

INSANE PERSONS: Indigent persons, resident requirement and who responsible for upkeep in State Hospital.

June 3, 1933 6-10



Dr. E. T. McGaugh, M.D.  
State Health Commissioner  
Jefferson City, Missouri

Dear Sir:

We wish to acknowledge your letter of June 1, 1933, which is as follows.

"Will you please note the attached letter with marked paragraph. I feel that this is a matter which should be brought to your attention, and will appreciate you writing to the Warden since the question is entirely a legal one."

The paragraph that you marked and upon which you desire information being as follows:

"We are especially desirous of having answers to the following questions: (1) What constitutes legal residence in Missouri? (2) Does a former resident of Missouri retain this residence as long as he fails subsequently to establish it in another state? (3) What verifications would be necessary to satisfy the proper authorities of Missouri that a patient is a resident of that State? (4) How should such verifications be made? (5) If a patient's legal residence is found to be Missouri, to what State official should neuropsychiatric reports and supporting data be sent in our efforts to obtain authorization for delivering him to a hospital and to whom should we look for final authority?"

Before replying to the questions asked we wish to preface same with a brief history relative to State Hospitals and the caring of insane persons in Missouri.

Article 1 of Chapter 46, R. S. Mo. 1929, provides, among other things, that state hospitals are declared to be eleemosynary institutions of the State and such are under the management and control of a board of managers.

Article 2, Chapter 46, R. S. Mo. 1929, and amendments of 1931, thereto, provide, among other things, that persons afflicted with any form of insanity shall be admitted into the hospital for the care and treatment of the insane. Said article further provides for the admitting of pay patients and indigent patients. There is a prescribed procedure for pay patients and also a procedure for indigent patients. The pay patients are admitted upon the filing of a request in writing addressed to the superintendent of the hospital to which said patient wishes admittance. Also a certificate of two attending physicians describing his condition and a bond insuring payment of his upkeep while confined there, and the payment of his upkeep. The indigent patients are admitted by order of the several county courts and their upkeep is paid by the county from whence sent.

To gain admittance for an insane person to a state hospital, some citizen residing in the county in which the poor insane person resides makes the following affidavit addressed to the county court:

"State of Missouri )  
County of \_\_\_\_\_ ) SS

The undersigned, a citizen residing in the county and state aforesaid, hereby states that \_\_\_\_\_ is insane. That his insanity is less than \_\_\_\_\_ years duration: That he has not estate sufficient to support him at a state hospital, and is a resident of said county and state aforesaid. These facts can be proven by \_\_\_\_\_ and \_\_\_\_\_ (naming at least two persons, one a reputable physician) this \_\_\_\_\_ day of \_\_\_\_\_.

Subscribed and sworn to

After the filing of such statement in writing, an inquiry is conducted by the county court and if such person is found to be insane and a poor person, the court makes its order committing such person to the hospital for the care and treatment of the insane. However, the counties are limited as to who and the number of insane persons may be sent to the hospitals. Section 8636 R. S. Mo. 1929 provides in part:

"The several county courts shall have power to send to a state hospital such of their insane poor as may be entitled to admission thereto." \* \* \*

In reading the statutes you will note that the county courts of the 114 counties take care of their indigent insane people and such are committed to the State hospitals at the direction and expense of the county.

In the case of Thomas v. Macon County, 175 Mo. Sup. 68, 1.c. 73, the court in writing his opinion held the following:

\* \* \* Plaintiff next points to section 4867 (8636 R. S. Mo. 1929) which provides that: 'The several county courts shall have power to send to the asylum such of their insane poor as may be entitled to admission thereto.' And it specifies that the county shall pay for the support and maintenance of such insane poor persons as the county court may send to the asylum.

