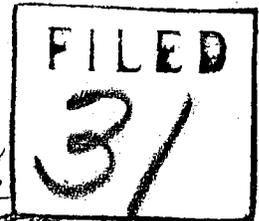


**PROSECUTING ATTORNEYS:** In proceedings contemplated by Chapter 202, RSMo 1949, no specific duties placed upon prosecuting attorneys to prepare initial papers seeking commitment of persons to State hospitals, except under Sec. 202.710, RSMo 1949, providing for initiating of criminal sexual psychopath hearings. In other cases, prosecuting attorneys' interest must stem from interest of county and State, and their services must be reserved to protect such interests.

July 23, 1959

*See 10-1961 letter to  
Boulware dated July 7, 1961  
holding sheriff must file & is represented by  
Honor. Patrick O. Freeman, Jr. Pros. Atty who  
prepares petition*

Honorable Patrick O. Freeman, Jr.  
Prosecuting Attorney  
Oregon County  
Thayer, Missouri



Dear Sir:

This opinion is rendered in reply to your request reading as follows:

"As Prosecuting Attorney of Oregon County, I am often called upon to prepare all of the proceedings in Probate Court to have people declared insane and also to prepare both Voluntary and Involuntary Commitments to Mental Institutions, both public and private.

"I have performed these services free gratis as Prosecuting Attorney whether there was crime involved or not.

"I would therefore appreciate an opinion from your office regarding whether or not it is the duty of the Prosecuting Attorney of a County of the 4th class to prepare all insanity proceedings and hospitalization commitments both in cases involving crime and not involving crime."

Sections 56.010 to 56.620, RSMo 1949, as amended, pertain to prosecuting attorneys generally over the State, and such official in a fourth class county is governed by the statutes cited. Attention is directed to applicable provisions thereof.

Section 56.060, RSMo 1949, provides, in part, as follows:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute

Honorable Patrick O. Freeman, Jr.

"forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county;  
\* \* \*"

Section 56.070, RSMo 1949, provides, in part, as follows:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. \* \* \*"

Section 56.080, RSMo 1949, provides as follows:

"In all criminal cases where any person or persons are brought up on writs of habeas corpus before a judge of any court of record, it shall be the duty of such attorney to attend upon the hearing of such application on behalf of the state."

Section 56.090, RSMo 1949, provides as follows:

"No magistrate or judge of a court of record having jurisdiction shall allow any such cases as are alluded to in sections 56.070 and 56.080 to be tried before him, unless the prosecuting attorney shall be present, or some one properly qualified to prosecute for him; and it shall be the duty of any magistrate, before trying such cases as are alluded to in sections 56.070 and 56.080, to give due notice to the prosecuting attorney."

Section 56.100, RSMo 1949, provides as follows:

Honorable Patrick O. Freeman, Jr.

"The prosecuting attorney shall, without fee, give his opinion to any magistrate court, and to any county court, or to any judge thereof, if required, on any question of law in any criminal case, or other case in which the state or county is concerned, pending before such court or officer."

Sections 56.060 to 56.100, RSMo 1949, quoted above, clearly disclose the general duties of the prosecuting attorney in representing the state and county where interests of either political body are concerned.

We now consider whether competency proceedings under general or special statutes are such as to create a state or county interest requiring a prosecuting attorney to hold himself available to render services to the state or county in such proceedings.

In State ex rel. Terry v. Holtkamp, 330 Mo. 608, 51 S.W.(2d) 13, the Supreme Court of Missouri alluded to the character of a lunacy proceeding in the following language found at 330 Mo. 608, l.c. 622:

"A lunacy proceeding is a civil, as distinguished from a criminal, proceeding; yet it is a proceeding in personam by the State; the public is interested in the welfare of the person alleged to be insane."

In State ex rel. Wilkerson v. Skinker, 344 Mo. 359, 126 S.W. (2d) 1156, the Supreme Court of Missouri described lunacy proceedings in the following language found at 344 Mo. 359, l.c. 370,371:

"But it is also true that in these lunacy proceedings, the State, as parens patriae--the community--society--has an interest, both to protect the insane person and to protect the public from possible injury and to the end that such person may not, through mental incapacity, waste his estate and become a charge upon the public."

To emphasize the interest of the public in lunacy proceedings, we quote the following from State ex rel. Paxton v. Guinotte, 257 Mo. 1, l.c. 11,12,16:

Honorable Patrick O. Freeman, Jr.

"Who are the parties in interest in an inquest de lunatico under our statute? Manifestly, (a) the public at large, that it may not suffer in person or property from the dangerous vagaries or mania of the individual alleged to be of unsound mind, and for that such person by a dissipation of his property, may not become a charge upon the public purse, and (b) the person whose mind is under suspicion, the alleged crazy person, that he may not suffer from the detention of his property or person in the custody of another. \* \* \* If then it be that the interest of the petitioner in the case (costs which our statute regulates excepted), is thus but negligible, it would seem to follow that when an inquest touching the sanity of a person is thus begun in this State under our statute, the interest of the petitioner being found in the ancient history and logic of the case to be utterly subordinate to the interest of the public and to that of the person under inquiry, the petitioner may not dismiss the inquest unless the probate court consent."

