In conclusion, and in answer to your specific questions, (a) sale of investments of the Common School Fund made to reinvest the proceeds in bonds bearing a higher interest rate but having a different maturity date than the bonds sold is not, in my opinion, permissible under present Indiana statutes, although it may be sound business practice, and (b) securities in which the Common School Fund is invested may not be sold prior to their maturity date in order to obtain cash to make advancements to school corporations pursuant to Acts 1959, ch. 379.

OFFICIAL OPINION NO. 54

December 30, 1966

MENTAL HEALTH—Three Methods of Discharge of Patients from Mental Health Facility—Regular and Temporary Commitments—Restoration Proceedings.

Opinion Requested by Dr. J. R. Gambill, Deputy Mental Health Commissioner.

I am in receipt of your letter requesting my opinion on various aspects of Chapter 338 of Acts 1955, and Chapter 359 of Acts 1957. Your specific questions were:

1. "Does a state mental hospital superintendent have the authority under Acts 1955, Chapter 338, Section 2, to discharge patients committed under Acts 1957, Chapter 359, Section 604?
2. "If he does not have the authority to discharge patients, does it follow that he does not have authority to place patients on leave? Would he need to get permission from the court each weekend for patients to go home on visits?

3. "Is there a difference between the superintendent discharging a patient from the rolls of the hospital and the court terminating the court commitment? What is the effect of the certificate of discharge the superintendent sends to the clerk of court under Acts 1955, Chapter 338, Section 3?

4. "Is committing a person under Acts 1957, Chapter 359, Sections 604 and 605 the same as declaring him 'a mentally ill person?' Is the court's using the superintendent's certificate of discharge to restore a patient's civil rights under Acts 1955, Chapter 338, Section 3, the same as declaring the commitment terminated and the patient is no longer adjudged as a 'mentally ill person?' "

1. The background material contained in your letter indicates that your first question is caused by the seemingly anomalous situation wherein a person is admitted to a state mental hospital by an order of the court in the manner prescribed by the 1957 Act, but released from that hospital at the discretion of the hospital superintendent without a court order. Your letter further specifies that you are concerned solely with the civil commitment provided by the 1957 Act and that you are aware that a person committed by a criminal court can be discharged only with an order by that court.

The solution to this apparent conflict is probably best found by consideration of the legislative history on the subject.

Although legislation on this topic was adopted in the Nineteenth Century (see, for example, Acts 1855, ch. 65), we need at the present time to go back no further than 1927. Chapter 69, Acts 1927 is entitled:

> "AN ACT concerning insanity inquest, the procedure in adjudging persons insane, the commitment of insane persons to hospitals for insane, their care pending admission, their discharge therefrom, the apprehension and return of insane patients and prohibiting the kidnapping or aiding the escape of insane persons."

The several sections of this Act set out the procedures for committing a person to a mental hospital, maintaining persons in mental hospitals, and discharging persons from mental hospitals.

In 1949 the General Assembly passed a minor supplemental Act. Chapter 173 of Acts 1949 is entitled:

> "AN ACT concerning the commitment of insane persons to state or county institutions."

This Act simply provided that should no room be available in a state institution a judge could commit a person to a county home under certain circumstances. This Act is of no significance in the present situation. A number of such special statutes have been enacted during the intervening years and such statutes shall not be considered in this opinion.

The 1955 General Assembly enacted two statutes concerning mental institutions. These enactments are important not only for their content but because they represent a change in the approach of the Legislature to this topic.

Acts 1955, ch. 118, the same being Burns IND. STAT. ANN., §§ 22-1301—1304, is entitled:

> "AN ACT concerning the care and treatment of patients in psychiatric hospitals of this state, and prescribing penalties."

Acts 1955, ch. 338, the same being Burns IND. STAT. ANN., §§ 22-1306—1310, is entitled:

> "AN ACT concerning the discharge of patients from the psychiatric hospitals of this state, prescribing a procedure therefor, and prescribing a procedure for the restoration of the civil rights of patients who are discharged from psychiatric hospitals."

The first section of each of the above Acts contained definitions of the terms used within the Act, and each such section contained this definition:

> "A 'patient' means any mentally ill person, or any person who appears to be mentally ill, who is in or

> under the supervision and control of any psychiatric hospital, or who [,] because of mental illness, is under the supervision and control of any circuit or superior court of this state." (Bracketed material found in care definition but not in discharge definition.)

