Aurora Terminal Company may be determined by your Commission to terminate the interstate character of the shipments, and the subsequent shipment of the coal to points in Indiana may be determined by you to be intrastate in character and the rates therefor subject to the regulation of your Commission. However, it should be noted that I am only suggesting such a possibility, since any determination must be made by your Commission in the light of all the facts presented and heard in a proper proceeding.

OFFICIAL OPINION NO. 30

July 26, 1960

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

Dear Dr. Ginsberg:

This is in reply to your letter requesting my Official Opinion as follows:

"Your official opinion is requested as to whether or not any liability exists for the cost of the care of criminal sexual psychopaths committed prior to July 1, 1959 who remain in residence after that date under the provisions of Chapter 324, Acts of 1959, which became effective July 1, 1959."

Acts of 1955, Ch. 339, as amended, as found in Burns' (1959 Supp.), Sections 22-4216 to 22-4227, provides that psychiatric patients, the estate of the patient, the guardian of the patient or the responsible relatives, including husbands or wives, parents, and adult children of the patient, are liable for the payment of the cost of maintenance of such patients. Section 2 of this Act originally provided that the maintenance charge should not apply "* * * to any inmate of any penal or correctional institution who has been transferred to any psychiatric hospital, or to any criminal sexual psychopath who has been committed to any psychiatric hospital * * *." This section was amended by Acts of 1959, Ch. 324, Sec. 1, as found
in Burns' (1959 Supp.), Section 22-4217, by the provisions of which amending act the rate of the cost of maintenance of such patients was changed, and the exemption of inmates in a penal or correctional institution who have been transferred to psychiatric hospitals and of criminal sexual psychopaths who have been committed to any psychiatric hospital was omitted.

Acts of 1949, Ch. 124, as amended, as found in Burns' (1956 Repl.), Sections 9-3401 to 9-3412, provides that any person charged or convicted but not yet imprisoned for a criminal offense except the crime of murder or manslaughter, or rape on a female child under the age of twelve years, which person appears to be a criminal sexual psychopathic person, after an examination by two qualified physicians and the filing of the physicians' reports and, after a proper hearing, can be committed to the Indiana Division of Mental Health for confinement in a state psychiatric hospital until such person shall have fully and permanently recovered from such criminal psychopathy. Sections 4 and 10 of the aforementioned statute were amended by Acts of 1959, Ch. 356, as found in Burns' (1959 Supp.), Sections 9-3404 and 9-3410, and now provide that after the filing of the reports of two qualified physicians the court shall hold a hearing and order a commitment to the Division of Mental Health in an appropriate state psychiatric institution for an indeterminate period not to exceed sixty (60) days for the purpose of observation, evaluation and diagnosis of such person.

Burns' 9-3410 (a), supra, provides in part as follows:

"If the court, pursuant to the provisions of section 4 of this act, temporarily commits a defendant to the division of mental health for the purpose of observation, evaluation and diagnosis of such defendant, the county in which such court is located shall be liable for the cost of the maintenance of such defendant, in an amount of not to exceed the per capita cost of patients in the state maintained and operated mental hospitals, for a period of not to exceed sixty [60] days. * * *

It should be noted that the above-quoted section pertains only to persons who are committed to the Division of Mental Health for purposes of observation, evaluation and diagnosis for a period not to exceed sixty days.
Patients who were transferred from penal or correctional institutions and patients who were adjudged criminal sexual psychopaths were specifically exempted from the provisions of Acts of 1955, Ch. 339, supra. Acts of 1959, Ch. 324, supra, omitted any such exemption. Therefore, it must be concluded that the Legislature by omitting the exemption intended that such persons be charged for their care and maintenance as are other patients.

"To determine what defect or defects in the original act the legislature intended to remedy, the original act must be compared with the amendment. Those provisions of the original act which are in irreconcilable conflict with the provisions of the amendatory act are impliedly repealed. When the amendatory act purports to set out the original act or section as amended, all matter in the act or section that is omitted in the amendment is considered repealed."

Sutherland, Statutory Construction, 3rd Ed., Vol. 1, Sec. 1932, p. 419.

See also Smith v. State (1924), 194 Ind. 686, 688, 144 N. E. 471, which states, in part, as follows:

"* * * An amendment of a section of a law 'to read as follows' operates to repeal all of the section amended not embraced in the amended section of the law * * *.

See also State ex rel. Nicely v. Wildey et al. (1935), 209 Ind. 1, 197 N. E. 844.

It also should be noted that the Acts of 1959, Ch. 339, Sec. 1, as found in Burns' (1959 Supp.), Section 22-4216(4), defines "patient" for the purpose of determining who is responsible for the payment of the statutory charge for care and maintenance provided in a state psychiatric hospital as follows:

"* * * any mentally ill persons, or any person who appears to be mentally ill, who is in or under the supervision and control of any psychiatric hospital, or who, because of mental illness, is under the supervision and control of any circuit or superior court of this state."

