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The absence of any statutory authority permitting the State Board of Health to deal with persons on an individual basis in a semi-contractual relationship leads to the inevitable conclusion that the State Board of Health is not empowered to establish a home nursing agency as described in the federal Medicare Act. Local boards of health have not been discussed since the same principles apply to them as to the State Board of Health.

Since the answer to the first question is in the negative there is no need to answer your second question at present.

OFFICIAL OPINION NO. 41

December 22, 1966

**PUBLIC WELFARE—Recipient of Benefits Committing Fraud
Upon Change of Status Without Informing Department
—Criminal Sanctions of Offenses Against
Property Act.**

Opinion Requested by Mr. Albert Kelly, Administrator, Department of Public Welfare.

Your letter dated November 25, 1966, asks for an opinion directed to the following:

“The question arises when an applicant for Public Welfare assistance who does *not* make false statements or representations and who honestly and correctly discloses his *present* financial condition and the occupants of his household when applying for assistance, but who after receiving assistance for a period of time becomes eligible for and starts to receive either Social Security, an inheritance or other income, or who later renders

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himself or herself ineligible for continued assistance, but *does not report this change* in his or her financial circumstances or of the occupants of his or her household. Has this recipient committed fraud under the above statutes [Burns §§ 10-2120 and 52-1404] and can he or she be prosecuted under either of the above statutes?"

Acts 1939, ch. 123, § 1, the same being Burns IND. STAT. ANN., § 10-2120, reads as follows:

"Whoever being an applicant for poor relief, or direct relief, or any form of assistance or who makes application for free care, attention, hospitalization, or other services, which is rendered free in whole or in part, and which is furnished by any governmental agency, unit or institution from public funds, and who knowingly misrepresents any facts in the application therefor or makes any false statement in connection therewith, *or who, after having accepted such poor relief, or direct relief, or any form of assistance, care, attention, hospitalization, or other service, and whose financial condition and ability to pay have materially changed after filing of the original application, or who receives unemployment compensation and continues to accept such relief, assistance, care, attention, hospitalization or other service, and fails to report such material change to the person or persons from whom such help is being received,* shall, upon conviction, be guilty of a misdemeanor and fined not to exceed one hundred dollars [\$100] or imprisoned in the county jail for not more than six [6] months, or both." (Emphasis added.)

Acts 1939, ch. 123, § 2, the same being Burns IND. STAT. ANN., § 10-2121, construing this Act, provides:

"Nothing contained in this act shall be construed to be amendatory of or to supersede or repeal any existing laws, *neither shall this act apply to any of the punishable offenses regarding which provision is made in chapter 3 of the Acts of the General Assembly of Indiana*

of 1936, section 116, page 12, or of any act amendatory or supplemental thereto." (Emphasis added.)

With respect to your question as stated, the act of omission in failing to inform as to changed circumstances is ostensibly included in, and a punishable offense under, § 10-2120, quoted above. The question remains, however, in light of the construction provision, as to whether such act of omission is a "punishable offense" included in Burns IND. STAT. ANN., § 52-1404. If it is, the Act quoted above must be construed as not including such omission as a punishable offense.

Acts 1936 (Spec. Sess.), ch. 3, § 116, the same being Burns IND. STAT. ANN., § 52-1404, reads in pertinent part:

"Whoever *obtains*, or attempts to *obtain*, or aids, or abets any person to *obtain*, by means of a wilfully false statement or representation, or by impersonation, or by other fraudulent means:

"(a) Assistance, services or treatment to which he is not entitled;

"(b) Assistance, services or treatment greater than that to which he is justly entitled; . . .

". . . shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not more than five hundred dollars [\$500] or be imprisoned for not more than three [3] months, or be both so fined and imprisoned, in the discretion of the court. . . ." (Emphasis added.)

It seems clear from a reading of this section that the Legislature was concerned solely with fraudulent practices in procuring or getting initial possession of the welfare assistance. Even a liberal construction cannot avoid the Act's preoccupation with the word "obtain." It would appear that the only leeway lies in the means that might be used to effect the end of obtaining the assistance.

To answer your question, then, it is my opinion that failure to inform as to changed circumstances is a punishable offense only under Burns § 10-2120.

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I might add that the two Acts in question present a serious bit of overlapping. The anomalous situation exists that there are two Acts covering virtually identical offenses (except that in § 10-2120 failure to inform is included), with different penalties, and, due to the construction provision (§ 10-2121), all of § 10-2120, except failure to inform, is apparently rendered meaningless. It occurs to me that § 10-2120 provides for all the contingencies regarding fraud in connection with such welfare benefits, and, therefore, that statute alone would seem to suffice.

However, I must call to your attention Acts 1963 (Spec. Sess.), ch. 10, which may be found in Burns §§ 10-3030—3041, and may be cited as the Offenses Against Property Act. That statute modernizes, consolidates and simplifies the statutes of Indiana concerning crimes against property, including those formerly classified as larceny and obtaining by false pretenses. Those sections relating to “knowingly obtaining by deception control over property of the owner,” § 3(1)(b), Burns § 10-3030(1)(b) which is defined in § 13(3)(b), Burns § 30-3040(3)(b) to mean “fail to correct a false impression which the actor previously has created or confirmed,” supply additional criminal sanctions for many of the acts of omission or commission about which you inquired.

Thus, it does appear that the actions about which you are inquiring are subject to criminal penalties under the Welfare Act of 1936, as amended, and under the Offenses Against Property Act.

You indicated in your letter that an amendment may be proposed to the penal provisions of the Welfare Act of 1936 in the next General Assembly. The General Assembly expressed, in the Offenses Against Property Act itself, and through the report of the Criminal Code Study Committee which proposed it, an intention that all of the types of offenses covered by that statute be governed by the provisions of that statute rather than by a multitude of acts relating primarily to other subjects scattered throughout the twenty-some volumes of Burns IND. STAT. ANN., so that both potential law breakers and officers of the law could easily locate and understand the penal statutes relating to such crimes. In view of

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this intention of the General Assembly, I would suggest that any amendments to penal provisions which may be offered to the 1967 General Assembly be proposed to the Offenses Against Property Act rather than to the Welfare Act of 1936.

OFFICIAL OPINION NO. 42

December 23, 1966

**CITIES AND TOWNS—Annexation of Property by Town
Having No Daily Newspaper—How Proposed
Annexation Should be Publicized.**

Opinion Requested by Hon. Robert H. Bales, State Representative.

I am in receipt of your recent letter concerning the procedure for annexation to be followed by a town when there is no daily newspaper published in that town, or in the entire county in which the town is located.

Your letter, when paraphrased, presents four questions:

1. If all the property owners in the territory sought to be annexed and the town involved is in favor of annexation, can such annexation be accomplished by agreement?
2. If annexation cannot be accomplished through agreement, are towns in which no daily newspaper is published proscribed from annexing territory?
3. If such towns are not proscribed from annexing territory, what procedure should be followed in publishing notice of such proposed annexation?
4. Under the publication procedure given in answer to question No. 3, how is the period of time in which