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SANATORIUM: Transportation of Patients to Missouri State Sanatorium and Compensation Therefor.

5-21  
May 16, 1934.



Honorable Herbert M. Braden,  
Prosecuting Attorney Livingston County,  
Chillicothe, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of May 2, 1934, such request being in the following terms:

"I am writing you for an opinion as to whether or not a County Court may hire individuals to transport persons to the Missouri State Sanatorium, under the provisions of Article 4, Chapter 46, Missouri Revised Statutes for 1929. I might say in this connection that there is a dispute between the County Court and the Sheriff as to whether or not the sheriff is entitled, under the law, to transport these free patients and collect mileage under the regular rate.

The theory of the sheriff is that they are admitted under Court order and that he is the proper person to carry out the orders of the Court, the same as in the transportation of persons to the different State hospitals. If it is your opinion that the sheriff is entitled to transport these patients, I would also like to have an expression from you as to the compensation to which he is entitled for this service."

Revised Statutes Missouri 1929, Chapter 46, Article 4 deals with the Missouri State Sanatorium for persons afflicted with tuberculosis. Section 8686 contained therein which deals with free patients after providing that a person applying to be received as a free patient shall apply to the County Court of the County in which he resides, that the County Court if it finds that such person is unable to pay for hospitalization shall certify this fact to the Board of Managers of said sanatorium and that when there is a vacancy for said applicant in the sanatorium the Superintendent thereof shall have such applicant examined and if eligible to be received in the sanatorium the physician shall certify this fact, continues:

"Every person who is certified as herein provided to be unable to pay for his or her care or treatment shall be transported to and from the sanatorium at the expense of the county of which they are a resident."

There is no further specific provision in the statutes as to the person or officer who shall transport such patient or about compensation for

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such transportation, and therefore it will be necessary to determine this question from other provisions of the statutes and the implications thereof. Since the controversy about which you are concerned deals mainly with the claim of the Sheriff of a right to transport and be compensated therefor, the duties and rights of the Sheriff will first be considered, and then the rights and duties of other persons or entities.

I.

RIGHTS AND DUTIES OF SHERIFF

The Sheriff, according to the terms of your request, bases his claim partly on an analogy to his duty and right to transport insane persons to the various state hospitals which is specifically granted by Revised Statutes Missouri 1929 Section 8662 (amended immaterially as to this controversy by Laws of 1933, page 408). However, the method of commitment and transportation of an insane person to a state hospital for the insane follows an entirely different procedure from that involved in the admission and transportation of a person afflicted with tuberculosis to the Missouri State Sanatorium, because to commit an insane person to a state hospital a warrant must be issued for his arrest under Revised Statutes Missouri 1929, Section 8649, and by Section 8662 above referred to the Sheriff's duty to transport and right to receive compensation for transporting a person adjudged by the court to be insane is from the "place of arrest" to the hospital. On the other hand the procedure with relation to a person afflicted with tuberculosis does not involve any arrest, but involves (1) a finding of the County Court as to the inability of the person to pay for hospitalization and the certification thereof to the Superintendent of the Sanatorium, (2) a finding by the examining physician that the applicant is suffering from tuberculosis and the certification thereof by the physician, and (3) a vacancy for an applicant at the Sanatorium. No arrest or detention is involved. The apparent reason for requiring the arrest of an insane person and his transportation under arrest would seem to be that the insane person must be in the strict custody of arrest because of possible danger to members of the public during his transportation to a hospital, and the Sheriff would seem to be the logical person for so protecting the public. No such reason exists for a person with tuberculosis because there is no reasonable fear of apprehending danger to the public from him as there is reason to fear such danger in the case of an insane person or a criminal. There would seem to be no reason logically why any other person could not transport a person afflicted with tuberculosis to the state hospital equally as well as a Sheriff. The duty of a Sheriff to transport convicts to the penitentiary (R. S. Mo. 1929 Section 3717) and his right to receive compensation therefor (R. S. Mo. 1929, Section 11791) furnishes even less of an argument for the right of the Sheriff to transport a person affected with tuberculosis. R. S. Mo. 1929 Section 5035 relates to the transportation of minors to a training school and provides that:

"\* \* \*the sheriff, constable, marshal, or other person charged with the delivery of any boy to such training school, shall be allowed for such delivery the necessary travelling expenses of himself and such boy and a reasonable per diem,

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which account shall be allowed by the county court, if correct, when presented to the court."

