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(except the portion *not* attributable to the employee's contributions plus interest thereon payable upon election by the surviving spouse as noted above) payable under the particular funds and statutes mentioned herein, is also taxable for inheritance tax purposes.

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### OFFICIAL OPINION NO. 28

July 26, 1963

Hon. A. Morris Hall  
State Senator  
302 Marion National Bank Bldg.  
Marion, Indiana

Dear Senator Hall:

This is in response to your request for my Official Opinion concerning the responsibility as between several governmental agencies for the expense of hospital services rendered by a private hospital to a person shot by a state police officer while resisting arrest. Because of the unusual nature of the situation here involved, a brief statement of facts is in order.

It appears that a state police officer stopped a motor vehicle on a state highway in Huntington County, but the driver fled in his vehicle after attempting to strike the officer who was standing by the police car. Thereupon, the officer placed a general alarm by radio, and sometime later a second state police officer saw the vehicle and the driver in Miami County. Upon being ordered to surrender, the driver fled into Grant County, and was pursued by the second police officer. After crossing into Grant County, the driver abandoned his vehicle and fled by foot. He paid no attention to the order of the officer to halt, and as a result, the officer fired his pistol in order to stop him.

The driver was struck by a bullet, and was hospitalized for a period of several months. After being released from the hospital, he was taken to Huntington County where he was tried, convicted of a misdemeanor and fined one dollar and costs. Since this person was indigent, the expense of treat-

ment has never been paid, and you have questioned the liability for such care as between the Trustee of Richland Township, Grant County, the Indiana State Police, the Department of Public Welfare of Huntington County, and the Department of Public Welfare of Grant County.

Considering first the possible liability of the Indiana Department of State Police, we find the following language in 26 I. L. E. State § 102:

“A State, including the State of Indiana, may not be sued in its own courts or in courts of other jurisdictions, unless it consents. When suit cannot be brought directly, the same result may not be reached indirectly by suing an officer, department, or agent of the State, as nominal defendant, in an action which affects actual rights of the State in certain property.”

Any power here to recover hospitalization costs from the Department of State Police must depend upon the power of the hospital to bring legal action against that department. Examination of our statutes fails to disclose that our General Assembly has ever granted a right to sue the State Police Department. Therefore, we must exclude that department from those which you have listed in your request.

Any liability as between the other named agencies must also rest upon proper statute. Acts of 1935, Ch. 116, as amended, is commonly known as The Poor Relief Act, and will be found in Burns' (1951 Repl.), Section 52-144 *et seq.* Section 5 of that Act is found in Burns' 52-148, *supra*, and places a duty upon overseers of the poor to care for poor persons in their townships so long as such persons remain a charge. Section 5a, as added in 1957, amended in 1961 and as found in Burns' (1963 Supp.), Section 52-148a, creates an exception to Burns' 52-148, *supra*, and reads as follows:

“In the event any indigent person is injured or in the event any indigent person who is a nonresident of this state becomes ill in any township of this state, the overseer of the poor in such township shall immediately report such matter to the department of public welfare of the county in which such township is located,

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which department shall promptly provide medical and hospital care for such indigent person. The cost of any such medical and hospital care so furnished shall be borne by the county of the legal residence of the indigent, or if he has no legal residence in any county of this state by the county in which such township is located; and shall be paid out of any money appropriated to the county welfare department. For the purpose of this act the term indigent person shall mean a person without financial resources to pay for such medical and hospital care."

The above-quoted section says nothing as to the manner of the injury. Rather, said section becomes effective "*in the event any indigent person is injured \* \* \**" (Our emphasis) Since you state that this driver was indigent, and the facts disclose his injury, there is no other conclusion than that Burns' 52-148a, *supra*, is applicable. Thus, the Trustee of Richland Township, Grant County, has no duty to bear this cost.

The responsibility then must fall upon a county department of public welfare, but as between the two departments which you name, the facts which we have are insufficient to sustain a specific answer. Burns' 52-148a, *supra*, states in part:

"\* \* \* The cost of any such medical and hospital care so furnished shall be borne by the county of the legal residence of the indigent, or if he has no legal residence in any county of this state by the county in which such township is located; and shall be paid out of any money appropriated to the county welfare department \* \* \*"

Although the information furnished in conjunction with your request is voluminous, it does not disclose the residence of the injured person. Newspaper coverage of the incident gave a rural route address at Converse, Indiana, which town is in Miami County immediately adjoining the Grant County line. Thus, so far as we are informed, this person could have lived in either of these two counties. Other information discloses that this individual occupied rooms in a Fort Wayne tavern, and still further information is to the effect that he kept his

possessions and lived in his automobile, traveling from place to place.

Therefore, a question of fact is presented as to residence and its determination is for a court or some other source rather than the Attorney General. However, it is possible to conclude that the cost of care given this indigent person is the proper expense of the county of legal residence, whatever county that may be. On the other hand, if the individual had no legal residence in Indiana, then the responsibility must fall upon the county in which the township is located, which, it would appear, is Grant County.

Therefore, it is my opinion that the cost of hospital treatment rendered to an indigent person shot while fleeing from an arresting state police officer may be borne in accordance with provisions of Burns' (1963 Supp.), Section 52-148a by the proper county department of public welfare as determined from the facts of the case.

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OFFICIAL OPINION NO. 29

July 29, 1963

Hon. Hilary O. Seng  
State Representative  
302 E. 6th Street  
Jasper, Indiana

Dear Representative Seng:

This will acknowledge your recent letter in which you request my Official Opinion concerning liability for specific hospital services. Your letter reads as follows:

“Recently a resident of Patoka Township, Crawford County, Indiana, was admitted to Stork Memorial Hospital on an emergency basis as a result of having taken rat poison. At the time of his confinement, a warrant had been issued by the Dubois Circuit Court for his arrest for an alleged criminal violation. The Indiana State Police had the warrant at the time they called at the man’s home when they were informed that he was