Similarly, each of the 1955 Acts contained sections repealing all laws or parts of laws in conflict therewith. Thus, those parts of the 1929 Act relating to the care and to the discharge of persons in mental institutions were repealed by the above Acts, but those portions of the early Act relating to admissions remained in force.

The actions of the 1955 General Assembly introduced a scheme by which the admission of patients to, the care of patients in, and the discharge of patients from state mental institutions was to be considered three separate programs regulated by separate Acts.

The 1957 General Assembly also enacted legislation relating to patients in state mental institutions. Acts 1957, ch. 359, the same being Burns IND. STAT. ANN., §§ 22-1201—1231, is entitled:

> "AN ACT prescribing the proceedings for the admission of mentally ill persons to psychiatric hospitals; and prescribing penalties."

The first section of this Act contains definitions of the terms used in the Act. The definition of the word "patient" is identical with that used in the 1955 care and treatment Act. The 1957 Act also specifically repealed most of the sections of the 1929 Act.

Therefore, it is apparent that the 1957 General Assembly agreed with and acceded to the legislative theory represented by the 1955 Acts. The title of the 1957 Act indicates that the Act is to apply only to admissions to state hospitals, and is not to affect the procedure for discharge therefrom.

Furthermore, comparison of the discharge provisions in the 1955 discharge Act and in the 1957 admission Act shows no conflict.

Acts 1955, ch. 338, § 2, the same being Burns IND. STAT. ANN., § 22-1307, provides, in part:

> "The superintendent may discharge a patient from the hospital whenever, in his opinion, the mental and physical condition of such patient justifies, and he may grant a leave of absence for short periods whenever, in his opinion, the patient may be benefited thereby, but he shall retain in the hospital such patients as may, in his judgment, be unfit to be at large or may require special medical care: Provided, that in no case shall the exercise of the writ of habeas corpus, as regulated in such cases, be denied."

Acts 1957, ch. 359, § 704, the same being Burns IND. STAT. ANN., § 22-1223, provides:

> "Whenever the custody of any person shall be granted under this act to any superintendent or administrator the court shall retain jurisdiction over said matter and may at any time upon proper petition and hearing revoke, terminate or amend such order. Unless such order is so revoked or terminated, such superintendent or administrator shall be entitled to keep and retain custody of such person until and unless such superintendent or administrator shall discharge such person, or until and unless such person be cured of such illness."

The above provisions are in complete accord concerning the release or discharge of patients committed to a state mental institution by a court. Although the language used in the statutes is different, both statutes provide that a person in a state mental institution as a result of commitment by a court is to be retained in that institution until he is either discharged by the superintendent or his discharge is ordered by the court, whichever comes sooner.

That a person committed to a state mental institution by an order of a court following a civil procedure may be released at the discretion of the superintendent of that institution should not be surprising. No matter what euphemisms may

be used to describe either the procedure or the institution, a person involuntarily committed to a mental institution is in fact imprisoned. His denial of freedom results not from his having committed a heinous crime, but rather because he is sick. The reason for the civil hearing and the order of the court is to insure that a person who is sick, like the person who has committed a heinous crime, will not be imprisoned arbitrarily and without due process of law. In the case of *Shireman v. Shireman,* 133 Ind. App. 699, 704, 184 N.E. 2d 905, 907 (1962), plaintiff sought a divorce from his wife alleging cruel and inhuman treatment in that she improperly alleged that he was insane, caused the issuance of an invalid warrant, and that as a result he was "placed under arrest and kept in a hospital overnight. He was held in jail the next night and the following day was taken before the regular Judge of the Harrison Circuit Court who released him." The Indiana Appellate Court said:

> "We may only comment with restrained indignation at the flagrant abuse of process revealed in this case whereby a man was deprived of his liberty and placed in custody contrary to all of the principles of Anglo-American law. The laws of the State of Indiana pertaining to the voluntary and involuntary admission of persons to psychiatric hospitals require notice and hearing before a court of competent jurisdiction and proper venue. Burns' Ind. Stat., 1950 Replacement, § 22-4701 *et seq.* (Supp.), *supra.* The individual's right to due process of law is guaranteed and protected by these statutes. Here, appellant's application is not in due form, it was not filed with the Clerk of the Circuit Court, no notice was issued to appellee, an invalid warrant was issued, and there was no hearing as provided by law. There is no evidence that the Judge had any knowledge of these proceedings until after appellee was taken into custody. We feel it incumbent upon us to condemn such procedure as being illegal and contrary to all standards of law and justice."