As to such minors the person selected to transport them is left to the discretion of the County Court presumably because the character of some minors may be such as to make the Sheriff a proper person to transport them, whereas other minors committed might not require such custody. This statute shows that the Sheriff is not necessarily the only person eligible to transport inmates to a state institution.

The Sheriff is not mentioned in Article 4 of Chapter 46 dealing with the Missouri State Sanatorium, and because of the differences above pointed out between the transportation of insane persons or convicts, and the transportation of persons afflicted with tuberculosis, we are unable to see any reason why a Sheriff should be under a duty or have a right to transport patients to the Missouri State Sanatorium.

## II.

### DUTIES AND RIGHTS OF COUNTY COURT

Clearly since the statute relating to transportation of persons to the Missouri State Sanatorium provides that such persons shall be "transported" to the Sanatorium the statute must contemplate someone accompanying the patient where it might be necessary. Since the Superintendent of the Sanatorium, subject to the control of the Board of Managers, has the care of the patient, and since the method of transportation might have a definite effect upon the health of the patient, it might well be that the Superintendent would have the right to arrange for the transportation in whatever way he saw fit, and to have the County pay for such transportation. However, as we understand it, the Superintendent has expressed no demand to arrange for transportation, and since from your letter there is no indication that he desires to do so we shall only consider what county authorities would have the right to make such arrangements, and in our opinion the County Court would have the proper authority to make the arrangements and could designate any agency suitable in its opinion (including the Sheriff if it so desired) to transport the patient.

Our reasons for this conclusion are found in the general powers of the County Court. Revised Statutes Missouri 1929, Section 2078, provides that the County Court "shall have control and management of the property, real and personal, belonging to the County \* \* \*" and the County Court in the case of *Kansas City Disinfecting and Manufacturing Co. v. Bates County*, 273 Mo. 300, 201 S. W. 92 (1918) is called "the general statutory, contracting, auditing and fiscal agency of the County", 272 Mo. 306. Revised Statutes Missouri 1929, Section 12107 provides that "The County Court may, by an order entered of record, appoint an agent to make any contract on behalf of such County for erecting any county buildings, or for any other purpose authorized by law." Furthermore, although the County Court does not in the case of a person applying to be admitted to the State Sanatorium make an order of commitment, such County Court does furnish one of the two certificates to the

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Superintendent of the Sanatorium which are conditions precedent to admission. Furthermore, by the statute the transportation is to be "at the expense of the County" and since the County Court is the general fiscal agent of the county, and since it participates in the proceedings admitting the patient to the Sanatorium, the County Court would seem to be the proper and reasonable authority to designate the person who is to accompany the patient to the Sanatorium. Since the County must pay the expense it would seem that its fiscal agency would properly have the most vital interest in the terms on which the transportation is to be paid for.

In conclusion, it is our opinion that the Sheriff would have no right, unless designated by the County Court, to transport and receive compensation for transporting a person afflicted with tuberculosis to the Missouri State Sanatorium, and that in the absence of an expressed interest in such transportation by the Sanatorium authorities, the County Court would have the right and power to designate the person to transport such applicant to the Missouri State Sanatorium and reasonably to fix his compensation, or to pay the reasonable expenses of such transportation if the applicant did not need to be accompanied.

Yours very truly,

EDWARD H. MILLER

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ASSISTANT ATTORNEY GENERAL.

APPROVED:

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ATTORNEY GENERAL.