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ATTORNEY GENERAL

OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

May 7, 1974

OPINION LETTER NO. 137

Honorable Ronald McKenzie
Prosecuting Attorney
Marion County
Tower Plaza Office Building
Clinic Road
Hannibal, Missouri 63401

Dear Mr. McKenzie:

This letter is in response to your request for an opinion from this office as follows:

"Is a third class county responsible for the upkeep and maintenance of an indigent ward of the public administrator of that county.

"Mary Jane McLerren is a ward of the Probate Court of Marion County, Missouri. The Guardian is John Lyng, the Public Administrator of Marion County. The appointment of the guardianship was made after an incompetency hearing early in 1973. At the time of the incompetency hearing, Mrs. McLerren was living at a domiciliary home in Hannibal, Missouri. Since that time due the decline in her health, Mrs. McLerren was moved to a nursing home in Hannibal, Missouri. The move which was made on Doctor's orders and because Mrs. McLerren could no longer stay at the domiciliary home due to its license requirements caused an increase in the monthly expenditure for the support of Mrs. McLerren of \$75.00 from \$225.00 a month to \$300.00 per month. Mrs. McLerren's income is \$283.50 per month. This income is insufficient to cover her monthly nursing

Honorable Ronald R. McKenzie

home bill, along with probate costs and guardian's fee.

"On the 27th day of August, 1973, John Lyng, Marion County Public Administrator filed a petition with the Marion County Court under Section 475.370 RSMo 1969, which set out that he was appointed the guardian for Mary Jane McLerren on the 28th day of March, 1973, and that since that time, he had acted as guardian, had completed an inventory and appraisal of all assets in the estate, had collected all income on behalf of the incompetent and had made all necessary and reasonable disbursements for her maintenance. That as of the 27th day of August, 1973, the incompetent, Mary Jane McLerren had an estate insufficient to pay her debts and maintain her, and that true account of the guardianship including all disbursements and all receipts and the inventory of the estate was attached to accompany the petition. The petition prayed that the Court make allowance for Mary Jane McLerren from the County Treasury sufficient to maintain her. According to section 475.370 RSMo. 1969.

"The petition of the Public Administrator was turned down by the County Court."

With your opinion request you submitted a statement concerning your views of the law regarding this matter. You state it is your view that Marion County is liable to pay for the maintenance and support of the ward, Mary Jane McLerren, that it is the obligation of the county court to support the poor indigent persons within the county under Section 205.580, and that, in your opinion, Mary Jane McLerren qualifies as a poor person under the statute and entitled to support. You state that it is your view under subsection 3 of Section 475.370, RSMo, the county court when presented with a petition as provided in this section has two alternatives:

". . . 1) to grant the prayer of the petition and make an order for payment for support and maintenance of the indigent ward out of the county treasury, or (2) to set out its reasons to the guardian why it is not satisfied that the estate and effects are insufficient for the purposes of the statute. . . ."

Honorable Ronald R. McKenzie

It is your opinion that the county court could take issue with whether or not the ward is a resident of the county, whether or not the ward is actually without an estate and without funds, or whether or not the guardian has made a proper account of the guardianship and performed his duty properly. It is also your opinion that if the court has no objection or reservation concerning the petition, the court has no alternative but to make an order providing for the support of the ward. We assume from this that it is your opinion that it is mandatory for the county court to make an allowance out of county funds for support under these circumstances without regard to any other facts or conditions that exist.

Section 475.370, RSMo, referred to in the opinion request, provides as follows:

"1. If the estate of any incompetent person is insufficient to pay his debts, to maintain himself and family, or educate his children, his guardian may apply to the county court of the proper county, by petition, setting forth the particulars, and praying for an appropriation from the county treasury for the support of his ward.

"2. The petition shall be accompanied by a true and perfect account of the guardianship, an inventory of the estate and effects, and a list of the debts due from such insane person, and it shall be verified by the affidavit of the petitioner.

"3. If the county court is satisfied that the estate and effects are insufficient for the purposes above specified, it may order such sum to be paid to the guardian, out of the county treasury, as to it shall appear reasonable, and cause a warrant to be issued accordingly.

"4. But no allowance shall be made, at any one time, for a period longer than one year, nor shall the order be made at any time, unless the guardian has duly accounted, and settled with the probate court, for the moneys and effects which have come to his hands for the support of his ward, out of the county treasury or otherwise." (Emphasis added)

Honorable Ronald R. McKenzie

The first question that arises under this section of the statute is whether it is mandatory the county court make an appropriation for the support of the ward when a petition for support is properly filed by the guardian and the county court is satisfied that the facts stated in the petition are true and correct.

The above-statutory provision expressly states that if the county court is satisfied that the estate and effects are insufficient for the purposes above specified, it may order such sum to be paid to the guardian, out of the county treasury, as to it shall appear reasonable to cause a warrant to be issued accordingly. It is our view that under this statutory provision it is not mandatory but a discretionary matter for the county court to determine whether an appropriation for the support of the ward is to be made, together with the amount of the appropriation, depending upon the amount of income or support the ward has available together with the financial conditions of the county and money available in the county treasury for the support of the county poor. It is our view that the right of a ward to receive support from the county under this statute is no greater than the right of any other person alleged to be in need of support by the county. The fact that the application for support is made by a guardian is not significant. Bradford v. Phelps County, 210 S.W.2d 996 (Mo. 1948).

Section 205.580, RSMo, provides as follows:

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

Section 205.610, RSMo, 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 magistrate of the county in which any person entitled to the benefit of the provisions of sections 205.580 to 205.760 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."

It is our opinion that under the above statutes it is the responsibility of the county court to provide for relief, maintenance, and support of persons who are in fact indigent. However,

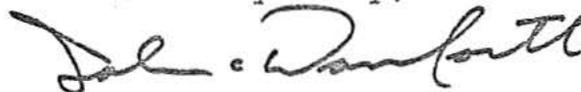
Honorable Ronald R. McKenzie

the question of indigency under the above sections and the question of relief under Section 475.370 is a matter for the determination of the county court. It should be obvious that the county cannot be required to support any person literally within the provisions of subsection 1 of Section 475.370 because, if such were the case, any such person living beyond his means could compel county aid. In our view the county court has the discretion to determine whether an appropriation should be made for an individual's support depending upon the funds available for that purpose together with the overall needs of each individual and other relevant facts. State ex rel. Becker v. Wehmeyer, 113 S.W.2d 1031 (St.L.Ct.App. 1938).

The case of Cox v. Osage County, 15 S.W. 763 (Mo. 1891), which is referred to in the opinion request, is not in point. That opinion involved the provisions of what is now Section 475.355, RSMo, which in substance provides for any judge of the court of record, other than a judge of the magistrate court, when it appears by reason of mental condition any person is so far disordered in his mind as to endanger his own person or the persons or property of others and that such person is not confined by the person having charge of him, the judge may cause such person to be apprehended and employ some person to confine him in some suitable place until a hearing may be had on an information filed in probate court, and the expenses of such confinement under this section shall be paid by the guardian out of the estate of the incompetent or a person bound to provide for and support the incompetent, or the same shall be paid out of the county treasury upon the order of the county court after the same is duly certified by the probate court. The only expenses of confinement under this statute are the expenses involved prior to a hearing in the probate court and those were the expenses under consideration in the Cox case.

We are enclosing herewith Opinion No. 14 issued by this office on May 26, 1959, to Charles M. Cable, to the effect that the county court may provide for indigent old persons by paying a private nursing home for their care and to grant supplemental aid to its indigent old in addition to that granted by the state, if the court determines it is economically expedient for the county to do so.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 14
5-26-59 Cable