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statute for the use of school busses to transport 4-H Club members and leaders to meetings and events educational in nature, even though approved by the local school administrators, unless it is a "school function" within the meaning heretofore considered.

The last-referred-to statute does authorize the use of school busses "for such other purposes" as may be approved by the State School Bus Safety Committee, on recommendation of the trustee or board of trustees of the school corporation. In the event such authorization is given under any of these factual situations, it should be ascertained that liability insurance in a proper amount covers the use of such vehicles for such purposes.

OFFICIAL OPINION NO. 47

July 13, 1962

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

Dear Mr. Kelly:

This is in reply to your letter of June 12, 1962, in which you request my Official Opinion on the following question:

"May County Departments of Public Welfare award old age assistance as provided for in The Welfare Act of 1936, as amended, upon an application made by the guardian of a person who has been adjudicated a mentally ill person and committed to a State Psychiatric Hospital and who may be released therefrom and prior to the restoration of his civil rights or mental health?"

Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 32, as last amended by Acts 1961, Ch. 183, Sec. 1, and as found in Burns' (1962 Supp.), Section 52-1201, relates to eligibility of aged persons to receive old age assistance. Specific qualifications are set out with respect to citizenship, age, residence, income and transfer of property. In addition to the foregoing, subparagraph (e) of the section contains the following language:
“(e) Except as otherwise provided in this act is not an inmate of or being maintained by any municipal, state or national institution during the time he is receiving assistance, but an inmate of any such institution may make application for such assistance, in which case the assistance, if granted, shall not begin until after he ceases to be an inmate; and” (Our emphasis)

While the foregoing clause has been amended, the italicized portion is identical with the wording in the original act.

In its original form, Burns’ 52-1201, supra, contained the following additional requirement:

“(g) Is not, because of his physical or mental condition, in need of continuing institutional care.”

However, it is interesting to note that clause (g) was deleted from the section in 1937.

In 1941, a new section 39 (a) was added to the Public Welfare Act of 1936, which section was last amended by Acts of 1961, Ch. 294, Sec. 2, by the addition of the italicized language appearing below. This section may be found in Burns’ (1962 Supp.), Section 52-1208 (a), and reads as follows:

“In all cases where an application is made to a court for the appointment of a guardian for a recipient of aged assistance, or for any person wishing to apply for aged assistance, who is found to be incapable of managing his estate or business affairs because of old age, infirmity, senility, improvidence, being a spendthrift, or a habitual drunkard, the court in making such appointment may waive the execution of a bond by such guardian or may fix the amount in a sum less than $200.00. No costs shall be taxed or charged by any public officer in such proceedings either in the proceeding for the appointment of the guardian or for the subsequent reports in such trust established under the provisions of this section.” (Our emphasis)

Thus, it would appear that there has been a progressive legislative trend toward permitting institutionalized persons to apply for and to receive old age assistance upon their release from institutional care.
It is interesting to note that Burns’ 52-1201, supra, uses the term “inmates.” We must keep in mind that the section was enacted over twenty-six years ago, at which time it was also common to speak of the “insane” and “insane asylums.” These terms have been modernized in superseding legislation, namely, Acts of 1955, Ch. 338, as found in Burns’ (1962 Supp.), Sections 22-4240 to 22-4244. This act uses a new terminology, to wit: “patients,” “mentally ill persons,” and “psychiatric hospitals.”

Since your question specifically concerns mentally ill persons committed to a psychiatric hospital, who may be “released” therefrom, and particularly relates to the period prior to the restoration of their civil rights, it is necessary that we determine when a patient is released from a psychiatric hospital.

The title of Acts 1955, Ch. 338, supra, reads as follows:

“AN ACT concerning the discharge of patients from the psychiatric hospitals of this state, prescribing a procedure therefor, and prescribing a procedure for the restoration of the civil rights of patients who are discharged from psychiatric hospitals.”

Section 1 of the Act, as found in Burns’ (1962 Supp.), Section 22-4240, defines numerous terms used throughout, one of which is “discharge” and another of which is “convalescent leave.” These definitions read as follows:

“(8) A ‘discharge’ means the final and complete release of a mentally ill person from the care, treatment, training or detention by any person or psychiatric hospital to whom or to which such mentally ill person has been committed, or from any psychiatric hospital which said mentally ill person may have entered voluntarily.

