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.

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

unconscious because of taking the poison, and at the request of the man's parents, was taken by the Indiana State Police to the hospital.

"Subsequently, the man was released from the hospital and immediately apprehended by the Sheriff of Dubois County, Indiana, and upon failure to make bond was placed in the Dubois County jail. Complications set in as a result of the poisoning and the man was subsequently readmitted to Stork Memorial Hospital after having been released from jail. He was taken to the hospital by the Sheriff of Dubois County but signed himself into the hospital.

"The man was again admitted to Stork Memorial Hospital approximately one month later by his parents as a result of having taken an overdose of barbiturates. Apparently, the person involved is an indigent person, and the Township Trustee has refused to pay upon the grounds that he was not advised that the man was being admitted to the hospital on any of the occasions.

"I would appreciate your opinion as to where financial responsibility lies under the foregoing facts."

The facts which you disclose raise questions as to what individual or authority may be liable for the payment of hospital expenses of a person during each of three described periods of hospital care. Assuming that the factor of indigency is present here, the question of liability on the part of a county and of a township trustee exists, thus becoming public rather than private in nature.

Acts of 1935, Ch. 116, Sec. 5, as amended and found in Burns' (1963 Supp.), Section 52-148, concerns hospital care rendered to an indigent person. That section reads as follows:

"The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a charge, and shall see that they are properly relieved and taken care of in the manner required by law. He shall, in cases of

> necessity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions; and shall also see that such medicines and/or medical supplies and/or special diets and/or nursing as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished.
>
> "He may, in cases of necessity, authorize the payment from township poor relief funds for water, gas and electric services, including the payment of delinquent bills for such services, when necessary to prevent their termination or to restore terminated service."

1962 O. A. G., pages 14, 18, No. 5, concerned the above-quoted section, and that opinion concluded in part:

> "A township trustee may not refuse hospital care at the township's expense to a resident who is on the township trustee's relief roll unless such care is made necessary as a result of injury."

The aforementioned Attorney General's Opinion held further that such aid may be refused by the township trustee where hospitalization is made necessary as the result of injury, such exception being based upon Acts of 1957, Ch. 267, Sec. 1, as amended and found in Burns' (1963 Supp.), Section 52-148a. The facts which you state would appear to present another possible exception to Burns' 52-148, *supra*, the same being where an indigent person is placed under arrest by proper authorities and confined to jail.

Before proceeding, I would comment that no statutory authority has been found authorizing a township trustee to refuse payment to an indigent person upon the ground that said trustee was not advised of hospitalization. In your letter you present three specific conditions. Therefore, it will be necessary to consider each situation separately.

In the first instance, state police officers, in attempting to arrest a suspect in Crawford County, found him to be unconscious, apparently having attempted suicide. They took

him to Stork Memorial Hospital, located in Huntingburg, Indiana, at the request of his parents, where he was treated and subsequently released. You state that the patient is indigent, and it would appear that his parents either did not assume the obligation of treatment, or if they did, are also unable to meet the obligation.

As pointed out in 1963 O. A. G., No. 28, there appears to be no law in Indiana vesting in the state police department a duty to furnish hospital care to an indigent person shot while resisting arrest. Neither, then, can there be a liability on the part of that department to care for an indigent person voluntarily taken to a hospital by a state police officer under a condition of emergency.

With respect to the state police department, the situation here somewhat resembles the condition upon which 1963 O. A. G., No. 28 is based. However, while that opinion arose from an injury received during the course of arrest, the person whom you describe was neither injured nor under arrest. Since the person was unconscious, the officer could neither inform the person of the arrest, nor show his warrant, and as stated in Acts of 1905, Ch. 169, Sec. 128, as found in Burns' (1956 Repl.), Section 9-1006:

> "The officer must inform the defendant that he acts under the authority of a warrant, and must show the warrant if required."

In view of the fact that this individual was indigent, and assuming no other person to have undertaken the liability to pay for his care, he came within the provision of Burns' 52-148, *supra*. It would, therefore, appear that the duty to compensate for the first period of hospital treatment fell upon the trustee of the township in which the patient resided when admitted to the hospital.

In the second instance, the indigent patient was released from the hospital, apprehended by the Dubois County Sheriff and placed in jail upon his failure to make bond. When complications arose from the poisoning, the prisoner was "released from jail" and returned to the hospital by the sheriff, where he "signed himself into the hospital." The liability for

this second period of hospitalization is questionable, and the determination must depend upon the meaning of the word "released" as used in your letter.

