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49-2617, *supra*, with the exception that the prosecuting attorney's fee taxed as costs in all criminal actions was raised from \$8.00 to \$10.00 and the provision concerning the prosecuting attorney's fee in non-contested divorce actions, as emphasized in the above-quoted statute, was not included.

However, the repeal of Burns' 49-2617, *supra*, did not operate to revive the provisions of Burns' 3-1214, *supra*, which had provided for a \$5.00 fee. Acts of 1877 (Spec. Sess.), Ch. 36, Sec. 1, as found in Burns' (1946 Repl.), Section 1-307, provides, in part, that "Whenever an act is repealed which repealed a former act, such act shall not thereby be revived, unless it shall be so expressly provided."

See also: Baum *et al.* v. Thoms (1898), 150 Ind. 378, 50 N. E. 357.

There being no present provision in the laws of this state for prosecuting attorney's fees to be taxed as costs in non-contested divorce actions, it is my opinion that, although it remains the duty of the prosecuting attorney to appear in such actions, no fee may be taxed as costs for such services.

OFFICIAL OPINION NO. 15

May 15, 1959

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

Dear Doctor Ginsberg:

This is in response to your letter of April 13, 1959 wherein you request an Official Opinion on the question of whether Acts of 1957, Ch. 359 supersedes Acts of 1905, Ch. 159. Acts of 1957, Ch. 359, as found in Burns' (1957 Supp.), Sections 22-4701 to 22-4731, in general, provides a procedure for the commitment and admission of mentally ill persons to state-owned and operated psychiatric hospitals by one of the following means:

1. Voluntary application for admission; or
2. Temporary commitment by a court of competent jurisdiction; or
3. Regular commitment by a court of competent jurisdiction.

Acts of 1905, Ch. 159, as found in Burns' (1950 Repl.), Sections 22-2001 to 22-2019 provides for the establishment of the Indiana Village for Epileptics and, in general, provides for admission of epileptics to the Indiana Village for Epileptics through commitment by the judges of the circuit courts in the various counties. It should be noted that the name of the institution was changed from the "Indiana Village for Epileptics" to the "New Castle State Hospital" by Acts of 1955, Ch. 101, Sec. 1, as found in Burns' (1957 Supp.), Section 22-2001a.

Burns' 22-2012, *supra*, defines the necessary procedure for court commitment to New Castle State Hospital as follows:

"Such epileptic persons shall be committed to said village for epileptics by the judges of the circuit courts in the various counties, and any such cause shall be heard in chambers. A reputable citizen of the county from which an application is to be made, shall make an application under oath setting forth information substantially as follows: The age, sex, race, general mental and physical condition, and residence of the applicant, whether such applicant is under the charge of a guardian or parents, and where known, the cause and duration of the epileptic condition, and such other facts regarding the applicant's personal and family history as the trustees may require; which facts shall be submitted to the judge of the circuit court having jurisdiction over that county, together with a certificate of a reputable physician that the applicant is admissible under the rules of the board of trustees, and is free from any infectious or contagious disease and from vermin. When such statements have been filed, the said judge shall appoint two [2] medical examiners who shall be physicians of not less than five [5] years' experience in the general practice of medicine and surgery, and not related to the person for whom applica-

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tion is made by consanguinity or marriage. It shall be the duty of said medical examiners to carefully and separately examine said person for whom application is made and separately certify in writing to said judge whether said person is an epileptic or subject to epileptic seizures. In his discretion, the judge may call additional witnesses until fully satisfied of the condition as to epilepsy of the person under inquiry. If it shall appear to the judge that the person is afflicted with epilepsy, he shall enter an order of commitment in the proper record, at the same time directing the clerk of the circuit court to forthwith apply to the superintendent of the Indiana Village for Epileptics for the admission of said person to said village, and to transmit with said application to said superintendent, for his information, copies of all statements and certificates submitted, certified to be such under the seal of the court. Upon receiving said application and transcript of statements and certificates, said superintendent of the Indiana Village for Epileptics shall immediately determine, upon the information therein contained, whether or not the case is admissible; and if there shall be room within the institution of which he is superintendent, he shall at once notify the proper clerk of the acceptance of the application for admission. Should there be no room in the village for epileptics, *the superintendent shall suspend the application for further consideration when vacancies do occur.*" (Our emphasis)

Burns' 22-4701, *supra*, contains some helpful definitions, in part, as follows:

"(1) The term 'mentally ill persons' shall mean a person who is afflicted with a psychiatric disorder which substantially impairs his mental health; and, because of such psychiatric disorder, requires care, treatment, training or detention in the interest of the welfare of such person or the welfare of others of the community in which such person resides;

"(2) The term 'psychiatric disorder' means any mental illness or disease and shall include, but not be limited to, any mental deficiency, *epilepsy*, alcoholism or addiction to narcotic drugs;

“(3) The term ‘division’ shall mean the division of mental health of the department of health;

“(4) The term ‘commissioner’ shall mean the commissioner of the division of mental health, or any employee designated and appointed by the commissioner as a deputy, agent or representative of the commissioner;

“(5) The term ‘psychiatric hospital’ shall mean any state-owned or operated hospital or school for the care, treatment, training or detention of persons who are mentally ill and *which is under the supervision and control of the division of mental health*;

“(6) The term ‘patient’ shall mean any mentally ill person, 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 his mental illness, is under the supervision and control of any circuit or superior court of this state;

“(7) The term ‘superintendent’ shall mean the chief administrative officer of any psychiatric hospital, or any employee or duly qualified physician designated and appointed as a deputy, agent or representative of such superintendent; * * *” (Our emphasis)

It should be noted that Burns’ 22-4701, *supra*, includes epilepsy as a mental illness and would also seem to include the New Castle State Hospital within the definition of “psychiatric hospital” since that institution is under the control and direction of the Division of Mental Health of the Department of Health. (See Acts of 1953, Ch. 197, Sec. 205, as found in Burns’ (1957 Supp.), Section 60-2025.)