It was stated in State ex rel. Savery, etc. v. Marion Criminal Court, etc. (1955), 234 Ind. 632, 637, 130 N. E. (2d) 128, that:
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"* * * Through the entire field of legislation dealing with this human wreckage of society, there is a pervading feeling that sexual offenders and similar persons require special treatment since punishment normally is not a deterrent to a repetition of the offense. Institutional treatment offers also better protection to society. Although it is no panacea, it, at least, is a more enlightened approach in search of a better solution of an old social problem. Such proceedings are civil in nature even though they may have their origin or be instituted as a result of criminal proceedings."

(Our emphasis)

A "criminal sexual psychopathic person" is defined as follows:

"Any person over the age of sixteen [16] years who is suffering from a mental disorder and is not insane or feebleminded which mental disorder is coupled with criminal propensities to the commission of sex offenses, is hereby declared to be a criminal sexual psychopathic person."

Acts of 1949, Ch. 124, Sec. 1, as found in Burns' (1956 Repl.), Section 9-3401.

In view of the repeal of the exemption by amendment in 1959, the holding in the Savery case, supra, and the definitions of "patient" and "criminal sexual psychopathic person" in the above-quoted statutes, it would appear that the criminal sexual psychopathic patient occupies a status similar to that of other patients in so far as charges for his care and maintenance are concerned.

Acts of 1955, Ch. 324, as found in Burns' (1959 Supp.), Sections 22-4228 to 22-4235, provide for the transfer of inmates of penal or correctional institutions needing psychiatric care to mental hospitals.

Acts of 1947, Ch. 300, Sec. 5, as amended by the Acts of 1957, Ch. 262, Sec. 1(b), and as found in Burns' (1959 Supp.), Section 52-1135(b), provides in part as follows:

"The necessary costs and expenses which may be incurred upon the placing of an inmate of an institution in a hospital shall be paid by the state * * *."
Section 4 of the same statute as found in Burns' (1951 Repl.), Section 52-1134, states in part 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 * * * ."

Under the provisions of various statutes too numerous to be listed here our state institutions for the treatment of mental illness are designated as hospitals. It should be noted that the treatment of mental illness has been commonly accepted as largely a medical problem. Therefore, it would seem that the above-quoted provisions clearly pertain to inmates of penal institutions transferred to any state psychiatric hospital, and thus the costs of care of inmates of penal institutions so transferred should be borne by the state, even though the specific exemption has been dropped from the Acts of 1955, Ch. 339.

The question remains as to whether responsibility exists for the cost of care of criminal sexual psychopaths who were committed to a state psychiatric hospital prior to July 1, 1959. In construing a statute similar to that of the State of Indiana charging mental patients and certain relatives for the cost of care and maintenance, it has been held that the fact that the patient was committed prior to the passage of legislation imposing such charges does not protect the father of the patient from responsibility for the payment of such charges.


In construing another similar statute, it has been held that a change in the rate charged is not an impairment of a contract.

Central State Hospital v. O'Donnell's, Admr. (1923), 199 Ky. 708, 251 S. W. 961.

In conclusion therefore, it is my opinion that liability does exist for the payment of the cost of care of criminal sexual psychopaths committed prior to July 1, 1959, who remained as patients in state hospitals after that date, as well as crimi-
nal sexual psychopaths committed subsequent to that date. However, it should be remembered that under the provisions of Acts of 1959, Ch. 356, supra, the responsibility for the payment of the costs of care and maintenance of such persons who are committed initially for a period of not to exceed sixty (60) days rests in the county in which the committing court is located.

OFFICIAL OPINION NO. 31

August 5, 1960

A. C. Offutt, M. D., Commissioner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis 7, Indiana

Dear Dr. Offutt:

This is in response to your request of July 22, 1960, for an Official Opinion concerning the authority to fix the salaries of officers and employees in full-time local health departments, and more especially, joint city-county full-time health departments. You ask specifically what effect the passage of Acts of 1959, Ch. 107, has with respect to such authority, and whether the Acts of 1959, Ch. 107, conflicts with 1959 O. A. G., page 19, No. 4.

The Acts of 1959, Ch. 107, supra, was an act which amended and added to the Acts of 1933, Ch. 233, a general act concerning the classification and government of civil cities. Section 6, subsection (b) of the Acts of 1959, Ch. 107, as found in Burns' (1959 Supp.), Section 48-1233(b), added a new section numbered 20a to the Acts of 1933, supra, which reads in part as follows:

"(b) The salaries of each and every appointive officer, employee, deputy, assistant and departmental and institutional head shall be fixed by the mayor subject to the approval of the common council: * * *.”

In 1959 O. A. G., page 328, No. 64, I was asked to examine Ch. 107 of the Acts of 1959, supra, and give my conclusions with respect to the authority of the mayor to fix salaries of