

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) ?"

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The three-part question you raise involves the construction of a portion of the definition section of the Acts of 1935, Ch. 63, Sec. 1, as found in Burns' (1956 Repl.), Section 10-4734. This act, known as the "Uniform Firearms Act," was approved February 21, 1935, to take effect on the first day of July, 1935.

The purpose of the Firearms Act is to achieve a maximum degree of control over criminal and careless uses of certain types of firearms, while at the same time making them available to persons where needed for protection.

Matthews v. State (1958), 237 Ind. 677, 148 N. E. (2d) 334, 338.

The pertinent portion of the definition section of the "Uniform Firearms Act," as found in Burns' 10-4734, *supra*, reads as follows:

"'Crime of violence,' as used in this act, applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, voluntary manslaughter, kidnaping, kidnaping for the purpose of ransom, rape in the first degree, malicious mayhem, *assault or assault and battery with intent to commit a felony*, robbery, bank robbery, automobile banditry, burglary in the first or second degree." (Our emphasis)

The above definition of "crime of violence" has remained unamended since the date of enactment of the Firearms Act.

In order to determine what offenses are "crimes of violence," I am of the opinion that we are obliged to look solely to the "Uniform Firearms Act." The 1935 Indiana Legislature did not leave the answer to that inquiry to conjecture or collateral investigation. It was meticulous in its definition of the term, as well it might be in the formulation of penal legislation having a purpose so novel and definite as this.

While in the construction of statutes, resort is made in testing such statutes to many well recognized rules of statutory construction, it must be borne in mind that all other

rules for statutory construction are subservient to the one that the legislative intent must prevail, if it can reasonably be discovered from the language used by the Legislature.

1954 O. A. G., page 135, No. 37;

Murray v. Gault (1913), 179 Ind. 658, 101 N. E. 632;

State v. Barrett (1909), 172 Ind. 169, 87 N. E. 7.

I am of the opinion that the legislative intent can reasonably be discovered from the language of Burns' 10-4734, *supra*. Each of the crimes, or attempts to commit same, included in the legislative creation, the so-called "crimes of violence," may be found in a then existent (1935) separate criminal statute utilizing both the specific and descriptive crime description of Burns' 10-4734, *supra*. Moreover, the Legislature in drafting the latter section, utilized commas (,) as marks of separation to make clear the grouping of the individual crimes of violence. The Legislature thus established its own construction "yardstick" and, in so doing, plainly established the crimes enumerated in Burns' 10-4734, *supra*, as an *exclusive enumeration* of crimes of violence embraced by the "Uniform Firearms Act."

The "* * * assault or assault and battery with intent to commit a felony * * *" specified in Burns' 10-4734, *supra*, is the very one which in 1935 read, as shown in the Acts of 1905, Ch. 169, Sec. 352, as amended and found in Burns' (1956 Repl.), Section 10-401, as follows:

"Whoever perpetrates an *assault or assault and battery* upon any human being with *intent to commit a felony*, shall, on conviction, be imprisoned in the state prison for not less than one [1] nor more than ten [10] years." (Our emphasis)

This section, Burns' 10-401, *supra*, was further amended by Acts of 1959, Ch. 121, Sec. 7, as found in Burns' (1963 Supp.), Section 10-401. The 1959 amendment deleted the words "a felony," and inserted the words "other than a felonious homicide" between the words "to commit a felony" and the words "shall, on conviction."

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You will note that in drafting Burns' 10-4734, *supra*, the Legislature meticulously followed the example of Burns' 10-401, *supra*, by not placing a comma (,) between the word "assault" and the words "or assault and battery."

The Acts of 1905, Ch. 169, Sec. 354, as amended, as found in Burns' (1963 Supp.), Section 10-403, the so-called "simple" assault and battery statute, clearly is not one of the enumerated offenses of Burns' 10-4734, *supra*. Its pertinent definition portion reading:

"Whoever in a *rude, insolent or angry manner, unlawfully touches* another, is guilty of an assault and battery * * * " (Our emphasis)

The descriptive language which I have emphasized in this statute is most specific, but, upon comparison with the language of Burns' 10-4734, *supra*, such language is notably absent therefrom.

By the same reasoning, the other two (2) statutes, namely, the Acts of 1941, Ch. 148, Sec. 7, as found in Burns' (1956 Repl.), Section 10-402, and House Enrolled Act No. 1021, being Acts of 1963, Ch. 122, Sec. 1, as found in Burns' (1963 Supp.), Section 10-410, are also not enumerated offenses under Burns' 10-4734, *supra*. Their pertinent definitions as contained in Burns' 10-402, *supra*, and House Enrolled Act No. 1021, *supra*, respectively, read as follows:

10-402 "Whoever, having the present ability to do so, *attempts to commit a violent injury* upon the person of another, is guilty of an *assault* * * * " (Our emphasis)

1021 "Whoever *intentionally or knowingly and unlawfully inflicts great bodily harm or disfigurement* upon another person is guilty of *aggravated* assault and battery * * * " (Our emphasis)

In view of the above analysis, we need not consider the prospective effect of Burns' 10-4734, *supra*, with respect to the two later enacted statutes, Burns' 10-402, *supra*, and House Enrolled Act No. 1021, *supra*.

The application of the maxim of exclusive enumeration, or *expressio unius est exclusio alterius*, which I have applied to your three-part question, has been described as follows by the United States Supreme Court:

“* * * This maxim (*expressio unius est exclusio alterius*) properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment. * * *”

Ford v. United States (1926), 273 U. S. 593, 611,
47 S. Ct. 531, 71 L. Ed. 793.

In a similar federal case involving the enumeration in the Federal Firearms Act of certain “crimes of violence,” the United States Circuit Court of Appeals, Ninth Circuit, held that the statutory enumeration was intended to be exclusive so that unless included therein, a crime may not be regarded as a “crime of violence” within the meaning of the act. Specifically, that court held that robbery, although perhaps the most characteristic of all gangster crimes, was not one of the enumerated offenses.

Nicholson v. United States (1944), 141 F. 2d 552,
553.

In summary, it is my opinion that none of the three crimes which you mention fall within the “crime of violence” definition of Burns’ 10-4734, *supra*.