The statutes cited above disclose the duty imposed upon a county prosecuting attorney to represent the state and county in civil as well as criminal proceedings in which such political bodies have an interest. The case law cited above discloses in a general way how the state and county are interested in competency proceedings.

The request for this opinion points the inquiry to "insanity proceedings and hospitalization commitments both in cases involving crime and not involving crime," but by telephone communication with the person requesting this opinion, the inquiry is narrowed to a consideration of proceedings contemplated by Chapter 202, RSMo 1949, as amended.

Chapter 202, RSMo 1949, as amended, treats subject headings of (1) Division of Mental Diseases and State Hospitals, (2) Missouri State Schools, (3) State Aid to County and City Hospitals, (4) Criminal Sexual Psychopaths, and (5) Commitment and Hospitalization of Mentally Ill.

Honorable Patrick O. Freeman, Jr.

Treatment will first be given to the subject heading, Commitment and Hospitalization of Mentally Ill, found at Sections 202.780 to 202.870, RSMo Supp. 1957. In referring to statutes in this subject heading, all references are to RSMo Supp. 1957. Section 202.780 defines a "mentally ill individual" as "an individual having a psychiatric or other disease which substantially impairs his mental health who may or may not be legally insane." Section 202.863 provides that "patients admitted to the state hospitals under the provisions of this law shall be classified as private patients or as county patients." Patients to be admitted to the state hospitals under this law are further classified as voluntary (Section 202.783) and involuntary (Section 202.793), the latter being admitted under four different procedures described in Section 202.793 as follows:

- "(1) Hospitalization on court order, judicial procedure;
- (2) Hospitalization on medical certification, standard nonjudicial procedure;
- (3) Hospitalization on medical certification, emergency procedure;
- (4) Hospitalization without indorsement or medical certification, emergency procedure."

Section 202.797 outlines the various steps to be taken to obtain hospitalization on medical certification, standard nonjudicial procedure, listed at (2) above. In such statute, we find no duties imposed upon the prosecuting attorney of the county. Section 202.800 outlining procedures resulting in hospitalization on medical certification, emergency procedure, listed at (3) above, imposes no duties on the prosecuting attorney. Section 202.803 outlines procedure for hospitalization without medical certification, emergency procedure, listed at (4) above, without prescribing any duties for the prosecuting attorney. Section 202.807 outlines procedure for hospitalization on court order, judicial procedure, listed at (1) above. This procedure is initiated by filing of an application with the probate court by a "friend, relative, spouse, or guardian of the individual, or by a licensed physician, a health or public welfare officer, or the head of any public or private institution in which such individual may be." Under this procedure, the statute provides that "an opportunity to be

Honorable Patrick O. Freeman, Jr.

represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel, the court shall appoint counsel." In this procedure in the probate court, we find no duties placed upon the prosecuting attorney.

Once a person is about to be hospitalized under any of the four procedures described in the preceding paragraph and set forth in Sections 202.797, 202.800, 202.803 or 202.807, we find that under Section 202.813, provision is made for such person to be hospitalized as a "county" patient. This is accomplished by a request being directed to the county court, or the probate court if the individual to be hospitalized is a resident of the city of St. Louis or a class one county, by "a person having a proper interest in the individual's hospitalization." In this procedure, we note an absence of any statutory provision placing duties upon the prosecuting attorney to file an application to have the person declared to be a county patient. However, once the person to be hospitalized is designated as a "county patient," the interest of the county is apparent, and, if called upon, the prosecuting attorney should advise the county court in reaching its decision upon such issue. Under certain circumstances, as provided in Section 202.823, we note that persons hospitalized in state institutions under this law may be transferred to facilities maintained by an agency of the United States, but such statute also provides:

" \* \* \* No person shall be transferred to an agency of the United States if he is confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of mental illness unless prior to transfer the court originally ordering confinement of such person enters an order for the transfer after appropriate motion and hearing. \* \* \* "

In the preceding quotation from Section 202.823, we find abundant reason for a prosecuting attorney to remain aloof from initial proceedings seeking hospitalization of persons under this particular law in order that he may at all times be in a position to impartially represent the county. Therefore, in review of this particular subject heading of Chapter 202, RSMo 1949, as amended (Secs. 202.780 to 202.870, RSMo Supp. 1957) entitled "Commitment and Hospitalization of Mentally Ill," we find no statutory duty imposed upon prosecuting attorneys to prepare original papers looking to the initial hospitalization of persons as provided by such

Honorable Patrick O. Freeman, Jr.

law. The proceedings authorized by this law are not to be considered as dependents upon guardianship proceedings set forth in Chapter 475, RSMo Supp. 1957.

