoner was convicted provided that the sentences may be ordered by the Court to run concurrently.

Likewise, your second question was also the subject of an official opinion by the Attorney General of Indiana reported

in 1927-1928 Ind. O. A. G., p. 13. In that opinion the Attorney General held as follows:

"In case a convict is sentenced to imprisonment for sixty days, fined \$100 and adjudged to pay the costs amounting to \$40 and serves his sentence of sixty days, and serves thereafter for 100 days, he can not be lawfully discharged by paying the costs (\$40) but he must serve exactly two hundred days before he can be discharged from prison as a poor person under the provisions of section 2354, *supra*.

"Specifically answering your question, not only is there no statute to prevent a clerk from accepting in cash any part of a fine or costs offered him, *but it is his duty to do so*. When collected it should be credited on both the fine and costs, but such payment will not entitle the convict to be discharged from prison. He can only be discharged as a poor person by the court after he has served one day for every dollar of the 'fine' and 'costs.' Costs cannot be separated from the fine and both must be fully paid or served to entitle the prisoner to be discharged." (My emphasis.)

The serving of days for fine and costs unpaid is not in any sense a payment of such fine and costs.

1945 O. A. G., p. 53, No. 10 (Feb. 23, 1945.)

I call your attention, however, to the fact that where judgments, including fines and costs, are rendered in city courts, the city judges thereof are authorized to apply any money collected pro rata on such fines and costs. (Section 4-2403, Burns' I. S. A. 1933.)

The foregoing official opinion adequately answers your second question.