State Prison should be construed as a return to the custody of the warden or superintendent of the institution from which the inmate was paroled.


Such arrest and confinement would thus terminate the “dead time” and entitle the prisoner to credit on his original sentence for the time spent in such jail.

OFFICIAL OPINION NO. 26

June 29, 1959

Mr. Joe McCord, Director
Department of Financial Institutions
410 State House
Indianapolis 4, Indiana

Dear Mr. McCord:

This is written in answer to your letters of recent date requesting my Official Opinion concerning the interpretation of House Bill No. 43, being Ch. 110 of the Acts of 1959. Your letters set out five questions in regard to this recent enactment and each of these will be set out below and discussed in the order that it has been presented. All five of the questions concern Sec. 1, Ch. 110 of the Acts of 1959, which section in its entirety is as follows:

“SECTION 1. No instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be received for record or filing by the county recorder unless the name of the person who, and governmental agency, if any, which prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner. An instrument will be in compliance with this section if it contains a statement in the following form: ‘This instrument was prepared by (name).’
“This section does not apply to any instrument executed prior to the effective date of this section, nor to the following: any decree, order, judgment, or writ of any court; any will or death certificate; any instrument executed or acknowledged outside of this state.”

The first question you have set out is as follows:

“* * * would the name of the lending institution, whether it be a corporation, partnership, or an individual operating under a trade name satisfy the requirement in the Act that the name of the person who prepared the document be shown? If the name of the individual is required, would the name of a secretary, typist or other employee meet the requirements of the law?”

The answer to this first set of questions depends upon the construction of the word “person” as used in the act since the act itself does not contain any definition of “person” as used therein as is the ordinary practice when it is meant to extend to other than natural persons. 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns’ (1946 Repl.), Section 1-201, sets out the following criterion for the construction of the statutes of Indiana:

“The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

“First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.”

Accordingly, the courts of this state have held that the word “person” is in essence a technical word and does have an appropriate meaning in law and should be understood according to its technical import. So in Wood et al. v. Isgrigg Lumber Co. et al. (1919), 71 Ind. App. 64, 123 N. E. 702, the Appellate Court, quoting from Endlich, Interpretation of Statutes, §§ 87, 89, adopted the following general rule at page 66:
"* * * 'In its legal significance it is said the word "person" is a generic term and as such, prima facie, includes artificial as well as natural persons, unless the language indicates that it is used in a more restricted sense. * * *"

In construing the use of the word "person" in the Indiana statute of frauds, in Heintz v. Mueller (1897), 19 Ind. App. 240, 49 N. E. 293, the Appellate Court said at page 247:

"* * * The word person is a generic term, including both natural and artificial persons. It does not always in statutes embrace corporations, but where, as here, there is nothing in the subject-matter or in the context to indicate a purpose to use it in the limited sense of natural persons, and the object of the statute is fully subserved only by applying the general meaning and including therein artificial persons, this general application should be made. * * *"

So far as the purpose of the act is concerned, this office adopts the interpretation given by the Attorney General of the State of Ohio in his Opinion No. 5806 of an identical statute enacted in that state in 1955, which interpretation is succinctly set out at page 3 thereof as follows:

"* * * It would seem that the object of this legislation is two-fold, i.e., to afford information which would disclose instances of the unauthorized practice of law, and to fix the responsibility for such defects in instruments which may later become evident. I do not consider that we are here concerned with any question of what constitutes the unauthorized practice of law, for the statute in question is directed solely at the disclosure of the identity of persons who prepare instruments, rather than the regulation of their activities. Such disclosure would, of course, be more or less ineffectual unless the natural person concerned were named in the instrument."

Notwithstanding the conclusion stated in the last sentence above quoted, the Ohio Attorney General's Opinion held that "person" as used in the Ohio Act includes a corporation, but
only because Section 102 of the Revised Code of that State defines “person” to include a private corporation. Unlike Ohio, Indiana does not have a statute defining “person” which is applicable generally to all Indiana laws. Instead, Indiana statutes often define the term “person” to include a corporation but confine the applicability of such definition to the specific act containing such definition. Typical of this practice is the Acts of 1881 (Spec. Sess.), Ch. 38, Sec. 857, as found in Burns’ Indiana Statutes (1946 Repl.), Sec. 2-4701 (Fifth) which so defines the term in construing the civil procedure statute.

It is my opinion, therefore, that the object of this statute would not be “fully subserved” by applying the generic interpretation of “person” and would be, further, “repugnant to the intent of the Legislature.” That this interpretation is reasonable is further borne out in my opinion by the inclusion immediately after “person” of the phrase “and governmental agency, if any.” This appears to operate as an exemption factor in regard to the legislative objective to disclose the unauthorized practice of law for the individual who prepares the instruments which are within the purview of the Act pursuant to governmental authority and requirements.

