RICHMOND STATE HOSPITAL: Payment of funeral expenses of deceased inmate of hospital for insane—right of inspection of institutional records by public generally and under order of court.

December 15, 1933.

Hon. Richard Schillinger, M. D.,
Medical Superintendent,
Richmond State Hospital,
Richmond, Indiana.

Dear Sir:

Your letter of November 22, 1933, asks my opinion concerning two matters of concern to your institution, as follows:

1. Whether or not, under the provisions of section 17, chapter 69, Acts of 1927, your institution is required to pay for the removal and burial of the body of a deceased inmate, when relatives claim the body and remove it from the county in which your institution is located to another county for burial, and when the relatives are unable to meet the expense of such removal and burial.

2. Whether it is compulsory for your institution to give the "public" or the "courts" access to all of your records, including confidential information given as to the patient's personal or family history with the request that the same be not disclosed to the public.

The 1927 act, as quoted in your letter, provides as follows:

"In case of the death of any patient in any of the hospitals for insane whose funeral charges are not otherwise supplied, such funeral charges shall be paid by the superintendent of the hospital, who shall make out an account therefor, in each case, against the county from which such patient was admitted. The account so made out shall be signed by the superintendent and attested by the seal of the hospital, and shall be delivered to the treasurer of state, to be by him collected of such county as a debt due to such insane hospital.”

(Section 17, chapter 69, Acts of 1927. Our italics.)

It will be noted from an examination of this section that the only condition attached to the duty on the part of the superintendent of such institution to pay the “funeral charges” of a deceased patient is that such charges “are not otherwise
supplied.” There is nothing in the language of this section, nor in the language used in the title or other sections of the act, that would indicate an intention on the part of the legislature to limit cases in which the superintendent should pay the funeral charges to those cases where the body remains in, and is buried in, the county wherein the institution is located.

Neither can the duties imposed upon you by the section quoted above be restricted or otherwise affected by the act which provides for the disposal of unclaimed bodies in certain cases, for scientific purposes, through the agency of the state anatomical board. By its own language, the latter act applies only to “the dead body of any person not claimed by any relatives or legal representative.”

Section 13730, Burns Annotated Indiana Statutes, Revision of 1926.

In answer to the first matter of inquiry, it is my opinion that your institution should pay the reasonable funeral charges occasioned by the death of any patient, where other provision for the payment of the charges is not made, even though the body should be removed from the county in which your institution is located to the county from which the patient was admitted, for burial. Of course, if the removal should be made to some place other than the county from which the patient was admitted, a new question would arise as to your duty to pay additional charges that might be occasioned by the removal to a point more distant from the institution. That question is not now before me.

Your second question presents a matter of considerable difficulty. There is no statute in this state expressly giving or withholding the right of inspection of public records. However, the courts apparently have adopted the common law rule, that every citizen has a right to inspect any public record, and have held that it is not necessary for the citizen to show that he has a special interest in the record in question, although the right may be denied him if it is sought to be exercised merely to gratify idle curiosity.

State, ex rel., v. King, Auditor, 154 Ind. 621.

Anything is a “public record” which is in the nature of a written memorial, made by a public officer authorized by law
to make it. And if the officer is *authorized* to make the record, it is not necessary, to make it a "public record," that he be *required* by law to make it.

53 Corpus Juris, 604-605; 
Robison v. Fishback, 175 Ind. 132.

There is authority to the effect that the records of a public insane asylum containing information concerning the mental and physical condition of a patient, which has been obtained by physicians in their professional character for the purpose of determining the proper treatment, are privileged, and are not open to inspection as public records.


However, this view has not been accepted universally (see notes, 51 L. R. A. (N. S.) 22), and I do not believe it to be in accord with the general rule regarding public records in Indiana, as enunciated in the cases cited above. Under our statute regarding privileged communications, if the information obtained from such public records should be considered as privileged, it may and should be excluded by the court in a court proceeding as evidence, on objection properly made.

Section 550, Burns' Annotated Indiana Statutes, Revision of 1926.

In answer to your second question, it is my opinion that you are required to give anyone access to so much of the written records of your institution as are authorized by law to be kept, if the person seeking the inspection can show an interest in the records which is more than mere curiosity or a desire to create scandal. Moreover, failure to obey a court order regarding inspection or production of your records would be punishable as contempt of court.

In any case wherein you are in doubt as to the right of an individual to an inspection of certain records, you may refuse the inspection until a proper mandate of a court of competent jurisdiction has ordered the inspection.

State, ex rel., v. King, Auditor, *supra*. 