Next, we discuss the subject heading entitled "Division of Mental Diseases and State Hospitals" found in Chapter 202, RSMo 1949, as amended, at Sections 202.010 to 202.580, RSMo 1949, as amended. In this group of statutes, procedures for commitment to state hospitals are available for voluntary and involuntary commitment of drug addicts. Voluntary commitment is effected under procedures outlined in Section 202.370, RSMo 1949, and under such statute no duties are placed upon prosecuting attorneys to aid in initiating such procedures. Involuntary commitment of drug addicts after hearing is initiated by information "signed by any resident of the county of such person's residence and filed with the probate court thereof." Here, we find no duty placed upon the prosecuting attorney to aid in initiating such involuntary proceedings. Under Sections 202.450 and 202.470, RSMo 1949, indigent sane persons are entitled to diagnosis, treatment and temporary care at any state hospital upon proper certification from the county court. While this procedure spells out no duties to be performed by the prosecuting attorney, the county court may call upon him for such advice and assistance as it may need in the premises, such service to be rendered in compliance with his general duties found in Chapter 56, RSMo 1949, and pointed out in the forepart of this opinion.

The third subject heading in Chapter 202, RSMo 1949, to be discussed is "Missouri State School" found in Sections 202.590 to 202.660, RSMo 1949. Admission to units of this state school is provided for in Section 202.610, RSMo 1949, reading as follows:

"1. There shall be received and gratuitously supported in the Missouri state schools, feeble-minded and epileptics residing in the state who, if of age, are unable, or if under age, whose parents or guardians are unable to provide for their support therein, and who shall be designated as state patients. Such additional number of feeble-minded and epileptics, whether of age or under age, as can be conveniently accommodated, shall be received into the school by the division of mental diseases on such terms

Honorable Patrick O. Freeman, Jr.

"as shall be just; and shall be designated as private patients.

2. Feeble-minded and epileptics shall be received into the school only upon the written request of the persons desiring to send them, stating the age, place of nativity, if known, Christian and surname, the town, city or county in which such persons respectively reside, and the ability of the respective parents or guardians or others to provide for their support in whole or in part; and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the patients and the persons requesting their admission; which statement, in all cases of state patients, must be verified by the affidavit of the petitioners and of two disinterested persons, and accompanied by the opinion of two qualified physicians, all residents of the same county with the patient, and acquainted with the facts and circumstances stated, and who must be certified to be credible by the county court of that county, or, in the case of the city of St. Louis, by the hospital commissioner or the assistant hospital commissioner of said city; and such county court, or, in the case of the city of St. Louis, the comptroller of said city, must also certify, in each case, that such patient is an eligible and proper candidate for admission to the colony.

3. State patients, whether of age or under age, may also be received into the colony upon the official application of any judge of a court of record; provided, that the county in which such state patients as are now inmates of said school, resided when they were admitted, and the county wherein such state patients herein admitted may reside at the time of such admission, shall be liable for and shall pay into the treasury of said school the sum of

Honorable Patrick O. Freeman, Jr.

"five dollars per month for each of such state patients."

Under paragraph 2 of Section 202.610, supra, we note that feeble-minded and epileptics are to be received into the school only upon written request of the persons desiring to send them, be they parents, guardians or others. Those who are to be admitted to the school as "state" patients will have a portion of their cost of care, to the amount of five dollars per month, paid by the county of their residence. Throughout this law, Sections 202.590 to 202.660, RSMo 1949, we find no specific duties placed on the prosecuting attorney to aid in obtaining initial commitment. However, we do find the interest of the county present when costs are to be defrayed to any extent by the county. This demonstrates that the prosecuting attorney must reserve his services for the benefit of the county court.

The fourth subject heading in Chapter 202, RSMo 1949, to be discussed is "State Aid to County and City Hospitals," found in Sections 202.670 to 202.690, RSMo 1949. Under these statutes, we are not concerned in any way with admission to hospitals and no duties of the prosecuting attorneys are apparent.

The fifth subject heading in Chapter 202, RSMo 1949, to be discussed is "Criminal Sexual Psychopaths," found at Sections 202.700 to 202.770, RSMo 1949. Under Section 202.710, RSMo 1949, these proceedings are to be initiated by petition filed by the prosecuting attorney either on his own information or on information furnished to him by other persons. To the extent that this group of statutes places definite duties upon the prosecuting attorney, he is obliged to carry out those duties, but only to that extent. Otherwise, his interest in the proceedings is to be weighed in relation to the county's interest and to that extent his services are available to the county. The person to whom the inquiry under these statutes is directed is, by Section 202.730, RSMo 1949, entitled to counsel, thus demonstrating that subsequent to filing the original information, the prosecuting attorney does not represent the person informed against or those interested in him.

#### CONCLUSION

It is the opinion of this office that in all proceedings contemplated by Chapter 202, RSMo 1949, as amended, no specific duties

Honorable Patrick O. Freeman, Jr.

are placed on prosecuting attorneys in preparing initial papers looking to commitment of persons to state hospitals, except where they are charged with the duty to file informations under Section 202.710, RSMo 1949, initiating criminal sexual psychopath hearings. In all other cases contemplated by Chapter 202, RSMo 1949, the interest of the prosecuting attorneys must stem from the interest of the county and state, and their services are to be reserved to protect such interests.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

JLO:M:om