Non-Resident insane convicts' upkeep paid out of appropriation.

HB651 Laws 33
Sec 3801-8659
R.S. Mo 1929

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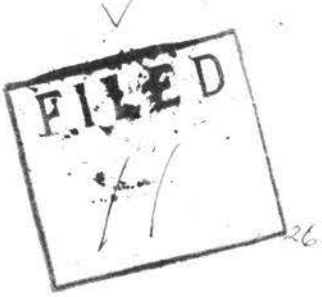
FILED



Honorable George D. Bryant
Pardon and Parole Commissioner
Department of Penal Institutions
Jefferson City, Missouri

Dear Sir:

This is to acknowledge your letter of May 29th, 1933, which is as follows:

> "Wish you would kindly render this department an opinion on the following question.
>
> Where an inmate is confined in the Missouri State Penitentiary and after having served some time is adjudged insane by the proper officials, and it develops that the board is unable to establish his residence in this State for the purpose of charging his upkeep to any particular county, or where he is a non-resident of the State of Missouri. What provision is made for the upkeep of such inmate?
>
> In other words, to what fund does the Asylum look to for payment for the upkeep of an insane prisoner where residence cannot be established in this State.
>
> The board will appreciate very much an opinion in this matter."

Section 3801 R. S. Mo. 1929, reads as follows:

> "If any person, after having been convicted of any crime or misdemeanor, become

> insane before the execution or expiration of the sentence of the court, it shall be the duty of the governor of the state to inquire into the facts, and he may pardon such lunatic, commute or suspend, for the time being, the execution of such sentence, and may, by his warrant to the sheriff of the proper county, or the warden of the penitentiary, order such lunatic to be conveyed to the insane asylum, and there kept until restored to reason. If the sentence of such lunatic is suspended by the governor, it shall be executed upon him after such period of suspension has expired; and the expense of conveying such lunatic to the asylum shall be audited and paid out of the fund appropriated for the payment of criminal costs, but the expenses at the asylum for his board and clothing shall be paid as now provided by law in cases of the insane poor: Provided, if such person shall have property, the costs shall be paid out of his property, by his guardian."

Section 8659 R. S. Mo. 1929, reads as follows:

> "If any person, after being convicted of any crime or misdemeanor, and before the execution, in whole or in part, of the sentence of the court, become insane, it shall be the duty of the governor of the state to inquire into the facts; and he may pardon such lunatic, or commute or suspend, for the time being, the execution in such manner and for such period as he may think proper, and may, by his warrant to the sheriff of the proper county or warden of the state penitentiary, order such lunatic to be conveyed to a state hospital and there kept until restored to reason. If the sentence of such lunatic is suspended by the governor, the sentence of the court shall be executed upon him after such period of suspension has expired, unless otherwise directed by the governor."

From the above two statutes it is evident that the Governor of this state has the authority to transfer convicts to a State Hospital or Asylum when after an investigation in his judgment he finds that convicts confined in the penitentiary are mentally insane.

The rule of law regarding the payment for the upkeep of indigent insane persons convicted of crime when they are residents of the counties of the State of Missouri, was expressed in the case of James R. Walton v. Christian County, 235 Mo. 385 l.c. 389, wherein the court in writing its opinion held:

> "* * *The liability of the counties of the State for insane criminals living and residing in said counties, who were insolvent when convicted and whose sentences have been suspended, as in this case, by the warrant of the Governor, in order that they may be transferred to the State institutions for the insane, is well settled. (Cases and sections of Statutes cited.)"

Your question, however, is what provision is made for the upkeep of an inmate if he be a non-resident of this state? The Legislature by appropriation made a provision to take care of expenses entailed in keeping non-resident convicts in the state hospital or asylum.

House Bill No. 651, approved May 11, 1933, provides among other things in part the following:

> "Section 1. Money for state penal institutions. There is hereby appropriated out of the state treasury, chargeable to the funds herein designated the several amounts for the specific purposes herein expressed to pay the * * * * * * * * * * * * * * * * and other expenses for the state prison, board, Missouri penitentiary, * * * * * * * for the years 1933-1934.* * * * * * * * * *

And further:

> "For Missouri penitentiary out of earnings funds: (D) (line 111) Support of insane convicts $25,000.00.

You will note from the above that the Legislature appropriated $25,000.00 to the Department of Penal Institutions for use in the support of insane convicts.

It is our opinion that the upkeep of non-resident insane convicts confined in State hospitals should be paid out of the fund appropriated for the support of such insane convicts.

Yours very truly,

JAMES L. HORNBOSTEL,
Assistant Attorney General.

APPROVED_____
ROY McKITTRICK
Attorney General.

JLH:MM