

**GOVERNOR: Transfer of inmates from one state institution to another; cases of Dewey Kellams and James Robinson.**

December 2, 1933.

Hon. Wayne Coy, Under Secretary,  
Executive Department,  
Indianapolis, Indiana.

Dear Sir:

Your letter of November 23, 1933, encloses the files in two cases in which application has been made to the governor for transfer of an inmate of one state institution to another. You ask whether the governor can issue the transfer as requested in each case.

One of the applications is made by E. M. Dill, Superintendent of the Indiana Boys' School, asking the transfer of one Dewey Kellams from his institution to a hospital for the insane. It appears that the inmate in question was transferred to the Robert Long Hospital about October 12th, on account of illness which was diagnosed as cerebro encephalitis. After four weeks in the hospital, he was taken back to the Boys' School and, on November 12th, returned to his home in Perry County. On November 15th, the clerk of the Perry circuit court informed Mr. Dill by telephone that the boy had developed acute insanity. The judge of the circuit court apparently has refused to commit the boy to an insane hospital, on the theory that he now is entirely under the control of the Superintendent of the Boys' School.

Mr. Dill refers to sections 3748 and 3749, Burns Annotated Indiana Statutes, Revision of 1914 (Sections 8779 and 8780, Revision of 1926), as authority for transfer of such inmate, after appointment and report of a lunacy commission, to the Indiana Hospital for Insane Criminals. It will be noted that these sections refer only to "convicts" in the Indiana *reformatory* and the Indiana *state prison*. In my opinion, they do not apply to inmates of the Boys' School.

Chapter 154, Acts of 1917, provides:

"The governor of the State of Indiana is hereby authorized and empowered to cause the transfer of any ward or inmate of any penal, benevolent, charitable or reformatory institution of said state to any other state institution, at any time, in his discretion, upon petition filed with him by the superintendent or officer

in charge of any such institution; provided, such transfer shall not increase any punishment or lengthen the time of servitude of any person so transferred."

(Section 4030, Burns Annotated Indiana Statutes, Revision of 1926.)

The above act, standing alone, would be ample authority for the transfer of Dewey Kellams from the Indiana boys' school to any state hospital for the insane, including the Indiana hospital for insane criminals, providing the transfer should not "increase any punishment or lengthen the time of servitude." The legislature, however, in 1923, passed another act relating to the transfer of mental defectives from one institution to another. Section 4 of the act, dealing specifically with transfers to the Indiana hospital for insane criminals, provides as follows:

"An inmate, being a male adult, of a hospital for the insane, the Indiana village for epileptics, school for feeble-minded youth, or the Indiana colony for feeble-minded, on account of homicidal and criminalistic habits and tendencies to a degree requiring prison surroundings and protection of life or property, may be transferred to the Indiana hospital for insane criminals at Michigan City by the mutual understanding and consent of the warden and superintendent of the respective institutions, and with the approval of the governor, and not otherwise. \* \* \*"

(Section 4241, Burns Annotated Indiana Statutes, Revision 1926.)

It is obvious, that the act of 1917, *supra*, has been modified by this later enactment to the extent that their provisions are in conflict. Although the later act is so worded as to apply only to transfers of persons who are, prior to the transfer, *already* inmates of some state institution for mental defectives, nevertheless it evidences the legislative intent to limit the transfer of persons to the hospital for insane criminals, even where the transfer is sought because of "homicidal and criminalistic habits and tendencies," to those persons who are *adult* males. It appears to me that the situation confronting Mr. Dill could be coped with adequately, and at least the spirit of the law best subserved, by a transfer of committal of the

inmate in question to a proper state hospital for the insane until he shall be entitled to his discharge from the Indiana boys' school. However, as a strictly legal proposition, the act of 1917, above referred to, probably would confer ample authority on the governor to order the transfer from the boys' school to the hospital for insane criminals.

It should be noted, further, that the board of control of the Indiana boys' school may, by its rules, provide for the discharge of any boy at any time by the superintendent, with the approval of the board. If this were done, the responsibility of the boys' school would be terminated and proper proceedings would have to be brought as in other cases for his commitment to a hospital for the insane.

The other application for transfer referred to in your letter, is made by Dr. Richard Schillinger, Medical Superintendent of the Richmond state hospital, in the case of one James Robinson. Not only do the facts presented make it a proper case for action by the governor under the provisions of the act of 1917, *supra*, but the case falls directly under the provision of section 4 of the 1923 act, as quoted hereinabove. It appears from the facts accompanying the application that the inmate has "homicidal and criminalistic habits and tendencies to a degree requiring prison surroundings and protection of life or property." All that is required to authorize the transfer, since the application evidences the consent of the superintendent of the Richmond state hospital, is the consent of the warden of the Indiana state prison and the approval of the governor.

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**MOTOR VEHICLES, BUREAU OF: Operation of motor vehicle while intoxicated; Acts of 1933, does not repeal chapter 213, Acts 1925.**

December 2, 1933.

Hon. Gus Mueller,  
 Chief Hearing Judge,  
 Department of Treasury,  
 Bureau of Motor Vehicles,  
 State Capitol Building,  
 Indianapolis, Indiana.

Dear Sir:

I have at hand your letter of date December 1, in which you request an official opinion as to whether or not section 40