

## OPINION 28

Thus, in conclusion, it is my opinion, on this latter phase, that the special benefits tax is to be levied upon the same assessed valuation of the real estate as is used for the levy of general taxes.

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### OFFICIAL OPINION NO. 28

April 18, 1962

Mr. Albert Kelly, Administrator  
State Department of Public Welfare  
701 State Office Building  
Indianapolis 4, Indiana

Dear Mr. Kelly:

Your letter of March 6, 1962, reads as follows:

“Your official opinion is requested regarding the responsibility of the state and county departments of public welfare for the payment of funds for the support or care of persons drawing public assistance under the old age assistance, blind assistance or aid to dependent children provisions of The Welfare Act of 1936, as amended, after such person has been committed to a state psychiatric hospital and is awaiting admission to such hospital.

“Your further opinion is requested regarding the responsibility of the county department of public welfare for the payment of funds for the support or care of children made wards under the provisions of Chapter 356 of the Acts of 1945, as amended, after such child has been committed to a state psychiatric hospital and is awaiting admission to such hospital.”

Acts of 1957, Ch. 359, was entitled “An Act prescribing the proceedings for the admission of mentally ill persons to psychiatric hospitals; and prescribing penalties.” Section 702 of the aforesaid Act will be found in Burns’ (1961 Supp.), Section 22-4721, and reads as follows:

“If any person is found to be mentally ill and is committed to a psychiatric hospital, the clerk of the circuit

court of the county in which the proceedings were held shall consult with the attending physician in determining the method of taking care of such mentally ill person pending his admission to the psychiatric hospital to which he has been committed. *If all things necessary for the comfort and proper care of such mentally ill person be not otherwise provided by the relatives or friends or from the estate of such mentally ill person, if any there be, it shall be the duty of the clerk of the circuit court to furnish them, and the same shall be paid out of the general fund of such county, on certificate of the clerk and warrant of the county auditor.* Under no circumstances shall any mentally ill person be confined in the county jail, unless he is found to be dangerous and violent, and then only on order of the judge of the court.” (Our emphasis)

The Indiana State Department of Public Welfare and the several county departments of public welfare were created by Acts of 1936 (Spec. Sess.), Ch. 3, as amended, commonly known as the Public Welfare Act of 1936, the same being found in Burns’ (1951 Repl., 1961 Supp.), Section 52-1001 *et seq.* While that act provides in detail for aid to the aged, the blind and to dependent children, it contains no section or sections relating to mentally ill persons, particularly during the period between their committal to a psychiatric hospital and their admission thereto. The Welfare Act conflicts in no way with Burns’ 22-4721, *supra*, and in my opinion the later section is applicable to recipients of old age assistance, blind assistance and aid to dependent children.

Acts of 1945, Ch. 356, as found in Burns’ (1956 Repl., 1961 Supp.), Section 9-3201 *et seq.*, concerns Juvenile Courts. Section 19 thereof as last amended by Acts of 1961, Ch. 227, Sec. 1, as found in Burns’ (1961 Supp.), Section 9-3219, relates to the support of wards and states in part as follows:

“\* \* \* All such compensation and allowances shall be a proper charge against the county and money to pay such compensation and allowances shall be provided for by the county council in the proper fund  
\* \* \*”

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This same section further states that an account for such a child may be established by the county department of public welfare.

Section 20 of the Act as found in Burns' (1956 Repl.), Section 9-3220, relates to mental and physical examination, and reads as follows:

“The court after due notice and hearing may cause any ‘child’, as defined by this Act coming under its jurisdiction to be examined by a physician, psychiatrist or psychologist, appointed by the court.

“Whenever a child concerning whom a petition has been filed appears to be in need of medical, surgical or psychiatric care, the court may order the parent, guardian or custodian to provide treatment for such child in a hospital or otherwise. If such parent, guardian or custodian fails to provide such care the court may, after due notice, enter an order therefor and the expense thereof, when approved by the court, shall be a charge upon the county; but the court may adjudge that the person or persons having the duty under the law to support such child pay part or all of the expenses of such treatment in the manner provided in Section 18 of this Act.

“If it shall appear that any child concerning whom a petition has been filed is mentally defective or mentally disordered, the court, before committing him to an institution, shall cause such child to be examined by two (2) qualified physicians and on their written statement that such child is mentally defective or mentally disordered, the court may commit such child to an appropriate institution authorized by law to receive and care for any such child. The parent, guardian or custodian shall be given due notice of any proceedings hereunder.”

While this section makes no specific mention of the period between the date of committal and the date of admission to the institution it does provide that the court may enter an order for treatment including psychiatric care, the expense of which, when approved by the court, shall be a charge upon

the county. It is to be noted that the county department of public welfare is not mentioned or named. Construing this section with Burns' 22-4721, *supra*, it would appear that the duty of furnishing necessary care to such a child between the date of committal and the date of admission is placed upon the clerk of the circuit court.

See: 1961 O. A. G., page 225, No. 38.

It is therefore my opinion that:

1. When a person receiving old age assistance, blind assistance or aid to dependent children under the provisions of the Welfare Act of 1936, as amended, has been committed to a psychiatric hospital and is waiting admission thereto, the clerk of the circuit court shall provide the needs of such person not provided by the relatives or friends or from the estate of such mentally ill person.

2. When a child who has been made a ward by order of court and who has been supported under the provisions of Acts 1945, Ch. 356, is thereafter committed to a psychiatric hospital and is awaiting admission thereto, the clerk of the circuit court, and not the county department of public welfare, shall furnish the needs of such child pending admission if such needs are not provided by the relatives, friends or from his estate.

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OFFICIAL OPINION NO. 29

April 19, 1962

Hon. James S. Hunter  
State Representative  
3910 Carey Street  
East Chicago, Indiana

Dear Representative Hunter:

In your letter of March 2, 1962, you have requested an Official Opinion using the following language:

"The Gary Bar Association has requested that the 'legal profession be placed on an equal footing with other professions that are rendering professional service to indigents, to-wit: medical, dental and optome-