

On the other hand, Burns' 52-148, *supra*, contains no limitation clause with respect to "any township of this State." The effect of that section is simply to place upon each township trustee the oversight and care of poor persons in his township so long as they remain a charge, and to furnish them with medical and surgical attendance. The section makes no statement whatsoever concerning a place of injury.

Burns' 52-148a, *supra*, is an exception to Burns' 52-148, *supra*, and applies only to cases specifically coming within the provisions of that exception. Since this indigent person was injured in Michigan, and not in Indiana, Burns' 52-148a, *supra*, is not applicable to him. The liability for his care must therefore be governed by Burns' 52-148, *supra*.

It is therefore my opinion that care of an indigent resident of an Indiana county and township injured in a foreign state and hospitalized in his local county falls upon the trustee of his township under Burns' 52-148, *supra*, and not upon the department of public welfare of his county under Burns' 52-148a, *supra*.

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OFFICIAL OPINION NO. 55

November 19, 1963

Mr. Arthur Campbell, Commissioner  
Department of Correction  
804 State Office Building  
Indianapolis 4, Indiana

Dear Mr. Campbell:

This is in response to your request for an Official Opinion regarding the Acts of 1947, Ch. 300, Sec. 4a, as added by the Acts of 1963, Ch. 200, Sec. 1, as found in Burns' (1963 Supp.), Section 52-1134a, which reads as follows:

"Any person who is an inmate of any penal or correctional institution of the state of Indiana, while in a parole or leave status, and is found to be in need of emergency medical, surgical or hospital care, shall be provided such emergency care the same as though he

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were physically present at such institution from which he is on parole or leave: Provided, That the term 'inmate', as used in this section shall include any person in the custody of the youth rehabilitation facility as created by chapter 177 of the Acts of 1961, or any prisoner transferred to a camp, farm, leased facility or industrial site, as provided in the 'Department of Correction Act of 1961', same being chapter 343 of the Acts of 1961: Provided, further, That such inmate shall be considered, for the purposes of this Act, as being in residence in the institution from which he was transferred to such camp or facility: Provided, further, That any inmate may, in case of an emergency, be placed in a hospital other than a state-owned or operated hospital."

Your first two questions read as follows:

"1. Is an inmate in a parole or leave status entitled to emergency medical care that does not require surgical or hospital care?

"2. Is the Department of Correction responsible for hospital and surgical expenses for a parolee other than those expenses relating to the emergency only as provided by this Section?"

The statute in question must be read in light of the following two sections of the same act. Acts 1947, Ch. 300, Sec. 4, as found in Burns' (1951 Repl.), Section 52-1134, reads as follows:

"Any person who is an inmate of any penal, benevolent or correctional institution of the state of Indiana, and is found to be in need of medical, surgical or hospital care which cannot be provided by the institution, may be placed in any state owned or operated hospital or other public hospital for necessary medical, surgical or hospital care on written order of the superintendent or warden of the state institution wherein said inmate is confined, provided that such inmate shall not be placed in a public hospital other than a state owned or operated hospital unless the daily charge for hospitali-

zation at such public hospital shall be less than that charged by the state owned or operated hospital.”

Acts of 1947, Ch. 300, Sec. 5(b), as amended and as found in Burns’ (1963 Supp.), Section 52-1135, reads as follows:

“(b) The necessary cost and expenses which may be incurred upon the placing of an inmate of an institution in a hospital shall be paid by the state out of funds appropriated by section 5a of this act. A certified and itemized statement of the cost of treatment shall be rendered to the penal, benevolent or correctional institution from which the inmate has been placed: Provided, however, In the event an inmate of any state penal institution escapes therefrom from [for] which offense he is later tried, convicted and sentenced to any state penal institution and if found to be in need of medical, surgical or hospital care which cannot be provided by the institution in which he is serving a sentence for the crime of escape and is placed, upon the written order of the superintendent or warden of such institution, in any state-owned or operated hospital or public hospital to receive such care, the necessary costs and expenses incidental thereto shall be paid out of the general fund of the state from funds appropriated by section 5a of this act, and upon a warrant issued by the auditor of state. If the superintendent or warden of said institution shall find that said certified and itemized statement of the cost of treatment be proper, a copy of such statement, together with a copy of the order authorizing such care, shall be sent by the proper official of such institution to the auditor of state and the entire cost of such treatment shall be paid by the state. No charges for medical, surgical or hospital care of inmates shall be paid out of state funds for any subsequent medical, surgical or hospital care unless a new written order is issued by the superintendent or warden of the penal, benevolent or correctional institution wherein said inmate is confined.”

Prior to the 1963 amendment only an *inmate* of a penal or correctional institution could receive medical, surgical or hos-

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pital care outside the institution. Now a parolee can receive such care in an emergency as though he were physically present at the institution.

The answer to your first question must be yes, as Burns' 52-1134a, *supra*, clearly entitled an inmate on parole status to receive "medical" care in the event of an emergency. The statute does not make medical care dependent on a parolee receiving surgical or hospital care.

Your second question assumes that in the event there is an emergency requiring the hospitalization or surgical treatment of a parolee, the department of correction would not be responsible for those expenses relating to the emergency. The question specifically asks whether the department is responsible for the expenses other than those related to the emergency.

If the parolee were physically present in the institution and contracted some physical disorder for which the institution had no facilities for treatment, he would be placed in an outside hospital for treatment pursuant to Burns' 52-1134, *supra*. The costs of this treatment would be paid by the state out of funds so appropriated pursuant to Burns' 52-1135, *supra*. Please note that the existence of an emergency does not enter into these sections. If an inmate had need of emergency medical treatment but could be treated at the institution then there would be no outside expense for which the Department of Correction could bill the state.