The court also held that this constituted cruel and inhuman treatment.

The release of a patient from a mental institution is just the opposite of his confinement therein. Rather than depriving him of his freedom, the release from an institution restores his freedom. Action by a court is not necessary for the protection of his rights at this time. Indeed, requiring the superintendent to get permission from the court before releasing a patient who, in the superintendent's considered opinion, is sufficiently cured so that further restriction would be of no benefit, could be considered a denial of due process since the cured patient would be imprisoned until such time as the superintendent can cause the court to grant a discharge.

Therefore, I conclude that the superintendent of a state mental institution has the authority under Acts 1955, ch. 338, to discharge patients committed on order of a court following a civil proceeding as authorized by Acts 1957, ch. 359.

2. For all of the reasons discussed in answer to your first question I also conclude that the superintendent of a mental institution may grant a leave of absence for short periods to a patient that has been committed by a court following a civil action without obtaining the approval of that court beforehand.

3. Your third question inquires as to the difference between the superintendent's discharge of a patient and the court's termination of the court commitment, and the answer to that question requires a short essay.

The term "commitment" is not defined in any of the Acts previously discussed, nor can any other statutory definition be found. The majority of instances in which the term is used are concerned with criminal procedure. A person found guilty of the commission of a criminal act is sentenced by the court, and if that sentence involves detention in a penal institution the court will issue an order of commitment which authorizes the superintendent of that institution to retain the person in his custody. As reported in 7a, Words and Phrases 577 (1952):

> "'Commitment' is a judicial order or process by which a magistrate directs an officer to take a person to prison for a fixed period of time, and is the authori-

> zation which permits an officer to continue to deprive such person of his liberty and legally hold him in custody after he has been brought before a magistrate." Whalen v. Cristell, 161 Kan. 747, 173 P. 2d 252 (1946).

The term "commitment," then, in its strict usage describes neither the person nor his status, but rather refers to the legal authority by which one person holds another person in custody. The distinction is important. In *Darst v. Forney,* 199 Ind. 625, 159 N.E. 689 (1928), the plaintiff had been declared insane by a court of competent jurisdiction, the clerk of the circuit court had applied for his admission to a mental institution, the application had been accepted by the institution, a warrant commanding the sheriff to arrest and convey the person to the institution had been issued, and the sheriff had arrested but not yet conveyed the person to that institution. The Indiana Supreme Court held that the person could not institute a habeas corpus action under a statute which provided that "Any person committed as insane may apply to the proper authorities for a Writ of Habeas Corpus, . . ." as he had not been delivered to and received at the institution and therefore had not been committed to that institution.

The commitment resulting from a sanity inquest is like that resulting from a trial in that it is the court granted authority by which one person holds another person in his custody. They differ, however, in that the person given such authority as a result of a criminal proceeding has no choice but to exercise that authority in the course of his official duties. The person to whom such authority might be given as a result of a sanity inquest has discretion as to when and even if he will commence the exercise of that authority. Several portions of Acts 1957, ch. 359, the admission Act discussed earlier, indicate that the order of the court is not mandatory on the superintendent of the institution.

Section 701 of the Act, Burns § 22-1220, provides, in part:

> "If [after the hearing] an order of temporary or regular commitment is entered, the judge shall direct the clerk of the circuit court to apply forthwith to the superintendent of the psychiatric hospital of the hos-

> pital district in which such person has legal settlement for the admission of such person to such hospital." (Bracketed material added.)

Section 705 of the Act, Burns § 22-1224, provides:

> "Rejected or suspended applications may be renewed from time to time by the clerk of the circuit court of the county from which such application was originally made, by simple reference to the original application, and may be accepted by the superintendent, if there be room for the patient for whom application is made; but the date of the renewal of the application and the date of the hearing to determine mental illness shall not differ by more than six months."

The following section of the Act, Burns § 22-1225, described the procedure which must be followed before a person who has not been admitted within six months after the hearing can be admitted to a mental institution.