“(9) A ‘convalescent leave’ shall mean the placement of a mentally ill person, for the purpose of furnishing additional care and treatment under the direct supervision of the division of mental health, outside the confines of any psychiatric hospital to which such person was committed.” (Our emphasis)
Section 2 of said Act, as found in Burns' (1962 Supp.), Section 22-4241, specifically concerns the above terms and reads as follows:

"Patients in psychiatric hospitals may be granted either a discharge, as defined in this act, or a convalescent leave. Except for voluntary admission cases who have signed and submitted a request for release, and for all cases where release is governed by the order of a court of competent jurisdiction, the granting of a discharge shall be discretionary with the superintendent.

"The superintendent may discharge a patient from the hospital whenever, in his opinion, the mental and physical condition of such patient justifies, and he may grant a leave of absence for short periods whenever, in his opinion, the patient may be benefited thereby, but he shall retain in the hospital such patients as may, in his judgment, be unfit to be at large or may require special medical care: Provided, That in no case shall the exercise of the writ of habeas corpus, as regulated in such cases, be denied." (Our emphasis)

The time of a discharge is further set out by Section 3 of the Act as found in Burns' (1962 Supp.), Section 22-4242, which section begins with the following language:

"Whenever any patient is discharged by the superintendent or an administrator for the reason that the patient is no longer a mentally ill person * * *"

Construing the foregoing sections together, it would appear that authority is given by Burns' 52-1201, supra, and 52-1208 (a), supra, to a patient in a psychiatric hospital, by and through his legally appointed guardian, to apply for old age assistance prior to his discharge. Upon his release or discharge from the hospital under Acts 1955, Ch. 338, supra, a person otherwise qualified so to do may receive old age assistance under the Public Welfare Act of 1936, as amended.

With respect to a patient placed on "convalescent leave," your question is more involved. First, it should be recognized that on September 28, 1961, the Indiana State Department of
Public Welfare and the Indiana State Department of Mental Health, entered into a written agreement concerning the appointment of a legal guardian for certain patients in state mental health institutions who wish to apply for old age assistance. That agreement, signed by the Commissioner of the Indiana Department of Mental Health and the Administrator of the State Department of Public Welfare, contemplated the giving of old age assistance to persons falling in each classification. It was also agreed that "Assistance may not begin until the patient leaves the institution on convalescent leave or is discharged."

Secondly, we must determine the nature of a convalescent leave. While Acts 1955, Ch. 338, supra, does not set out the procedure for obtaining such a leave, Section 1 of said Act, supra, does define the term as the placement of a mentally ill person for additional care under the direct supervision of the Division of Mental Health. The definition says nothing concerning the cost of the care, and does not place the burden thereof upon said division.

It is important that we not confuse a patient placed on convalescent leave with one placed in a "family boarding home," as described in Acts 1955, Ch. 178, Sec. 1, as amended, as found in Burns' (1962 Supp.), Section 22-4245. That section reads, in part, as follows:

"(a) As used in this act the term 'family boarding home' shall mean a home which has been specifically approved by the division of mental health as being a suitable home for the care and maintenance of mentally ill persons; and the term shall include any licensed nursing home, or county home, or licensed child care institution or other suitable facility, approved by the division of mental health which home is determined by the division of mental health to have adequate facilities for the care and maintenance of mentally ill persons.

"(b) The division of mental health is authorized to place any patient of a psychiatric hospital, owned or operated by the state, in a family boarding home for the purpose of caring for and maintaining such patient. The cost of the maintenance and care of a patient while
in a family boarding home shall be paid by the State of Indiana * * *

"* * * The placement of any patient in a family boarding home, pursuant to the provisions of this act, shall not be considered or treated as a convalescent leave." (Our emphasis)

In practice a patient is placed in a family boarding home at the expense of the state. The home becomes an agent of the psychiatric hospital, rendering a service upon behalf of said hospital, and at its expense. On the other hand, when a patient is placed on convalescent leave, it is contemplated that he will not return to the hospital, and that the leave will in all probability graduate into a discharge. When a patient is given such a leave, the Department of Mental Health ceases to support him and does not resume this function unless and until such patient returns to the hospital due to his mental condition. It would, therefore, appear that a convalescent leave is a trial period, or a stage in his discharge.

It is, therefore, my opinion that county departments of public welfare may award old age assistance as provided in the Public Welfare Act of 1936, supra, as amended, upon an application made by the guardian of a person who has been adjudicated a mentally ill person and committed to a state psychiatric hospital and who may be released therefrom, either on discharge or convalescent leave, and prior to the restoration of his civil rights or mental health. However, old age assistance payments to or on behalf of such a person may not commence until he has left the confines of the hospital, and must cease in the event of his return thereto.