

OLD AGE ASSISTANCE: PAYABLE TO:  
INMATE OF COUNTY NURSING HOME:  
COUNTY NURSING HOME:  
NON-PROFIT CORPORATING, OPERATING COUNTY:  
NURSING HOME: WHEN:

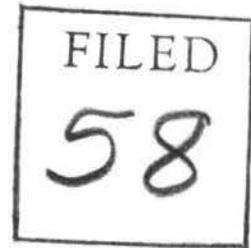
Patient in county nursing home established under Section 205.375 RSMo 1959 which is a public medical institution, under Section 208.010 RSMo 1959 may receive old age assistance pay-

ment if otherwise eligible. Division of Welfare has discretion to pay old age assistance to recipient-patient in county nursing home as it determines proper, or directly to county nursing home it has classified as medical institution.

OPINION NO. 58  
(439 1966)

July 6, 1967

Honorable Charles B. Faulkner  
Prosecuting Attorney  
Lawrence County  
Mt. Vernon, Missouri



Dear Mr. Faulkner:

This office is in receipt of your request for a legal opinion consisting of three inquiries. The first one reads as follows:

"1. Would a patient of a county nursing home operating as provided under Section 205.375 RSMo 1959, prevent that patient from receiving public assistance under Section 208.010 RSMo 1959, part (5) of paragraph 2, assuming qualification otherwise."

Section 208.010 Laws Mo. 1965, page 807, provides the requirements one must meet in order to be eligible for public (old age) assistance in Missouri. Paragraph 2, Part 5 of said section reads as follows:

"2. Benefits shall not be payable to any claimant who:

(5) Is an inmate of a public institution or is a patient in an institution for mental diseases except an individual who is sixty-five years of age or over and is a patient in a state institution for tuberculosis or to an individual who is a patient in a public medical institution."

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Before the first inquiry can be answered, it must be determined if a county nursing home is a public institution within the meaning of the above quoted statutory provisions.

Our legal research fails to disclose any statutory or appellate court decisions of Missouri defining the terms "public institution", as used in the above quoted statute. Fortunately, we do find definitions of said terms elsewhere, some of which read as follows:

"A public institution is an organized activity created or established by law or public authority". 44 C.J.S. 416.

In the case of Henderson v. Shreveport Gas, Electric Light and Power Company, 63 So. 616, 618, the court defined "public institution" as found in law to be:

"The next paragraph provides for 'public institutions' which use gas. A 'public institution' is: one which is created and exists by law or public authority (32 CYC 767), such as an asylum, charity college and university, hospital, schoolhouse, etc \* \* \*".

Again in State v. Chausen, 148 P.28, at l.c. 32, the Court defined the terms "public institution", as follows:

"We understand the Attorney General's argument to be that an existing public institution is some activity of the state which has taken form and is lodged in buildings or structures. The words 'public institution' can be given no such restricted meaning. A public institution is an organized activity created or established by law or public authority."

Section 205.375, RSMo 1959, contains a definition of a nursing home and provides a county or township may acquire one, and reads as follows:

1. "For the purposes of this section 'nursing home' means a facility for the accomodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services:

(1) Which is operated in connection with a hospital, or;

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(2) In which such nursing care and medical services are prescribed by or are performed under the general direction of, persons licensed to practice medicine or surgery in this state.

"2. The county court of any county or the township board of any township may acquire land to be used as sites for, construct and equip nursing homes and may contract for materials, supplies, and services necessary to carry out such purposes.

"3. For the purpose of providing funds for the construction and equipment of nursing homes the county courts or township boards may issue bonds as authorized by the general law governing the incurring of indebtedness by counties, or may provide for the issuance and payment of revenue bonds in the manner provided by and in all respects subject to Chapter 176, RSMo, which provides for the issuance of revenue bonds of state educational institutions.

"4. The county courts or township boards may provide for the leasing and renting of the nursing homes and equipment on the terms and conditions that are necessary and proper to nonprofit organizations for the purpose of operation in the manner provided by subsection 1."