The superintendent of a state mental institution may refuse to accept as a patient in the hospital a person for whom a court has issued an order for commitment. Similarly, as discussed above in the answer to your first question, he may discharge such a person from his hospital even though the court order has not been revoked. Since the former action does not affect the validity of the commitment order, it would be reasonable to assume that the latter would also have no effect. Such, however, is not the case. Section 27 of Acts 1927, ch. 69, the same being Burns IND. STAT. ANN., § 22-1311, is one of the few sections of the 1929 Act discussed earlier which has not been repealed either specifically or by implication by later Acts. That statute provides, in part:

> "No person who has ever been adjudged insane according to law, and has been formerly discharged from any hospital for insane for any cause, shall again be admitted to any such hospital unless and until a sworn statement is filed with the clerk of the circuit court of the county in which such discharged patient resides by a reputable physician who is licensed to practice medicine in this state, . . ."

A person discharged from a state institution cannot be involuntarily replaced in that institution under the original order of commitment without any further action. In this instance, as in the case where a person is not received by a mental institution within six months of the inquest hearing, a further examination must be had before the person may be involuntarily confined. In both instances the original order of the court, which has not been revoked by the court, permits confinement without a formal court hearing upon the filing of a report recommending such confinement by a qualified examiner.

If, on the other hand, the person is released from the hospital due to a revocation of the commitment order by the court which issued the order, or terminated by the issuance of a writ of habeas corpus issued by that court or by some other court, the authority of the superintendent of the institution to retain the person in custody is entirely expunged. There is no longer any legal authority for that person being involuntarily confined, and once released he can again be so confined only by another court order.

The third part of your second question concerned the effect of the certificate that must be filed with the clerk of the court that conducted the sanity inquest whenever a person involuntarily confined is released by the hospital. Chapter 338 of Acts 1955, the discharge act discussed earlier, requires the filing of certificates with the clerk upon discharge in two different sections.

Section 4 of the Act, Burns § 22-1309, provides:

> "In discharging any patient from a psychiatric hospital, the superintendent thereof shall give notice to the clerk of the circuit court of the county from which such patient was committed, that such patient is discharged. Upon receipt of such notice, the clerk of the circuit court shall forthwith file and preserve such notice with the other papers relating to such case."

The Act does not specify any further action that must be taken by the clerk, the court, or the superintendent. Filing the certificate merely advises the court that the person previ-

ously held in the custody of the superintendent has been released from such custody.

Section 3 of the Act, Burns § 22-1308, provides, in part:

> "Whenever any patient is discharged by the superintendent or an administrator for the reason that the patient is no longer a mentally ill person, it shall be the duty of such superintendent or administrator to send a verified certificate of the discharge to the clerk of the court which committed such patient. The certificate shall contain the following information: . . . 6. The fact that in the opinion of the superintendent or the administrator, the patient is no longer a mentally ill person. . . .
>
> "Upon receipt of either such certificate from any superintendent, administrator or manager of any regional office of the veterans' administration, the court having jurisdiction of such patient shall fix a time, date and place for the hearing of restoration proceedings. The clerk of said court shall notify in writing the following persons of such hearing: . . .
>
> "Any statement of a superintendent, an administrator or a manager of a regional office of the veterans' administration certifying to the fact that a patient is no longer a mentally ill person, or has been rated competent by the veterans' administration, shall be prima facie evidence thereof and shall be admissible as evidence in any restoration proceedings.
>
> "If, after the hearing, the court is of the opinion the patient is no longer a mentally ill person, or if no person notified of the hearing makes an appearance, and the court by reason of the information contained in the certificate is of the opinion that the patient is no longer a mentally ill person, the court shall enter an order in judgment to that effect."

The above certificate is intended to do more than advise the court that the person has been released from the custody of the superintendent. The certificate is to be issued only when

the person is, in the opinion of the superintendent, cured of his disability. Upon receipt the court must schedule what is called a restoration hearing, but which is in effect another sanity inquest. The certificate of the superintendent, unless contradicted by further evidence, is sufficient evidence for the court to decide in favor of the former patient.

Therefore, the certificate filed on release of a patient is intended to advise the court of the release of that patient, and if the superintendent believes the patient has been cured, to cause the court to institute a restoration hearing.

