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STATE ELEEMOSYNARY INSTITUTIONS: If county court finds patient in state hospital has not sufficient property to keep said patient as a private patient, such finding is final; (2) Father not compelled by law to maintain son in state hospital but may reimburse county if he so desires; (3) County Court cannot pay members of County Old Age Assistance Board.

February 24, 1936.

Hon. Glen W. Huddleston,  
Prosecuting Attorney,  
Carroll County,  
Carrollton, Missouri.



Dear Sir:

This department is in receipt of your letter of February 16 wherein you request an opinion on three questions, which we shall attempt to answer in the order presented.

I

"Does the County Court of a county have the power to send a patient to a state institution as a county patient, if the patient has some property but not sufficient property to keep him as a private patient in said institution for any length of time?"

Section 8653, R.S. Mo. 1929, relating to pay patients becoming county patients, provides:

"If the county court of the proper county shall so order, the clerk thereof shall transmit to the superintendent a certificate, under his official seal, setting forth that any patient in a state hospital has not estate sufficient to support him at the asylum. Upon receipt of such certificate by the superintendent, such person shall be a county patient of such county, and shall be supported by such county, as provided by this article in the cases of poor patients."

Section 8654, R.S. Mo. 1929 relates to county patients becoming pay patients, and is as follows:

"If the county court of the proper county shall so order, the clerk thereof shall transmit to the superintendent a certificate, under his official seal, setting forth that any county patient in the state hospital from his county has sufficient estate to support and maintain him at the hospital. After the receipt of this certificate, the patient shall be a pay patient; and in such cases, charges shall be made out and paid and a bond shall be required and executed as in all other cases of pay patients; and upon a failure thereof, after reasonable delay, the superintendent shall discharge such patient in the manner as provided in this article in case of poor persons."

Section 8653, supra contains the words "has not estate sufficient to support him at the asylum", while Section 8654, supra, contains the words "has sufficient estate to support and maintain him at the hospital".

Section 8664, R.S. Mo. 1929 construes the terms "insane poor" or "indigent insane" and is as follows:

"The words 'insane' and 'lunatic', as used in this chapter, shall be construed as including every species of insanity or mental derangement. The terms 'insane poor' or 'indigent insane', when applied to a person without a family, shall mean one whose property of all kinds does not exceed, after payment of his debts and liabilities, that which is exempted by the laws of this state from attachment and execution when owned by any person other than the head of a family; and the same words, when applied to a person having a family, shall mean one whose property of all kinds does not exceed, after payment of his debts and liabilities, that which is exempted by the laws of this state

from attachment and execution when owned by the head of a family; Provided, that when the said words are applied to a married woman, her separate estate, if any, and that of her husband shall be estimated as aforesaid, and the total amount of both estates shall determine the question aforesaid, whether she be a 'poor' person or not, within the meaning of this chapter. A person with a family is one who has a wife and child, or either; county patients are those supported in a state hospital at the expense of the counties sending them; pay or private patients are those supported in the hospital by their family or friends, or from the proceeds of their own property. Every word in this chapter importing the masculine gender shall extend and be applied to females as well as males; and any word importing the singular number only, or the plural number only, may be applied to one person or thing as well as to several persons or things."

Thus, it will be noted that an insane patient has the same exemptions as are applied to persons claiming exemptions under executions and attachments.

The amount of property, or the sufficiency of the patient's estate, as mentioned in your letter, is a question of fact. If the patient has sufficient estate over and above the exemptions as construed by Sec. 8664, supra, we are of the opinion that such excess could be used until exhausted for the payment of such patients maintenance at the state insane asylum. However, the finding of the county court will prevail, as was said in the case of The State ex rel. Yarnell v. The Cole County Court, 80 Mo., l.c. 82-83:

"The circuit court ruled in favor of defendant, refused to make the writ peremptory, and from this action of the court the plaintiff has appealed, and assigns for error, among other things, the refusal of the court to receive in evidence the order of the county court of Cole County made in the matter of making McGirk a patient of Cole County in the State Lunatic Asylum,

which order is as follows: 'Ordered by the court that Z.T. McGirk become a county patient at the lunatic asylum from this date.' The date of the above order is August 30th, 1880. It was objected to on the ground that it was a nullity, because the statute was not complied with in making it.

"The statute authorizing a pay patient confined in the asylum to be made a county patient, provides as follows: 'If the county court of the proper county shall so order, the clerk thereof shall transmit to the superintendent a certificate under seal setting forth that any patient in the asylum has not sufficient estate to support him at the asylum. Upon the receipt of such certificate by the superintendent, such person shall be a county patient of such county, and shall be supported by such county as provided in the cases of poor patients.' R.S. 1879, Sec. 4140. As this section conferred jurisdiction upon the county court over the subject matter, and invested it with full power to make a pay patient a county patient, the order made by the court and offered in evidence cannot be said to be a nullity. It may be irregular, but that does not make it void. It is the fact that the pay patient has not estate sufficient to support him at the asylum that authorizes the county court to make him a county patient, to be supported at the expense of the county; and we can indulge the presumption that the court found this fact to exist and based its order upon it. This order, if certified to the superintendent, would be as binding on the county as a certificate of the clerk stating that he had been ordered by the court to certify that such pay patient had not estate sufficient to support him.

"The fact that McGirk, then a citizen of Cole County, was placed in the lunatic asylum in July, 1880, as a pay patient, is not controvertible, and in no way dependent on the question whether his

sanity at the inquest of lunacy was tried by six or twelve jurors. While such a question might affect the regularity of the action of the probate court in appointing a guardian, it cannot affect the fact that he was confined in the asylum as a pay patient, nor the fact that he was subsequently, by the order of the county court, made a county patient. We will, therefore, in the disposition of the case, consider the order as being sufficiently efficacious to make said McGirk a county patient of Cole County from the time it was made."

In view of the foregoing, it is the opinion of this department that if the county court finds a patient has not sufficient property to keep him as a private patient in a state hospital, such finding is final and conclusive.

## II

"Does the County Court of a county have the power to send a person just over the age of 21 to a state institution as a county patient if the person has no money, or estate in his own name, but the person's father does have sufficient money to keep the person in the state institution as a private patient and does pay the county for the amount expended by the county on the person as a county patient?"

A father is not compelled by law to maintain a son in a state hospital; hence, by reimbursing the county for its expenditures for the maintenance of the patient, it inures to the gain of the county financially. An opinion covering this question was rendered by this department on October 29, 1935 to Honorable W. Ed Jameson, President of the Board of Managers of the State Eleemosynary Institutions, copy of which is enclosed. We believe this opinion properly answers your question.

III

"Can a county court legally pay the members of the County Old Age Assistance Board if it wants to, regardless of the provision in the Old Age Assistance Law to the effect that the County Board shall serve without compensation?"

On January 28, 1936 this department rendered an opinion to the Honorable G. Logan Marr, Prosecuting Attorney of Morgan County, Versailles, Mo. in which the question of compensating members of the County Old Age Assistance Board is discussed. A copy of said opinion is enclosed herewith, which we believe properly answers your question.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General.

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