Since the purpose of recording instruments is not only that of preservation but also the important function of notice to third persons, an instrument may not be properly recorded if it does not bear the name required by this statute. In the absence of the proper name, if such instrument were accepted for record, there may thereafter be presented some question as to whether such instrument constitutes constructive notice to third persons. If the name of the individual preparing the instrument is used, such practice could not possibly jeopardize the effect of such instrument as constructive notice to third persons, irrespective of the interpretation of “person” in this act by our Supreme or Appellate Court if such question should hereafter be presented for judicial decision. The practice of requiring the name of an individual or natural person will clearly protect the property interests of those concerned in any event, since “person” unquestionably includes natural persons.

Therefore, it is my opinion that the answer to your first question is that the name of a lending institution, whether it

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be a corporation, partnership, or an individual operating under a trade name, would not be enough, the name of the individual so preparing the subject instruments being the requirement of the act.

In regard to the second part of your first question, it is to be noted that it is the person who actually prepares the instrument whose name is required to be put thereon. The individuals you refer to here are merely scriveners or reproducers of another's actual preparation and in this regard are not to be considered as having prepared the instrument and, therefore, their names would not appear thereon.

The second question set out in your letters is as follows:

"* * * whether documents as covered by the above mentioned Act prepared by law firms would require the signature of the person who actually prepared the instrument or whether the name of the company or firm with which the person is connected would suffice."

This, of course, is answered to a large extent by the answer to your question one above. (Signature of and by the person who prepared the instrument is not a requirement of the act, but only the name of such person "either printed, typewritten, stamped, or signed in a legible manner." Further, such name need not be put on by such person.) By way of supplementa- tion to that answer it is here pointed out that even if "person" was used in its generic sense in Ch. 110 of the Acts of 1959, a law firm's name, the firm not being a corporate body or entity as that term is used in the law, would not meet the requirements of the act.

Therefore, it is my opinion in answer to your question two, that instruments which are the subject matter of this act, prepared by law firms, would require the name of the individual who actually prepared the instrument to be thereon.

Your third question is as follows:

"Is it necessary that the provision disclosing the name of the person who prepares the instrument be set forth on the note as well as on the lien instrument?"

When the note is separate and distinct from the lien instrument it merely represents an obligation or debt. The note does
not constitute any charge on real estate or personal property. 53 C. J. S. Liens § 1 a, p. 826, states it this way:

“In its broadest sense and common acceptation a lien is understood and used to denote a legal claim or charge on property, either real or personal, as security for the payment of some debt or obligation; a hold or claim which one person has on the property of another as a security for some debt or charge, although the property is not in the possession of the one to whom the debt or obligation is due. It includes every case in which personal or real property is charged with the payment of a debt. * * *”

In other words it is the lien instrument which creates the charge on the property and not the note.

Therefore, it is my opinion that the answer to your third question is that it is not necessary that the provision disclosing the name of the person who prepares the instrument be set forth on the note as well as on the lien instrument.

Your fourth question is as follows:

“Is it necessary that the name of a person preparing a release of a lien be set forth on such release? If so, is such required for statutory or marginal release of liens?”

Chapter 110 of the Acts of 1959 specifies that instruments which dispose of liens as well as create them on real estate or personalty shall contain the name of the person preparing the same. Where such release is marginal only and in compliance with the statutory provisions providing for such release and the requisite procedure therefor, it is my opinion that Ch. 110 of the Acts of 1959 would not be applicable.

Your last question concerning life insurance reads as follows:

“Is it necessary to place the name of the person who prepares an assignment of a life insurance policy on such assignment where the assignment is not recorded in the office of a county recorder?”
Of course, life insurance is personalty and the preparation of an assignment of the same would, if it was to be recorded, need to contain the name of the person preparing the same. But Ch. 110 of the Acts of 1959, applying only to those instruments which “shall be received for record,” would not apply to the assignment set out in your question.

In conclusion I would like to point out that it is not my intention by this Opinion to preclude inclusion on the instruments within the purview of Ch. 110 of the Acts of 1959 of the name of the lending institution, whether it be a corporation or not, any partnership, or trade name, inasmuch as the Act is primarily concerned with the disclosure of the individual responsible for the preparation of the instrument and the inclusion of the former names would further assist this objective.

OFFICIAL OPINION NO. 27

June 30, 1959

Honorable John R. Walsh
Secretary of State
State House
Indianapolis 4, Indiana

Dear Mr. Walsh:

This is in response to your request for an Official Opinion to answer a series of questions concerning the Acts of 1959, Ch. 224, an amendatory act, which inserts into the Indiana Securities Law (Acts of 1937, Ch. 120, Sec. 11, as amended, and as found in Burns’ (1957 Supp.), Section 25-839), the following:

“Every application made by a dealer shall be accompanied by the following:

“(1) A financial statement of the applicant showing assets and liabilities of the applicant, which statement shall accurately reflect the net worth of the applicant. The financial statement shall be attested to by the applicant if the applicant is an individual, or by a partner, director, manager or treasurer if the applicant is a