Since, under Burns' 52-1134a, *supra*, a parolee is to receive emergency care the same as though he were physically present at the institution, it is my opinion that the answer to your second question is as follows: Any emergency care to which a parolee is entitled and which he receives under Burns' 52-1134a, *supra*, and which care could have been provided by the institution had the parolee been physically present at the institution, is to be paid by the Department of Correction out of their general appropriation. Any emergency care which the parolee receives and is entitled to under Burns' 52-1134a, *supra*, and which could not have been provided by the institution had the parolee been physically present at the institution is to be paid by the state pursuant to Burns' 52-1135, *supra*. Thus, it is not necessarily true that the department would not be responsible for any emergency care provided a parolee.

Further since the act in question only applies to emergencies any other care which a parolee must receive should be paid for by the parolee.

Your third and fourth questions read as follows:

“3. Do the provisions of this Act apply to absconded parolees who have not yet been declared delinquent by Parole Board Action?

“4. Do the provisions of the Act apply to absconded parolees who have been declared delinquent by Board action but not yet apprehended?”

Burns' 52-1134a, *supra*, the act in question, applies to inmates “while in a parole or leave status.” The question therefore turns upon when an inmate's parole status terminates.

The Acts of 1961, Ch. 243, Sec. 11, as found in Burns' (1963 Supp.), Section 13-1611, reads, in part, as follows:

“\* \* \* Whenever a paroled prisoner is accused of a violation of his parole he shall be entitled to a hearing on such charges before the Indiana parole board under such rules and regulations as the Indiana parole board may adopt. If the Indiana parole board shall find that the prisoner has violated his parole it shall issue an order rescinding such parole but if they shall find that there has been no violation of the parole, it shall issue an order for his release from custody; but no such order of discharge shall be made in any case within a period of less than a year after the date of release on parole except that when the period of the maximum sentence provided by law shall expire at an earlier date, then a final order of discharge must be made and a certificate of discharge issued to the paroled prisoner not later than the date of expiration of the said maximum sentence.”

Thus, if an inmate is charged with a parole violation, such as absconding, his parole is not rescinded until after a hearing, and he would technically still be in a parole status. The *charge* of parole violation is not enough to take the inmate off parole status as there must be affirmative action of the parole board.

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See: *Overlade v. Wells* (1955), 234 Ind. 436, 127 N. E. (2d) 686.

The answer to your questions 3 and 4 is that Burns' 52-1134a, *supra*, applies to parolees who have absconded until they have been declared delinquent by the parole board. At that time the parole status would terminate and the act would no longer apply.

Your question No. 5 reads as follows:

"5. Do the provisions of this Act authorize payment for emergency medical, surgical or hospital care for parolees receiving such care in a hospital or medical facility located in a state other than Indiana who are under supervision in said state under the terms of the Interstate Parole and Probation Compact and/or the Uniform Interstate Compact on Juveniles as provided for in the Acts of 1935, Chapter 289 and the Acts of 1957, Chapter 98, respectively?"

The first act to which your question refers is Acts of 1935, Ch. 289, as found in Burns' (1956 Repl.), Section 9-3001 *et seq.* The purpose of this act is to authorize Indiana to enter into a compact with another state to permit parolees of Indiana to move to another state or *vice versa*. The receiving state is to assume the duties of visitation and supervision over parolees of the sending state "and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees."

The second act to which you refer is Acts of 1957, Ch. 98, as found in Burns' (1956 Repl.), Section 9-3601 *et seq.* The purpose of this act is essentially the same as the act above except it applies to delinquent juveniles.

In both of the above acts, once a parolee is transferred to another state that state assumes supervision over the parolee or delinquent. It is my opinion that the providing of emergency medical, hospital or surgical care to parolees is an exercise by the State of Indiana of its general supervisory power over parolees. The purpose of Burns' 52-1134a, *supra*, is to provide emergency care without forcing a parolee to revert to

inmate status. The Legislature has decided that this procedure will be more beneficial to parolees over whom the parole board has supervision. The two acts in question provide for the transfer of this supervision to other states and once this transfer is effectuated Burns' 52-1134a, *supra*, would no longer be applicable and the law of the receiving state would apply.

It is further my opinion that pursuant to the Acts of 1935, Ch. 289, Sec. 3, as found in Burns' (1956 Repl.), Section 9-3003, the Governor would have the power to provide by compact that our law providing emergency care would apply to parolees from other states in this state if the compacting state would provide the same care for Indiana's parolees. This of course would have to be a matter of agreement.

Your sixth question is as follows:

"6. Do the provisions of this Act apply to any person on parole or leave status who requires emergency medical, surgical or hospital care, as a result of an injury encountered while committing a criminal act or an injury resulting from the arrest of such person who has committed a criminal act?"

Burns' 52-1134a, *supra*, is applicable as long as the injured party is on "parole or leave status." The statute makes no exception. Again an individual remains on parole status until there is a hearing and affirmative action by the parole board. (See answer to questions 3 and 4) The parole status would not be affected by any *charge* of a criminal act or resisting arrest.

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OFFICIAL OPINION NO. 56

November 20, 1963

Mr. B. B. McDonald  
State Examiner  
State Board of Accounts  
912 State Office Building  
Indianapolis 4, Indiana

Dear Mr. McDonald:

Your letter of June 26, 1963, has been received and reads as follows: