

**OPINION
44-79**

April 8, 1944 (OPINION)

PAROLES

RE: Authority to Grant

This is in reply to your recent letter submitting the following questions. I shall consider your questions in the order in which they appear:

1. Does the Superintendent of the School have authority to:
 - (a) Discharge inmates? Refuse to discharge when request is made?
 - (b) Parole inmates, and what authority or supervision does he have over parolees?
 - (c) What authority to revoke parole?

Under the provisions of section 2553 of the Compiled Laws as amended by chapter 142 of the Session Laws of 1937, it is the duty of the superintendent of the hospital and his staff to examine and observe such patients as have been committed to the institution. If they find that such patient is not insane, but requiring treatment and/or observation, the superintendent of the state hospital shall enter said patient into the care and custody of the hospital. If the superintendent finds that the patient is insane and should be in custody, such superintendent shall make a finding of insanity and notify the commissioners of insanity of the county of the patient's residence. Said statute further provides that the superintendent shall have the power and it shall be his duty to issue his finding to that effect and such finding shall have the same force and effect as a finding of insanity now provided by law.

While the statute does not state in so many words, yet the implication would be that if the superintendent and his staff should find that the patient is neither insane, nor requiring treatment or observation he would have the authority to discharge such patient after due notice of the insanity commission of the county of the patient's residence.

I find no statute authorizing the superintendent to parole an inmate and if he cannot parole, of course, it follows that he can not revoke the same.

2. What authority, if any, does the County Judge, as chairman of the insanity commission, have to order discharge or parole of inmates?

The Judge of the County Court has no authority in law independently to order a discharge or parole an inmate. The proceedings for discharge of a patient is found in section 2562 of the Compiled Laws, as amended by chapter 142 of the Session Laws of 1937.

The patient also has the right to proceed under habeas corpus proceedings and before a District Judge in the District Court in which the hospital is located. As you are aware, we had several hearings under this proceeding last year.

3. Do the provisions of section 2562 of chapter 142 of the 1937 Session Laws also apply to inmates of the Grafton State School as well as to inmates of the state hospital?

Chapter 142 of the Session Laws of 1937 amending section 2562 makes no reference to patients at the Grafton State School, and I am, therefor, of the opinion that it does not apply to such patients. I believe this is a situation where the maxim "inclusio unius est exclusio alterius" applies.

ALVIN. C. STRUTZ
Attorney General