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.


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.

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-
try.' This request is particularly in reference to public assistance recipients of county welfare departments who need legal services for enforcing non-support orders, obtaining divorces, or other necessary legal services."

Paraphrasing the above statement, you ask whether the expense of legal aid rendered to or on behalf of public assistance recipients may be paid from public welfare funds.

Our Welfare Act was originally enacted in 1936, and has been frequently amended since that time. It is Acts of 1936 (Spec. Sess.), Ch. 3, as found in Burns' (1951 Repl., 1961 Supp.), Section 52-1001 et seq. In its present form, The Welfare Act of 1936 provides aid for six basic classes of persons, the same being aged persons, blind persons, dependent children, disabled persons, crippled children and destitute children. It should be noted at this point that the sections relating to disabled persons were added by Acts of 1961, Ch. 206, and will not become effective until January 1, 1963.

The Welfare Act specifically provides for medical care to be given to recipients coming within each of the above named classifications. Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 34, as last amended by Acts of 1961, Ch. 210, Sec. 1, as found in Burns’ (1961 Repl.), Section 52-1203, relates to recipients of old age assistance, and reads in part as follows:

"* * * Provided, That when a recipient or applicant is found to be in need of medical care, payment for any necessary care may be included in the monthly award to the recipient, even though payment for such care may increase the amount of the monthly award in excess of the maximum amount otherwise allowed by this section or payment for such care, regardless of any maximum monthly limitation in this section, may be made directly to the person, corporation, association, institution or agency furnishing such care. Such direct payments may be made either during the lifetime, or after the death, of the recipient. Each county department shall establish and submit for review and approval by the state department, a plan for furnishing necessary medical care adjusted to the medical facilities and the needs in the county."

138
The above-quoted language, with certain minor adaptations, has been used in other sections of the act, one of which is Section 54, as last amended by Acts of 1961, Ch. 69, Sec. 1, as found in Burns' (1961 Supp.), Section 52-1223, relating to recipients of blind assistance. Another is Section 82c as added by Acts of 1961, Ch. 206, Sec. 4, as found in Burns' (1961 Supp.), Section 52-1251c, the same relating to recipients classified as disabled persons. As stated above, this section will not take effect until January 1, 1963.

Still further similar language concerning dependent children will be found in Section 72 of the Act as last amended by Acts of 1949, Ch. 265, Sec. 1, as found in Burns' (1951 Repl.), Section 52-1241. Similar language relating to destitute children is contained in Section 97c as last amended by Acts of 1953, Ch. 38, Sec. 1, as found in Burns' (1961 Supp.), Section 52-1269.

Sections 86 through 89a of the Welfare Act of 1936, as found in Burns' (1951 Repl.), Sections 52-1255 through 52-1258a, concern crippled children, and particularly their medical and hospital care.

Examination of a blind person by an ophthalmologist is provided by Section 57 of the Act as found in Burns' (1951 Repl.), Section 52-1226, and the determination of blindness by an optometrist is provided by Section 57a, as added by Acts of 1951, Ch. 310, Sec. 2, and as found in Burns' (1961 Supp.), Section 52-1226a.

In addition to the duties to provide medical care as created by the statutes listed above, counties have been given the duty to provide medical and hospital care for certain indigents out of money appropriated to the several welfare departments. See: Acts of 1957, Ch. 267, Sec. 1, as amended by Acts of 1961, Ch. 223, Sec. 1, as found in Burns' (1961 Supp.), Section 52-148a.

In accordance with Section 5(f) of the Welfare Act as found in Burns' (1951 Repl.), Section 52-1104(f), the State Department of Public Welfare has adopted and promulgated official rules and regulations. One of these is Regulation 2-111 which became effective on April 6, 1946, and which describes in detail the nature of the medical assistance to be furnished.
However, examinations of the Welfare Act of 1936 and the Official Rules and Regulations of the State Department of Public Welfare fail to disclose that either the Indiana State Department of Public Welfare or any of our several county departments of public welfare has ever been vested with the power to pay for legal services rendered to or on behalf of a welfare recipient. Neither have I been able to find such authority in any other act of the Legislature.

A department of public welfare, either state or county, cannot exceed its statutory power, for as said in the case of Boone County, REMC, et al. v. Public Service Commission et al. (1958), 129 Ind. App. 175, 186, 155 N. E. (2d) 149, 155:

"It is a fundamental principle of law that every administrative agency in the state of Indiana must find the source of its authority in the statute conferring it, and it can only exercise the power conferred in conformity with the statute."

Therefore, it is my opinion that the expense of legal aid rendered to or on behalf of public assistance recipients may not be paid from public welfare funds.

OFFICIAL OPINION NO. 30

April 19, 1962

Hon. Nelson G. Grills
State Senator
802 Board of Trade Building
Indianapolis 4, Indiana

Dear Senator Grills:

This is in reply to your recent letter requesting an Official Opinion with respect to the salary payable to a county surveyor registered by the Indiana State Board of Registration for Professional Engineers and Land Surveyors. Your letter reads in part as follows:

"A number of County Surveyors in Indiana were not registered as professional land surveyors at the time Chapter 277 was passed. After the passage of this act,