

"A corporation organized under the provisions of this act or of any previous corporation act of this state may by amendment alter its articles in any respect; provided, that only such provisions shall be included or omitted by amendment as it would be lawful to include in or omit from original articles filed at the time of making such amendment or effect changes of shares as hereinafter provided for. * * * * *

The provisions of the foregoing section with respect to the amendment of articles of incorporation are exceedingly broad.

Under the circumstances with respect to the particular case which you present, the corporation apparently being a *de facto* corporation, the error having been obviously an inadvertence or oversight on the part of the incorporators and the Secretary of State in accepting the original articles for filing and the fact being that the amount of capital with which the corporation began business did comply with the law, it is my opinion that the proposed amendment may be filed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4812.

PRISONER—FOUND INSANE BEFORE CONVICTION AND COMMITTED TO LONGVIEW HOSPITAL—UPON REGAINING SANITY HE SHOULD BE RELEASED WHERE COMMITTING COUNTY FAILS TO TAKE PRISONER INTO CUSTODY WITHIN A REASONABLE TIME.

SYLLABUS:

1. *When a person accused of a crime is found insane before trial and is committed to the Longview Hospital at Cincinnati, Ohio, by virtue of Section 13441-2, General Code, the superintendent of such institution can release such person when he is restored to reason, but the proper authorities of the committing county must first be notified of such fact and given a reasonable time in which to take such person into custody.*

2. *A person committed to Longview Hospital by virtue of the provisions of Section 13441-2, General Code, on being restored to reason, is entitled to his discharge from said hospital by the superintendent of that institution when the proper authorities of the committing county fail or neglect within a reasonable time to take the accused into custody after being notified by the superintendent of that institution that the accused has been restored to reason.*

COLUMBUS, OHIO, Dec. 13, 1932.

HON. JOHN McSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

This will acknowledge receipt of your letter which reads in part as follows:

"Recently there was admitted to the Longview Hospital one F. L. by commitment under Section 13441-1 and 13441-2 G. C., by the Court of Common Pleas of Hamilton County following his arrest on a charge of forgery.

Is it sufficient that the superintendent notify the Common Pleas Court that the patient is not insane and give the court an opportunity to make other disposition of the case?

And should the committing court fail to take any action may the superintendent discharge the patient to go at large?"

Your first inquiry is fully answered by my opinion referred to in your letter, which opinion may be found in Opinions of the Attorney General for 1930, at page 389. The syllabus reads as follows:

"When a person accused of crime is found insane, before trial or after conviction, and committed to the Lima State Hospital under the provisions of Section 13441-2, General Code, the superintendent of such institution may release such person when he is restored to reason upon notifying the proper authorities of the county of such fact, and giving the authorities of the county a reasonable time to take such person in custody."

The fact that the commitment in that case was to the Lima State Hospital instead of to a general hospital for the insane, such as the Longview Hospital at Cincinnati, Ohio, does not alter or change the rule of law laid down in that opinion or the discussion had therein relative to the provisions of Section 13441-2, General Code. By virtue of the provisions of Section 13441-2, a court of common pleas is authorized to commit a person accused of a crime when found to be insane either before trial or after conviction to "an insane hospital *within the jurisdiction of the court*; provided, that if the court deem it advisable, it shall commit such person to the Lima State Hospital."

The Court of Common Pleas of Hamilton County, Ohio, in the criminal case referred to in your letter, committed the accused person before trial to the Longview Hospital, a hospital for the insane within the jurisdiction of that court. There can be no question but that the accused person in that case was committed to the proper hospital for the insane. See Sections 1947, 2018 and 13441-2, General Code.

The discussion at p. 391 of the Opinions of the Attorney General, supra, in reference to the applicability of the provisions of Section 1998 to the discharge of an insane person committed to the Lima State Hospital by virtue of the provisions of Section 13441-2, applies equally as well to the provisions of Section 2024, which reads as follows:

"At any time, an inmate of the institution may be discharged therefrom by the superintendent, with the consent of the directors. When an inmate of the hospital is cured, the superintendent shall discharge him forthwith, and may furnish him with suitable clothing and a sum of money not exceeding ten dollars, if deemed necessary. When pauper idiots and harmless incurable insane persons are discharged, the superintendent shall issue his warrant to a suitable person, which warrant must be substantially as follows:

The State of Ohio, Hamilton County, ss.:

The proper authority having directed the discharge of A. B., an inmate of Longview Hospital, you are hereby commanded to remove the inmate to the county infirmary.

