It is the rule that public officers, charged with a duty that calls for the exercise of judgment or discretion in the performance of that duty, are not liable either criminally or civilly, unless the officers are guilty of some wrong. Some of the cases use the words "wilful wrong."

Williams v. City of Indianapolis, 26 Ind. App. 628; Wallace v. Feehan, 206 Ind. 522; Stevens v. North, etc., Inc., 161 Minn. 345, 201 N. W. 435.

If the operation should be performed in a manner not authorized by the statute, or without conforming to the provisions of the law, a case of liability might arise.

However, under the conditions contemplated in your letter, I am of the opinion that neither the superintendent or the physicians of your institution would be legally liable either in a civil or criminal proceeding for performing the operation of sterilization.

In this connection, I refer also to my opinion given April 17, 1936, in regard to the necessity of a court order in certain cases.

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POLICE, INDIANA STATE: Motor vehicles, abandoned—Seizure by officers of abandoned motor vehicles with defaced motor numbers.

April 29, 1936.

Hon. Don F. Stiver, Superintendent,
Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion of April 22, 1936, reading as follows:

"Kindly render the department of Indiana State Police an official opinion on the following question of law:

"Acts of 1925, Section 54, page 603...

"Any sheriff or any state police officer or any officer or member of a municipal police department
or any representative of the Secretary of State who may discover any motor vehicle or motor bicycle which has apparently been abandoned or any motor vehicle or motor bicycle which is in the possession of any person other than the legal owner, and who cannot establish his right to the possession of such motor vehicle or motor bicycle, shall cause such motor vehicle or motor bicycle to be taken to and stored in a suitable place, and shall report such fact in writing to the Secretary of State within five (5) days after the discovery of such motor vehicle or motor bicycle. Immediately upon receipt of such notice, it shall be the duty of the Secretary of State to institute search for the legal owner of such motor vehicle or motor bicycle, and if such legal owner cannot be found within thirty (30) days from the date on which such motor vehicle or motor bicycle was discovered, the Secretary of State shall cause such motor vehicle or motor bicycle to be advertised for sale as abandoned or seized property, by inserting a notice, three consecutive days, in a newspaper published and enjoying a general circulation in the county in which such motor vehicle or motor bicycle was discovered, and within five (5) days after the date on which the notice was last published, the Secretary of State shall sell such motor vehicle or motor bicycle to the highest bidder. All expenses which may be incurred in carrying out the provisions of this section, including the seizure, sale and storage of such motor vehicle or motor bicycle, shall be paid by the Secretary of State out of the auto theft fund, and all proceeds of the sale of any such motor vehicle or motor bicycle shall be covered into the state treasury and shall be credited to the auto theft fund. Any sheriff or police officer who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100.00).

"The question involved is: If a car is found in the hands of an innocent purchaser, the motor number having been altered, definitely branding the car as stolen, and the rightful owner cannot be found, do the
state police have the right to impound said car and proceed with sale? If so, upon whom is the burden of proof to prove ownership?"

In answer to your first question, there is no doubt but that the State Police have the right to impound an automobile where the motor number has been altered, definitely branding the car as stolen, even though the same be in the hands of an innocent purchaser, and the rightful owner cannot be found. All that is necessary is that the State Police determine that the car is in the possession of a person other than the legal owner who cannot establish his right to its possession. The fact that the motor number had been altered would certainly justify the State Police Department in assuming that the car was stolen property. The owner of the property, if dissatisfied with the judgment of the Police Department would have his remedy by replevin.

As to the question of the burden of proof, all that would be required of the State Police Department is that it be satisfied that the motor vehicle is in the possession of a person other than the legal owner and who could not establish his right to its possession. The fact that the motor number had been altered would certainly be sufficient justification for the seizure of the vehicle. If the party in whose possession the motor vehicle was found brought an action in replevin to recover the vehicle, the burden of proof would, of course, be upon him.

PUBLIC INSTRUCTION, OFFICE OF SUPERINTENDENT
OF: Tenure contracts—Effect of abandonment or consolidation of school corporations.

April 29, 1936.

Mr. Grover Van Duyn,
Assistant Superintendent
of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following questions:

"1. Do tenure contracts held in a town school corporation become invalidated when the said town school