

1969 O. A. G.

OFFICIAL OPINION NO. 28

September 19, 1969

John U. Keating, M.D.
Acting Commissioner
Department of Mental Health
1315 West Tenth Street
Indianapolis, Indiana 46202

Dear Dr. Keating:

This is in response to your request for an Official Opinion regarding restitution to the Patients' Trust Funds of money erroneously expended on behalf of another patient with the same name, which question is as follows:

May restitution be made by invoking the provisions of the Acts of 1957, Chapter 242, Sec. 4, as found in Burns' (1964 Repl.), Section 22-520?

The statute in question provides, in part, as follows:

“* * * Provided, that in the event a trust fund has been established in any institution, which trust fund is in existence at the time this act becomes effective [July 1, 1957], and there is a deficiency in the amount of money that properly belongs in such trust fund, the income derived from any trust fund established under the provisions of this act shall be paid into the trust fund until the deficiency has been fully paid.”

In reviewing this statute, I do not find in said language any necessity for the application of rules of construction other than the rule that “words and phrases shall be taken in their plain, or ordinary and usual sense.” 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1967 Repl.), Section 1-201. That is, this provision applies only to trust funds that were in existence on July 1, 1957, and had a deficiency as of that date.

In my opinion if the fund in question was in existence on July 1, 1957, and was also deficient at that time, restitution may be made from the earnings of the “Patients' Recreation Fund” or “Inmates' Recreation Fund.”

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It is my further opinion that if the fund held in trust for the patient either came into existence after July 1, 1957, or became deficient after July 1, 1957, the income from the "Patients' Recreation Fund" or "Inmates' Recreation Fund" may *not* be used to pay the deficiency.