4. Your fourth question inquires whether the commitment under the Admission Act is the same as declaring the person mentally ill. If it is a regular commitment as contemplated by Section 604 of the Act, then the answer is in the affirmative. If it is a temporary commitment as contemplated by Section 503 of the Act, then the answer is in the negative.

Section 604 of the Act, Burns § 22-1218, provides:

> "If, upon the conclusion of the hearing and examination, it shall appear to the judge that the person so alleged to be mentally ill is mentally ill, the judge shall enter an order for the commitment of the person, for the purpose of observation, diagnosis, care and treatment, to a psychiatric hospital of the district. . . ."

Commitment under this section is not actually the equivalent of the declaring of the person to be mentally ill. Rather, the court must find as a fact that the person is mentally ill before he can issue any order of commitment.

Section 503 of the Act, Burns § 22-1213, provides, in part:

> ". . . When the court feels that the best interests of the patient will be served by temporary rather than regular commitment procedures, the judge shall designate the time and the place where the hearing will be held to determine whether such person so alleged to be mentally ill is in need of treatment or further evaluation.
>
> ". . . If, upon the conclusion of the hearing and examination, it shall appear to the judge that treatment or further evaluation is needed, and that the best interest

> of the patient will be so served, the judge of the court shall enter an order for the temporary commitment of the person, for the purpose of observation, diagnosis, care and treatment, to a psychiatric hospital of the district. The commitment shall be for a period of not to exceed ninety days. . . . In the event a person on temporary commitment to a psychiatric hospital is found by the psychiatric staff of such hospital to be in such condition that he should be committed to a psychiatric hospital for extended treatment, the psychiatric staff of the hospital shall make a written report of their finding, including a psychiatric evaluation of the person, to the committing judge. The written report shall be made at least ten days prior to the expiration of the temporary commitment or the extension of the time thereof. The judge, upon receiving this report of the psychiatric staff, shall provide for a hearing and proceed in the manner as provided in section 303 of this act, or as provided in sections 601 to 605 of this act, inclusive, to order the regular commitment of such person to the appropriate psychiatric hospital: . . . The civil rights of any person temporarily committed under the provisions of this section shall not be abridged because of such commitment."

It is apparent that the basic purpose of the temporary commitment is to permit closer observation and more accurate evaluation of the condition of the person, and that a hearing for a regular commitment should be held if the observation and evaluation indicate that the person should be confined and treated. The specific provision that the person's civil rights are not to be abridged indicates that a temporary commitment is not the result of a judicial determination that the person is mentally ill, nor is it to be construed as a declaration that the person is mentally ill.

The second portion of your fourth question asks whether the court's use of the certificate filed upon the discharge of a person as evidence in a hearing initiated upon filing of that certificate is a declaration that the person is no longer mentally ill.

The restoration hearing initiated by the certificate was discussed in answer to your third question, and in that question it was described as being basically a second sanity inquest. Therefore, it would follow that the judge's determination, if in accord with the certificate, would be a declaration that the person is no longer mentally ill. Acts 1955, ch. 338, § 3, Burns § 22-1308, is the pertinent statute and was quoted extensively in the third answer. A portion of that statute is determinative of the present question in that it states as follows:

> "If, after the hearing, the court is of the opinion that the patient is no longer a mentally ill person, or if no person notified of the hearing makes an appearance, and the court by reason of the information contained in the certificate is of the opinion that the patient is no longer a mentally ill person, the court shall enter an order and judgment to that effect. Such order shall be entered upon the official records of the court and shall be incorporated into the commitment records of the patient."

The statute carefully specifies that the judge is to make a judicial determination of whether the patient is mentally ill at the time of the hearing. If he determines that the person is not mentally ill he is to restore the person's civil rights, which would of course include a termination of the commitment order.

The answers to your questions may be summarized as follows:

1. A state mental hospital superintendent does have the authority to discharge patients committed subsequent to a civil sanity inquest as provided by Acts 1957, ch. 350, § 604.

2. The superintendent also has the authority to grant leave to such persons without prior authorization from the court.

3. A patient discharged from the rolls of the hospital by the superintendent may be again involuntarily confined if such confinement is recommended by a qualified examiner, but a court termination of the commitment removes the patient