

1961 O. A. G.

OFFICIAL OPINION NO. 10

March 27, 1961

S. T. Ginsberg, M. D.
Mental Health Commission
Division of Mental Health
1315 West Tenth Street
Indianapolis 7, Indiana

Dear Dr. Ginsberg:

This will acknowledge receipt of your letter requesting an Official Opinion concerning the investment of moneys accumulated in the "Patients' Recreation Fund." Your letter reads as follows:

"Chapter 242, Acts of 1957, as amended, provides that certain moneys may be held in a 'Patients' Recreation Fund.'

"In order to purchase expensive equipment contemplated by the Act creating such a fund, it is sometimes necessary to accumulate moneys in the fund over a somewhat long period of time.

"Your official opinion is requested as to whether such accumulations can be invested in a manner similar to that of the 'Patients' Trust Fund' as set forth in Section 2 of the same Act."

Acts of 1957, Ch. 242, Secs. 1 through 9, as amended and found in Burns' (1959 Supp.), Sections 22-537 through 22-545, provides for the accumulation, investment, disbursing and general handling of money belonging to inmates or patients of the psychiatric and penal institutions of the State of Indiana.

Burns' 22-538, *supra*, provides that the superintendent of the institution shall hold money belonging to the inmates or patients in trust and then makes the following statement with respect to the deposit and investment of said funds:

"* * * Such trust funds shall be deposited in depositories that are either members of the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation, or their successors, or they may be invested in government securities of the United States."

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This money may be referred to as the Inmates' or Patients' Trust Fund, as the case may be, and, insofar as your question is concerned, Burns' 22-540, *supra*, provides for the handling of the interest or income from such funds. That section reads in part as follows:

“Any interest or income derived from the deposit or investment of funds held in trust for any patient or inmate, shall be transferred from such trust fund to a special fund to be known as the ‘Patients’ Recreation Fund’ or ‘Inmates’ Recreation Fund’: * * *.”

Provisions with respect to the Inmates' or Patients' Recreation Fund are found in Burns' 22-542 and 22-543, *supra*. Burns' 22-542, *supra*, sets forth the manner in which these recreation funds are to be used, and limits the use of the funds to the purchase of certain items including recreational entertainment and supplies for which other funds are not available by regular appropriation.

In order to purchase such items permitted by Burns' 22-542, *supra*, and to have continuing funds available to meet demands, you have asked whether or not these recreation funds may be invested or whether they must remain in trust to the institutional superintendent without investment. In other words, the crux of your question is the validity of investing the moneys in the Inmates' or Patients' Recreation Fund.

An examination of the provisions of the act in question reveals an intent on the part of the Legislature to produce as much money as possible for inmate and patient recreational supplies, equipment and entertainment. In carrying out this intent the Legislature has established several sources which may be looked to for a continued supply of money for the recreation fund. Burns' 22-543, *supra*, expressly recognizes that money may come into the fund from any source not prohibited by law. At the same time none of the provisions of the act prohibit the investment of the recreation funds for the purpose of creating additional money for the use and benefit of the inmates and patients.

Your attention is invited to the language in Burns' 22-545, *supra*, wherein the superintendent is placed under a separate

bond for handling recreation funds and held to a strict accounting therefor. This feature coupled with the fact that the funds are for the use and benefit of the inmates and patients places the superintendent in the position of a trustee and the money involved becomes impressed with a trust. The fact that the Legislature did not specifically refer to the recreation fund as a trust fund does not change the status and character of the money as it stands charged with a use and benefit in favor of the inmate and patient beneficiaries.

It is a generally accepted principle of the law of trusts that a trustee is, in the absence of a contrary intention expressed or implied in the trust instrument or statute creating the trust, duty bound to invest and reinvest trust funds in his hands. Furthermore the law does not favor the practice of allowing trust funds to lie dormant for a prolonged period of time, especially where such funds are not immediately needed to carry out the terms or intent of the trust. In 54 Am. Jur., Trusts, § 374, it is stated:

*“It is a general power and duty of a trustee, implied if not expressed, at least in the case of an ordinary trust, to keep trust funds properly invested. Having uninvested funds in his hands, it is his duty to make investments of them, where at least they are not soon to be applied to the purposes and objects or turned over to the beneficiaries of the trust. Generally, he cannot permit trust funds to lie dormant or on deposit for a prolonged period * * *.”* (Our emphasis)

Therefore, it is my opinion that the recreation funds coming into the hands of the superintendents of the various institutions should be invested in accordance with the provisions of Burns' 22-538, *supra*, where such money lodged in the “Inmates' Recreation Fund” or the “Patients' Recreation Fund” is idle, non-income producing and not immediately needed for some legitimate expenditure.