

Supp., *supra*, and that in performing the duty enjoined upon them by said statute in issuing such transcript of said birth record they would not be entitled to make a charge for such service.

**INDIANA WOMAN'S PRISON: Transfer of inmates—State Department of Public Welfare may transfer sixteen-year-old girls from the Indiana Girls' School to the Indiana Woman's Prison.**

August 15, 1944.

*Opinion No. 77*

Mrs. Marian F. Gallup, Supt.,  
The Indiana Woman's Prison,  
Indianapolis, Indiana,

Dear Mrs. Gallup:

Your letter of July 15, 1944, received requesting an opinion on whether the Welfare Acts give the right to transfer girls under the age of eighteen from The Indiana Girls' School to The Indiana Woman's Prison.

Your letter further furnishes the information that this girl is sixteen years of age, and you are informed her presence in The Indiana Girls' School appears to be seriously detrimental to the welfare of the institution.

This question is controlled by Section 52-1104, Burns' 1943 Supplement, same being Acts 1936 (Spec. Sess.), Chapter 3, Section 5, as amended by Acts 1941, Chapter 179, Section 3, which provides, in part, as follows:

"The state department is hereby charged with the administration or supervision of all of the public welfare activities of the state as hereinafter provided. The state department:

"\* \* \*

"(N) May classify the patients and inmates of the respective institutions of the state and transfer patients and inmates from one state institution to another, *at will, when, in its discretion*, it is deemed advisable for the welfare of the patient or 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."

Section 52-1107, Burns' 1943 Supp., being Sec. 8, Ch. 3, Acts 1936, creates a "children's division" within the State Department of Public Welfare.

Section 52-1108, Burns' 1943 Supp., being Sec. 9, Ch. 3, Acts 1936, as amended by Sec. 4, Ch. 179, Acts 1941, provides in part as follows:

"Subject to the authority of the state board and the administrator, and unless and until divisions other than those hereinbefore enumerated be created, as provided for in section eight (§ 52-1107 herein) of this act:

"\* \* \*

"(b) The children's division shall have immediate charge of the respective activities prescribed in sub-section (c) of section five (§ 52-1104 herein) of this act, including the supervision of the soldiers' and sailors' children's home, the school for the deaf, the school for the blind, the girls' school and the boys' school."

In the case of *Mellot v. State* (1942), 219 Ind. 646, the court upheld the conviction of a prisoner unlawfully escaping from the Indiana State Farm, to which institution he had been transferred from the Indiana State Prison by the State Department of Public Welfare under the above provision of the statute. Said statute is set out at page 649 of the opinion. In affirming such conviction, and in holding the finding of guilt or innocence was a judicial function of the court trying the case, while the penalty and the place of confinement was a legislative function, the court on pages 652 and 653 of the opinion says:

"So likewise the judgment in the present instance shall be considered the same as if the judgment has specifically stated that the defendant was sentenced to the Indiana State Prison, subject, however, to be transferred to another penal institution by the Board of Public Welfare, under the power granted said board by sub-section o of Sec. 5, ch. 3, Acts 1936 (Spec. Sess.), p. 19."

In the case of *State v. Rardon* (1943), 221 Ind. 154, 46 N. E. (2d) 605, 607-609, the Indiana Supreme Court approves and follows the holding of said court in the case of *Mellot v. State, supra*. In the *State v. Rardon* case, *supra*, it was held inmates of the Indiana State Prison could be legally transferred under Section 52-1104, Burns' 1943 Supplement, *supra*, to a state prison farm in Porter County, Indiana, and on escaping therefrom, would be guilty of a violation of the "Escape Statute," same being Section 10-1807, Burns' 1942 Replacement.

Section 52-1104, Burns' 1943 Supplement, *supra*, is the last expression of the legislature on the right to transfer a child from The Indiana Girls' School to The Indiana Womans' Prison, and is therefore controlling. No exception is made in such statute as to age limitation of any minor to be so transferred.

Under the above authorities it is my opinion the State Department of Public Welfare has authority to transfer this sixteen-year-old girl from the custody of The Indiana Girls' School to The Indiana Woman's Prison.

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**CORPORATIONS: Confusingly similar names. Duty of Secretary of State on complaint of fraud.**

August 16, 1944.

*Opinion No. 78.*

Hon. Rue J. Alexander,  
Secretary of State,  
State House,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of July 22nd, 1944, as follows:

"We are in receipt of a letter from Vivian D. Corbly, National Adjutant of the Disabled American Veterans, a copy of which you will find attached, requesting that we revoke the charter of the United States Disabled War Veterans, Inc.