Under that section, however, even the county court is not authorized by its arbitrary will or unlimited discretion to send any insane poor person it may select to the asylum at the expense of the county, but the court must hold due proceedings upon a petition filed showing that the insane poor person is 'a citizen residing in the county' and other essential facts as prescribed by the statute, and there must be a trial of the facts and a judgment of the court thereupon. (Statutes cited) The county court has no authority under those statutes

to send a person to the asylum or  
maintain one there at the expense of  
the county who is not a resident thereof.\* \* \*

Thus the responsibility for caring for indigent insane persons rests with the counties. Therefore, an insane indigent convict in custody in some place outside of the State of Missouri should be turned to the care and custody of the county in which he resides and not be taken to the boundary lines of the State of Missouri and there left. The counties must care for the indigent insane but only those residing within their boundaries. Thus it will be a question of fact in each instance as to where such insane person resides.

This brings us to the question of residence. The constitution or statutes do not define legal residence. Neither do they provide any length of time it takes a person to establish a legal residence, except in cases of voting, holding office, bringing suits in court, etc.

Section 8663 R. S. No. 1929, in the article and chapter relating to indigent insane persons as to who shall be entitled to the provisions of said article provides:

"No person shall be entitled to the benefit of the provisions of this article as a county patient except persons whose insanity has occurred during the time such person may have resided in the state etc.\* \* \*

Section 655 R. S. No. 1929, subdivision 17, defines residence as follows:

"\* \* \*seventeenth, the place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally lodge, shall be deemed the place of residence of such person or persons respectively.\* \* \*

Section 8663, supra, uses the words 'may have resided' in fixing the required residence of an indigent insane person before such county shall provide and care for such. We hold to the conclusion that these words should be construed to mean and are synonymous to the word 'domicile'.

In the case of *In re Ozias' Estate*, 29 S. W. (2d) 243, the court in discussing residence and domicile held the following:

'Residence and domicile are used interchangeably, and, in so far as they apply to the situation here presented are synonymous.

'Domicile. That place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.'

Bouv. Law Dict., Vol. 1. page 915, Proof of domicile, or legal residence, does not depend upon any particular fact, but upon whether all the facts and circumstances taken together tend to establish the fact. Engaging in business and voting at a particular place are evidence of domicile there, though not conclusive. *Hayes v. Hayes*, 74 Ill. 312; *Inhabitants of East Livermore v. Inhabitants of Farmington*, 74 Me. 154. To constitute a change of domicile three things are essential: (1) Residence in another place; (2) an intention to abandon the old domicile, and (3) an intention of acquiring a new one. *Berry v. Wilcox*, 44 Neb. 82, 62 N. W. 249, 48 Am. St. Rep. 706. It has been held a wife's removal into another state for the benefit of her husband's health and a residence there for twelve years will not change the original domicile. *In re Reed's Will*, 48 Or. 500, 87 P. 763; *Ensor v. Graff*, 43 Md. 291.

A person can have but one domicile, which, when once established, continues until he renounces it and takes up another in its stead. It is not lost by temporary absence. The question is one of fact which is often difficult to determine. *Words and Phrases*, Second Series, Vol. 2, page 133; *City of Lebanon v. Biggers*, 117 Ky. 430, 78 S. W. 213, 214.\* \* \*

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-6-

June 3, 1933

The verifications necessary to satisfy the various county courts would be a matter to be taken up with them. We believe however, proper affidavits showing the history of the person confined in an institution outside of the State of Missouri for criminal insane, and the information or data that tended to establish the place or domicile or residence in such county together with a statement of his mental condition would meet their requirements. We again call your attention to the fact that some person, a resident of the county, must make the statement as hereinbefore set out.

In answer to your fifth inquiry; the officials to whom the reports and supporting data should be sent (in an effort to obtain authorization to deliver him to a hospital) is the county court of the county where such person resides, and that body is the proper authority to look to.

Very truly yours,

JAMES L. HORNBOSTEEL,  
Assistant Attorney General.

APPROVED

ROY MCKITTRICK  
Attorney General.

JLH:MM