Witness my hand and official seal this day of

A. D.,

A. B., Superintendent.

Section 2024, which provides that a person committed to Longview Hospital may be discharged by the superintendent with the consent of the directors of that institution and which further provides that the superintendent must forthwith discharge an inmate of the hospital who has been restored to sanity, is a general statute relating to the discharge of persons committed for insanity to that hospital. Section 13441-2, which was enacted after Section 2024, deals with the commitment of a special class of insane persons and is a special statute. That section comes within the rule of statutory construction that special statutes, and especially those that are enacted later than general statutes, control and prevail over the latter statutes. This rule of statutory construction is stated in the first paragraph of the per curiam opinion of the Supreme Court of Ohio in the case of *State ex rel., Steller vs. Zangerle*, 100 O. S. 414, as follows:

“A special statute covering a particular subject-matter must be read as an exception to a statute covering the same and other subjects in general terms.”

Therefore, in specific answer to your first inquiry, it is my opinion that when a person accused of a crime is found insane before trial and is committed to the Longview Hospital at Cincinnati, by virtue of the provisions of Section 13441-2, General Code, the superintendent of that institution may discharge such person when he is restored to reason, but the discharge or release of such a person from the hospital should not be made until the proper authorities of the committing county are notified of that fact and are given a reasonable time in which to take such person into custody.

Your second inquiry relates to what disposition should be made by the superintendent of the Longview Hospital of a person accused of a crime who has been committed to that institution as provided by Section 13441-2, when the proper authorities of the committing county fail or neglect, within a reasonable time, to take such person in custody after being notified by the superintendent of the Longview Hospital that such person has been restored to reason.

Although Section 13441-2 expressly provides that when a person committed to a hospital for the insane by virtue of that section is restored to reason he “should be proceeded against as provided by law,” that phrase cannot be construed as authorizing the superintendent of a hospital for the insane to keep a person accused of a crime confined therein after he has been restored to sanity. That section, in conjunction with Section 2024, only authorizes the superintendent of a hospital for the insane to keep in confinement for a reasonable time a person accused of a crime whose sanity has been restored, so as to enable the proper authorities of the committing county to take such person into custody.

An accused person who has been restored to reason cannot be kept in a hospital for the insane when the proper authorities of the committing county, after being notified by the superintendent of the hospital, fail or neglect after the lapse of a reasonable time to take such person in custody, since there is no statute which empowers a superintendent of a hospital for the insane to confine in such an institution a person who is sane. In fact, Section 2024 specifically provides that the superintendent of Longview Hospital shall forthwith discharge from that hospital a person who is sane. Of course, the provisions of that section with respect to the immediate discharge of a sane person is subject to the limitations previously stated herein when the confined person has been committed to that hospital by virtue of the provisions of Section 13441-2. There

is no statute or procedure whereby the superintendent of the Longview Hospital can convey or return to the proper authorities of the committing county a person accused of a crime who is restored to reason, so that the accused can be tried as required by Section 13441-2.

However, it must be borne in mind that the discharge of a person from a hospital for the insane, who has been committed thereto before trial by virtue of the provisions of Section 13441-2, by the superintendent of such institution, on the failure of the proper authorities to take the accused into custody is not a bar to the prosecution of that person on the criminal charge pending at the time the accused was committed to a hospital for the insane.

Specifically answering your second question, I am of the opinion that a person committed to Longview Hospital by virtue of the provisions of Section 13441-2, General Code, on being restored to reason, is entitled to his discharge from said hospital by the superintendent of that institution when the proper authorities of the committing county fail or neglect within a reasonable time to take the accused into custody after being notified by the superintendent of that institution that the accused has been restored to reason.

Respectfully,

GILBERT BETTMAN.

Attorney General.

4813

LIGHTING—ASSEMBLY HALLS NEED NO OTHER ILLUMINATION
THAN ELECTRIC CURRENT.

SYLLABUS:

The language of sections 12600-35 and 12600-67, General Code, does not require that provision be made for artificial illumination in buildings containing auditoriums or assembly halls other than that created by the use of electric current.

COLUMBUS, OHIO, December 14, 1932.

HON. T. A. EDMONDSON, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of a request for my opinion from Edgar W. Brill, Chief of the Division of Factory and Building Inspection in your department, which reads in part as follows:

“Under ‘Theaters and Assembly Halls,’ Section 12600-35 takes up the electrical work and lighting. One paragraph specifies that lights in certain named localities ‘shall remain lighted.’

Under ‘School Buildings,’ Section 12600-67 considers electric lighting and states certain places ‘shall be adequately lighted at all times when the building is occupied after dark.’

It is desired to have your opinion as to what is the meaning or intent of the words ‘remain lighted’ and ‘lighted at all times’ with the accompanying context.

The question has been put up to me. As far as I know, no effort has been made by my predecessor to have provision made against darkness in the specified places on failure of the normal electric current while the building is occupied.”