

File No. 12402 Continued.

Answering the questions presented on the third page of Dr. Wilkin's Letter, in their order, I beg to say:

1. That in my opinion Section 144 of the Charter does limit the transfer by the Jail Board to cases of drunkenness and disorderly conduct.

2. The words "or in any case" do not suffice to give authority for the transfer of persons committed by a Magistrate for any minor offense, such as disturbing the peace or assault, but those words are intended and should be narrowed by "the charge of drunkenness or disorderly conduct."

3. The intention of the Legislature as expressed in Section 120-A (Chapter 412, Acts 1898), is to state therein a general rule of procedure for the removal of insane convicts from the City Jail, and this Section should be given its full scope.

4. The Judge of the Criminal Court is given expressly certain powers in relation to all convicts in the City Jail. I do not see anything in Section 120-A to exclude from the Judge of the Criminal Court jurisdiction over convicts sent to Jail by Police Magistrates.

5. As to the responsibility of the Warden for the safekeeping of prisoners, and whether that responsibility ceases with the removal of prisoners from the Jail, under Section 144, I have not deemed it necessary to investigate this question at great length, as it is purely a moot question, at this time. I should be inclined to think, however, that the liability of the Warden would extend to the case of prisoners unlawfully removed from the City Jail, although such unlawful removal might have been made under color of authority of Section 144.

You will understand that this question would hardly seem to come under the jurisdiction of this Department. It has apparently been passed on by the State's Attorney's Office, (see letter of Deputy State's Attorney of November 1st 1910, herewith enclosed.) But as you have referred the matter to me for an opinion, I beg leave to advise as above.

Very truly yours,

(Signed)

W. H. DeG. Wright.

Assistant City Solicitor.