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CONVICTS - - Governor's warrant necessary to transfer
ELEEMOSYNARY BOARD - insane convict from penitentiary or other
place of detention to insane hospital.

June 5th, 1934.

6-8



Honorable W. Ed Jameson, President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Sir:

We have your request of June 2, 1934 upon the following facts:

"Most of the criminal insane patients that have been transferred to the different mental hospitals from the state penitentiary have been cared for in Fulton. The few that have been sent to the other institutions are gradually being removed to Fulton where we are not quite so crowded and where we are making a special provision to take care of them.

I wish you would let me know whether or not it is necessary under the law for the Governor to issue an order for a criminal who has become mentally unbalanced and sent from the penitentiary to one of these hospitals to be transferred from one institution to another. The original assignment or transfer from the penitentiary to the mental hospital requires an order from the Governor. If it is necessary for him to make a new order to change from one institution to another I would like to know."

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There are two sections of the statutes relating to this matter, and these sections are virtually identical.

Section 3801:

"If any person, after having been convicted of any crime * become insane before the execution or expiration of the sentence of the court, it shall be the duty of the governor * to inquire into the facts, and he may pardon * commute or suspend * and may, by his warrant * order such lunatic to be conveyed to the insane asylum, and there kept until restored to reason. ** "

Section 8659:

"If any person, after being convicted of any crime * 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* by his warrant to * order such lunatic to be conveyed to a state hospital and there kept until restored to reason. * "

The power to remove a prisoner legally confined in the penitentiary is vested in the governor. In the case of insane convicts, he may,

(1) Pardon;

(2) Commute;

or, (3) Suspend the sentence.

Any transfer of an insane convict from the penitentiary to the custody of the authorities of an insane

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asylum shall be by warrant issued by the governor. The transfer of an insane convict by warrant to one insane asylum does not destroy the governor's power to transfer said convict to another insane asylum. Neither does the placing of an insane convict in one hospital create in the authorities of that insane asylum the right or power to transfer said convict to another hospital. In the last analysis, the legal authority of an insane asylum to retain a convict, while under sentence to the penitentiary, is the authority contained in the governor's warrant transferring said convict from the penitentiary to that particular hospital.

It is, therefore, the opinion of this office that no insane asylum in the state should receive an insane convict from the penitentiary or from the temporary custody of some other insane asylum, except wherein such insane convict is accompanied by the governor's warrant directing that such convict be placed in that particular hospital.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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