INDIANA BOYS’ SCHOOL: Feeble-minded or epileptic inmates of Indiana Boys’ School over 18 years of age may be discharged by Board of Trustees. May not discharge any boy under 18. All such cases should be transferred to proper institution by State Board of Public Welfare.

May 22, 1944.

Opinion No. 50

Hon. E. M. Dill, Superintendent
Indiana Boys’ School,
Plainfield, Indiana.

Dear Sir:

Your letter of April 28, 1944, received as follows:

"Recently we have had considerable trouble with boys being committed to the Indiana Boys’ School who are feeble-minded and epileptic. We have no facilities for the treatment of either type.

1. Does our Board of Control have a right under paragraph 13-913, Burns’ Statutes, to make rules and regulations governing the admission of feeble-minded and epileptic boys?

2. If so, do they decide who is a feeble-minded boy and who is an epileptic boy?

3. If a boy is found to be feeble-minded or epileptic after he has been admitted, does the Board of Control have a right to discharge him?"

Section 13-913, Burns’ 1933, being Sec. 10, Ch. 18, Acts 1883, provides as follows:

"No boy shall be committed to said institution who is not of sound intellect and free from cutaneous and other contagious diseases, or who is subject to epileptic or other fits, and he must be possessed of that degree of bodily health which would render him a fit subject for the discipline of said institution. And it shall be the duty of the court committing him to cause said boy to be examined by a reputable county physician, who shall certify to the above facts, which certificate shall be forwarded to the institution with the commitment."
Section 13-916, Burns' 1933, being Sec. 11, Ch. 18, Acts 1883, prescribes the form of commitment the judge shall sign in committing a boy to your institution which includes the following finding: "** * *, I do find that said boy is a suitable person to be committed to the instruction and discipline of the Indiana Boys' School. * * *"). Therefore, under the aforesaid sections of the statutes the court is thereby required to find that said boy is not epileptic or feeble-minded and a certificate of a reputable county physician to such facts is required to be forwarded to your institution with the commitment. This constitutes a finding by a court of competent jurisdiction that such boy is not epileptic or feeble-minded, and in my opinion the officials of your institution would have no power to disturb or overrule such finding by rule or otherwise as to the eligibility of such boy for admission to your institution. That duty is cast upon the court and it has made its finding thereon before it orders the commitment.

In answer to your third question, I wish to call your attention to Section 13-920, Burns' 1942 Repl., same being Sec. 18, Ch. 67, Acts 1867, which provided that the superintendent of your institution, with the approval of the board of trustees, might at any time discharge such boy from your institution. However, said Acts of 1867 are subject to the provisions of Section 13-923, Burns' 1942 Repl., same being Sec. 2, Ch. 305, Acts 1913, which provides as follows:

"The board of control (board of trustees) of the Indiana Boys' School is hereby authorized, in its discretion, to discharge any boy who has been committed to such institution for instruction or correction, when such boy shall have attained the age of eighteen (18) years."

Section 3 of said Acts of 1913 repealed all laws and all parts of laws in conflict therewith.

The construction of said Acts of 1867, supra, and said Acts of 1913, supra, is subject to the following well established rules of statutory construction:

In construing a statute the object is to discover the intention of the legislature.

Cyrus v. State (1924), 195 Ind. 346, 348;
Applying the foregoing rules of construction to said Acts of 1867 and 1913, supra, it is clear that under the former statute the superintendent, subject to the approval of the board of trustees of your institution, had the power to discharge a boy at any time. Under the latter statute, such power is restricted to boys who have attained the age of eighteen years. If the view were taken that the said 1867 statute was not modified by said 1913 statute, it would require a finding that the legislature in passing said 1913 statute enacted a meaningless statute. This construction, in my opinion, is not permissible. The 1913 statute only applies to the discharge of boys and not to the granting of a parole.

I am therefore of the opinion that the superintendent of the Indiana Boys' School, subject to the approval of the board of trustees of such institution, has the right to discharge from such institution only those boys who have attained the age of eighteen years.

Your attention is also called to the Public Welfare Act, Ch. 3 of the Acts of 1936, same being Sec. 52-1101, et seq., Burns' 1943 Supp., under which certain powers are delegated to the State Department of Public Welfare. Sec. 52-1104, Burns' 1943 Supp., being Sec. 5, Ch. 3, Acts 1936, as amended by Sec. 3, Ch. 179, Acts 1941, 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 subsection (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.”

Section 52-1109, Burns’ 1943 Supp., being Sec. 10, Ch. 3, Acts 1936, is as follows:

“When the board of trustees of any of the penal or correctional institutions of this state shall have authorized the release of any inmate of such institution upon parole, as provided by law, the warden or superintendent of such institution shall transmit a certified copy of such order of release to the state department, and the state department shall consider and act upon such proposed parole so authorized and if it is of the opinion that such inmate should be released upon
parole, it shall transmit its authorization in writing to the warden or superintendent of such institution. Upon receipt of such written authorization, the warden or superintendent shall thereupon release such inmate upon parole, subject to the provisions of the several laws of this state relating to inmates released on parole. When any such inmate is released on parole, the department, in its authorization, shall designate the county or other place in this state in which such person so paroled shall reside during the time that such parole is effective. All parole agents who are responsible for ascertaining and reporting on the conduct of paroled persons shall be appointed by the state department in the same manner as other employees, as herein provided, and the state department may delegate such duties to any of the employees of the county department."

I am therefore of the opinion your third question should be answered as follows: If said boy has not attained the age of eighteen years, your question is answered in the negative. If said boy has attained the age of eighteen years and it is ascertained he is feeble-minded or epileptic, the superintendent of your institution, subject to the approval of the board of trustees, would have the power to discharge such boy. However, from the foregoing provisions of the statute defining the powers of the State Board of Public Welfare, it is my opinion that the legislature contemplated, and the better practice to be followed by your institution would be, where a boy is, after admission, found to be feeble-minded or epileptic, for your institution to refer the matter to the State Department of Public Welfare so that such boy could be transferred to the proper institution for treatment for such illness. Such action by the State Department of Public Welfare in such case would be applicable to all boys so afflicted who are under the age of twenty-one years.