It is believed a nursing home established and operated by a county in accordance with the first paragraph of Section 205.375 RSMo 1959 is a "public institution" within the meaning of said term as used in Section 208.010. In the event a nursing home established and operated by a county under Section 205.375, supra, qualifies as a "public medical institution" within the meaning of Section 208.010 Par. 2, Part 5 supra, one otherwise qualified under said Section 208.010, to receive public (old age) assistance benefits, who is an inmate of a nursing home qualifying as a public medical institution, can legally be paid old age assistance benefits as long as he is an inmate of such county nursing home.

The second inquiry of the opinion request is:

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"2. If the patient of a county nursing home can receive public assistance, can the public assistance be paid to the county directly on request, as part payment of the patient's care or must it be paid directly to the patient?"

We understand the second inquiry to be:

If one qualified to receive public (old age) assistance is a patient in a county nursing home, can the assistance payments be paid directly to the nursing home upon its request to the Missouri Division of Welfare, as part payment of the patient's care, with the consent of the patient, or must all such payments be made to the patient?

In view of our discussion and answer of the first inquiry, we shall consider the second inquiry as applying only to county nursing homes qualifying as public medical institutions.

In this connection we direct your attention to Section 208.180 (1) RSMo 1959, which reads in part as follows:

"Payment of benefits hereunder shall be made monthly in advance, at such regular intervals as shall be determined by the division of welfare, directly to the recipient, or in the event of his incompetency to his legally appointed guardian and in the case of a dependent child to the relative with whom he lives; provided, that payments for the cost of authorized in-patient hospital or nursing home care in behalf of an individual may be made after the care is received either during his lifetime or after his death to the person, firm: corporation, association, institution, or agency furnishing such care and shall be considered as the equivalent of payment to the individual to whom such care was rendered. All guardianship proceedings of persons applying for or receiving benefits under this law shall be carried out without fee or other expense when in the opinion of the probate court the person is unable to assume such expense. At the discretion of the court such a guardian may serve without bond."

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Briefly summarized, Section 208.180 supra, provides payment of public (old age) assistance shall be made at regular monthly intervals as determined by the Division of Welfare, to the recipient, or in event of his incompetency, to his legally appointed guardian. The Division of Welfare may also make payments to certain other persons or organizations to cover cost of authorized in-patient hospital or nursing home care of the recipient, to the person or organization furnishing care, which shall be considered as equivalent of payment to the person for whom such care was rendered.

Under provisions of Section 208.180 supra, the Division of Welfare may in its discretion make public (old age) assistance payments to a recipient or to an institution in which the recipient is a patient, as it may determine to be proper. The Division of Welfare informs us that it in the exercise of its discretion will make direct payments only to those institutions it has classified as medical institutions.

When a county nursing home has been classified as a "medical institution", by the Division of Welfare, it may then make public (old age) assistance payments directly to such county nursing home, rather than to the recipient, who is a patient in that institution.

Your third question assumes a negative answer to the first or second question.

Since we have ruled that a patient in a county nursing home which is a public medical institution if otherwise qualified is eligible to receive old age assistance and that the Division of Welfare has in its discretion determined that old age assistance payments will be made only to institutions classified as "medical institutions", it is apparent that no answer need be given to your third question.

#### CONCLUSION

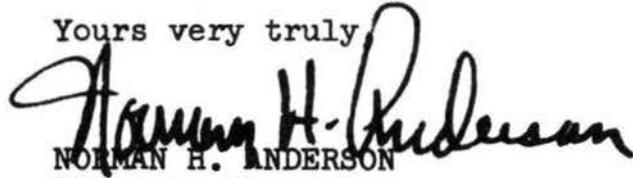
Therefore, it is the opinion of this office that a patient in a county nursing home established under Section 205.375, RSMo 1959, which qualifies as a public medical institution, within meaning of Section 208.010, Laws Mo. 1965, Page 807, may receive old age assistance payments if otherwise eligible for such payments.

It is the further opinion of this office that under provisions of Section 208.180 RSMo 1959, the Division of Welfare has discretion to make public (old age) assistance payments to a recipient in a county nursing home or directly to the county nursing home to cover partial cost of patient's care, when the Division of Welfare has classified such nursing home as a medical institution.

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The foregoing opinion which I hereby approve was prepared by my assistant, Paul N. Chitwood.

Yours very truly

A handwritten signature in black ink, appearing to read "Norman H. Anderson". The signature is written in a cursive style with a large initial "N".

NORMAN H. ANDERSON  
Attorney General