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Smith
COUNTY COURTS: (1) Cannot organize firm, partnership or corporation for purpose of operating convalescent home or poor farm; (2) may contract for care of poor with private individuals.

September 12, 1945



Hon. Elmer Peal
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri

Dear Sir:

We acknowledge receipt of your letter of August 27, 1945, in which you request an official opinion from this department. Your letter reads as follows:

"Please give us an opinion as to the creation, or setting up, of "A convalescent, nursing shelter or boarding home for aged, chronically ill or incurable persons within this State without having first obtained a license so to do from the State Board of Health of Missouri. The word person as used in this Act, shall include members of any firm, partnership or association and a corporation and any or all of the officers, managers or board of directors thereof." (Sec. 1, S. B. 142, 1941 Session's Act - Page 368.)

"Section 2 provides that nothing in the Act shall apply to any institution established, maintained or operated by the State, county, city, town or village thereof.

"Does this section preclude any County from organizing a firm, partnership, association Corporation, and then sell or lease a County pauper farm to this form, partnership association or corporation for the purpose of establishing and operating a convalescent home?"

"All the above plan for the distinct purpose of obtaining financial help from the Social Security Commission, in the maintenance of the present County home, which financial help is not now available for the upkeep of the pauper farm.

"Would this be an illegal evasion of the law regarding this matter?

"Our present pauper farm set-up is a heavy burden on the tax payers and any financial help would be appreciated by these same tax payers."

Section 9590, R. S. Mo. 1939, provides as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 9591, R. S. Mo. 1939, provides as follows:

"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law and able to maintain them, shall be deemed poor persons."

Section 9593, R. S. Mo. 1939, provides as follows:

"The county court of each county, on the knowledge of the judges of such tribunal, or any of them, or on the information of any justice of the peace of the county in which any person entitled to the benefit of the provisions of this article resides, shall from time to time,

and as often and for as long a time as may be necessary, provide, at the expense of the county, for the relief, maintenance and support of such persons."

Section 9594, R. S. Mo. 1939, provides as follows:

"The county court shall at all times use its discretion and grant relief to all persons, without regard to residence, who may require its assistance."

Section 9596, R. S. Mo. 1939, provides as follows:

"The several county courts shall have power, whenever they may think it expedient, to purchase or lease, or may purchase and lease, any quantity of land in their respective counties, not exceeding three hundred and twenty acres, and receive a conveyance to their county for the same."

Section 9597, R. S. Mo. 1939, provides as follows:

"Such county court may cause to be erected on the land so purchased or leased a convenient poorhouse or houses, and cause other necessary labor to be done, and repairs and improvements made, and may appropriate from the revenues of their respective counties such sums as will be sufficient to pay the purchase money in one or more payments to improve the same, and to defray the necessary expenses."

Section 9598, R. S. Mo. 1939, provides as follows:

"Whenever such poorhouse or houses are erected, the county court shall have power to appoint a fit and discreet person to superintend the same and the poor who may be kept thereat, and to allow such superintendent a reasonable compensation for his services."

Section 9600, R. S. Mo. 1939, provides as follows:

"The county court shall have power to make all necessary and proper orders and rules for the support and government of the poor kept at such poorhouse, and for supplying them with the necessary raw materials to be converted by their labor into articles of use, and for the disposing of the products of such labor and applying the proceeds thereof to the support of the institution."

Section 9601, R. S. Mo. 1939, provides as follows:

"The several county courts shall set apart from the revenues of the counties such sums for the annual support of the poor as shall seem reasonable, which sums the county treasurers shall keep separate from other funds, and pay the same out on the warrants of their county courts."

Section 9603, R. S. Mo. 1939, provides as follows:

"It shall be the duty of the superintendent of the poor, or poor farm, as provided for in this article, to keep a book furnished by the county court, and enter therein a book account of all business transactions had or done or caused to be

done by him as superintendent. Said book shall show an itemized account of all farm products, stock and other articles sold by the superintendent or by his authority, and of all articles purchased for the use of the poor, or for the use or improvement of the poor farm or the buildings thereon, and of all expenses for farm labor and other work or services done by order or contract of the superintendent, and of such other items as may be ordered kept therein by the county court."

In the aforesaid sections the Legislature has provided a complete plan and authorization for the county courts to provide for the relief, maintenance and support of aged, infirm, lame, blind and sick persons who are unable to support themselves, and there are no other persons required by law and able to maintain them.

In *Lancaster v. County of Atchison*, 180 S. W. (2d) 706, l. c. 708, the court held:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' *Sturgeon v. Hampton*, 88 Mo. 203, loc. cit. 213. Quoted with approval in the case of *Morris et al. v. Karr et al.*, 342 Mo. 179, 114 S. W. 2d 962, loc. cit. 964."

The fact that the Legislature has set out this complete plan and authority for the county courts to take care of the poor people in their jurisdiction would eliminate any proper implication that any other method was intended by the Legislature for the caring for and maintenance of the poor in the counties of the state of Missouri.

Section 23, of Art. VI, of the Constitution of Missouri of 1945, provides as follows:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

The above constitutional provision would preclude any county from owning or subscribing for stock, or from the lending or granting of any public money or thing of value in the aid of any corporation, association or individual, unless otherwise provided in the Missouri Constitution; and there are no provisions for the county to organize a firm, partnership, association or corporation, for the purpose of establishing and operating a convalescent home.

Section 9854.2, R.S.A. Mo. (Laws of 1941, p. 368, Sec. 2) provides as follows:

"The term 'convalescent', 'nursing', 'shelter', 'lodging', and 'boarding' home for the aged, chronically ill or incurables shall mean any place in which three or more aged, chronically ill or incurable persons, not related by blood or marriage to the owner, operator or manager of said place, are received, kept and provided with food, or shelter and care for hire or compensation, however paid: provided that nothing in this Act shall apply to any institution established, maintained or operated by the State or any county, city, town or village thereof."

The provisions of the above section are declaratory of the fact that no institution established, maintained or operated by the state or any county, city, town, or village

thereof, shall be required to be licensed under the provisions of the act regulating the homes for aged or ill persons.

Section 9607, R. S. Mo. 1939, provides as follows:

"The four preceding sections shall not apply to any county where the support and keeping of the poor is let out by contract, nor to any county where the superintendent rents or leases the poor farm and stocks the same and furnishes the necessary farm implements used thereon at his own expense, and carries on said farm at his own expense."

Under the provisions of Section 9607, supra, it appears that the county courts may, in their discretion, contract for the support and keeping of the poor with private individuals. But, in such case, it would be necessary for a private individual to be regulated and licensed under the provisions of Article 7, "Homes for Aged or Ill Persons," Section 9854.1 to Section 9854.7, R.S.A. (Laws of Mo. 1941, p. 368, et seq.).

CONCLUSION

Therefore, it is the opinion of this department that (1) a county court cannot organize a firm, partnership, association or corporation for the purpose of selling or leasing a county poorhouse for the purpose of establishing and operating a convalescent home; that (2) a county may contract with private individuals for the support and keeping of the poor.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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