The exact question contained in your letter substantially is whether a court commitment of an epileptic person rendered under the provisions of Burns’ 22-2012, *supra*, who has not been admitted to New Castle State Hospital prior to the enactment of Acts of 1957, Ch. 359, *supra*, can be admitted without the re-examination of the person by a qualified physician.

May I draw your attention to Burns’ 22-4724, *supra*, providing as follows:

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“Rejected or suspended applications may be renewed from time to time by the clerk of the circuit court of the county from which such application was originally made, by simple reference to the original application, and may be accepted by the superintendent, if there be room for the patient for whom application is made; but the date of the renewal of the application and the date of the hearing to determine mental illness shall not differ by more than six [6] months.”

Also, please note Burns’ 22-4725, *supra*, providing as follows:

“If any person be adjudged mentally ill and is not admitted to a psychiatric hospital within six [6] months after the date of the hearing to determine mental illness, such person shall not be admitted to any such hospital unless the court of original jurisdiction shall have caused an examination to be made of the allegedly mentally ill person by a qualified physician, the report of which examination shall state that at the time of such examination the individual was mentally ill, and a suitable person for commitment to a psychiatric hospital. Such statement shall be filed and kept by the clerk of the court thereof, certified by him under the seal of the court, and shall be transmitted to the proper psychiatric hospital, and a copy of the same shall be sent to the friends or relatives of the patient. The transcript submitted to the superintendent shall be accompanied by an application for the admission of such patient to the hospital.”

Under the provisions of Burns’ 22-2012, *supra*, there is no stated period of time under which the order of commitment of an epileptic continues to be in full force and effect and no re-examination of the person is required prior to admission.

Thus, from the reading of the two statutes it appears there is a clear-cut conflict in the matter of the procedure for commitment and admission of a mentally ill person to New Castle State Hospital. The point of law raised by your letter is whether the later statute supersedes the prior statute and by implication repeals the same.

“When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict.”

Sutherland, *Statutory Construction*, 3rd Ed., Vol. 1, Sec. 2012, p. 463.

“The intent to repeal all former laws upon the subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things and relationships ordinarily associated with the subject. Legislation of this sort which operates to revise the entire subject to which it relates, by its very comprehensiveness gives strong implication of a legislative intent not only to repeal former statutory law upon the subject, but also to supersede the common law relating to the same subject. Therefore, the failure to set out former statutory provisions in a later comprehensive enactment will operate to repeal the omitted provisions which are inconsistent, and former provisions which are not repugnant to the later legislation as well. * * *”

Sutherland, *Statutory Construction*, 3rd Ed., Vol. 1, Sec. 2018, p. 475.

It is well settled within the State of Indiana that where later legislation is, (1) inconsistent and irreconcilable with prior legislation, and (2) covers the entire subject matter the later legislation impliedly repeals the prior statute providing the later legislation has the same object and purpose.

Where there is a conflict in the provisions of some act or between two acts or statutes passed at different times, the earliest in position or enactment is repealed by the later.

Stiers v. Mundy (1910), 174 Ind. 651, 92 N. E. 374.

Though repeals by implication are not favored, a statute is repealed by a new act embracing or repugnant to the entire subject matter of the old one.

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Frank v. City of Decatur (1910), 174 Ind. 388, 92 N. E. 173;

State v. Tuhey (1920), 189 Ind. 635, 128 N. E. 689.

It would appear that Acts of 1957, Ch. 359, *supra*, is comprehensive legislation since it relates to the commitment and admission of mentally ill persons to a state-owned and operated psychiatric institution and includes any mental illness or disease within its purview.

It is my opinion that Acts of 1957, Ch. 359, *supra*, impliedly repeals those provisions of Acts of 1905, Ch. 159, in conflict therewith, and does require a re-examination of an epileptic committed to New Castle State Hospital under the provisions of Acts of 1905, Ch. 159.

OFFICIAL OPINION NO. 16

May 19, 1959

Mr. Albert Kelly, Administrator
Department of Public Welfare of the
State of Indiana
141 S. Meridian Street
Indianapolis 25, Indiana

Dear Mr. Kelly:

This is in response to your letter of March 30, 1959, in which you have requested an Official Opinion in answer to the following question:

“Would the staff members of the several county departments of public welfare be entitled to receive travel allowance as mileage for the use and operation of their privately owned motor vehicles necessarily used in the discharge of their duties in a sum not to exceed ten cents (10¢) per mile, or would the mileage rate be limited to seven cents (7¢) per mile, as provided for state employees under Chapter 114 of the Acts of 1959?”