If the prisoner was released from custody by order of court, and if the sheriff returned him to the hospital as a humanitarian act, and if said person "signed himself into the hospital" after being released from custody, the duty to meet the cost of this second period fell upon the trustee of the township of residence, in accordance with Burns' 52-148, *supra.* If, on the other hand, the prisoner was "released from jail" and taken to the hospital because of his physical condition, and if custody was retained while he remained in the hospital, then the liability must fall elsewhere.

A complete discussion of the laws of Indiana concerning medical care furnished to inmates of county jails would require much space, and is not necessary for the questions under consideration in this Opinion. It is sufficient to say that the duty to keep the jail, and to provide proper meat, drink and fuel for prisoners is placed upon the sheriff by Acts of 1852, Ch. 58, Sec. 3, as found in Burns' (1956 Repl.), Section 13-1004. Acts of 1899, Ch. 154, Sec. 19, as found in Burns' (1960 Repl.), Section 26-519, reads in part as follows:

> "Every estimate required by said section sixteen to be prepared by the board of county commissioners shall embrace, in items separate from each other, each of the following matters:
>
> * * *
>
> "Twelfth. Amounts required for the support of inmates of state benevolent institutions, or other benevolent or penal institutions."

Acts of 1899, Ch. 154, Sec. 33, as found in Burns' (1960 Repl.), Section 26-533, concerns the several boards of county commissioners and the allowances which they may not make. That section reads in part as follows:

> "* * * They shall have no power to contract for services of any physician to attend upon any poor of

> the county other than inmates of the county institution * * *"

Thus, it would appear that a board of county commissioners is empowered to supply medical care to an inmate of a county institution, which would include a county jail. It would further appear that the duty to furnish medical care to an inmate, who is also a poor person, would rest upon the county rather than a township because, as stated in Burns' 52-148, *supra*:

> "* * * He shall, in cases of necessity, promptly provide medical and surgical attendance for all of the poor in his township *who are not provided for in public institutions* * * *" (Our emphasis)

Therefore, if this prisoner was released from jail specifically to be replaced in the hospital for treatment and custody retained, the cost of this second period should be borne by Dubois County, in accordance with Burns' 26-519, *supra.*

The third period of hospitalization was necessitated by an overdose of barbiturates taken at a later date and would seem to be unrelated in any manner whatsoever to the arrest of and confinement to jail discussed above. The correspondence indicates that the township trustee has refused to render medical assistance for the reason that he was not notified of this or of the other two periods of hospital care. While we cannot condone the failure of this person, or of someone on his behalf, to promptly notify the trustee, yet the brief delay in this instance cannot excuse the trustee from the duty placed upon him by Burns' 52-148, *supra.*

It is, therefore, my opinion:

(1) That the duty to compensate for hospital care furnished to an unconscious, indigent person in need of medical treatment for reasons other than physical injury and delivered to the hospital by state police officers, who have not been able to complete a legal arrest, lies with the trustee of the township in which such person resides;

(2) That the duty to furnish hospital care to an indigent person held in a county jail and released from custody by

order of court prior to necessary hospital commitment, rests upon the trustee of the township of residence, in accordance with Burns' 52-148, *supra*;

(3) That the duty to furnish necessary hospital care to an indigent inmate of a county jail is a proper expense of the county; and

(4) That the statutory duty placed upon the township trustee to furnish medical and surgical care to the poor in his township is not affected by the failure of a hospitalized person, or some person on his behalf, to furnish prompt notice of the hospitalization.

OFFICIAL OPINION NO. 30

July 30, 1963

George A. Everett, Superintendent
Indiana State Police
301 State Office Building
Indianapolis 4, Indiana

Dear Superintendent Everett:

This is in reply to your request for an Official Opinion, which reads, in part, as follows:

> "The 'Uniform Firearms Act', Acts of 1935, Ch. 63, (Burns, 1956 Repl., § 10-4734 and following) defines certain crimes, for purposes of the Act, as 'crimes of violence'. Do the following crimes fall within such definition:
>
> "1. Aggravated assault and battery, as defined in House Enrolled Act No. 1021 of the 1963 General Assembly?
>
> "2. Assault, as defined in Acts of 1941, Ch. 148, § 7, (Burns, 1946 Repl., § 10-402)?
>
> "3. Assault and battery, as defined in Acts of 1905, Ch. 169, as amended, (Burns, 1962 Supp., § 10-403)?"