

Under Section 8636, R. S. Mo. 1929, which provides in part as follows:

"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. * * *"

The county court may upon a hearing, under Section 8647, R. S. Mo. 1929, cause a suitable order to be entered of record sending such insane poor patient to certain designated State Hospital and such order shall set forth that the person found to be insane is a fit subject to be sent to the State Hospital, and the clerk of the court shall forthwith forward a certified copy of said order to the Superintendent of the hospital accompanying same with the request of admission of the person found to be insane to the hospital.

Under Section 8649, R. S. Mo. 1929, upon receiving the application and the official copy of the order of the court, the Superintendent shall immediately advise the clerk whether the patient can be received and, if so, at what time. The clerk shall thereupon in due season, for the conveyance of such patient to the hospital by the appointed time, issue his warrant to the sheriff of his county or any other suitable person commanding him to forthwith arrest such insane person and convey him to said State Hospital.

Section 8650, R. S. Mo. 1929, provides as follows:

"The relatives of insane person shall have the right, if they choose, to convey him to the hospital. In such case, the warrant shall be directed to one of them; and the person to whom it is directed and his assistant shall, if demanded, receive the same compensation allowed for the like services to the sheriff."

So, under the foregoing statutes, the relatives of this insane person have the right, if they choose, to convey him to the hospital and a warrant shall be directed to one of them. If that right is not exercised by the relatives, the warrant shall be directed to the sheriff of the county or any other suitable person.

It is a matter left to the discretion and judgment of the county court as to who shall execute the warrant and convey the patient to the hospital, the sheriff or any other suitable person. However, we are of the opinion that it is against public policy for the warrant issued under the provisions of Section 8649, supra, to be directed to one of the members of the county court "commanding him forthwith to arrest such insane person and convey him to the state hospital designated in the order." In other words, the county court should not execute its own warrant by an individual member of the court.

The county court, under the provisions of Section 8647, R. S. Mo. 1929, conducts a hearing and either on its own finding or on the verdict of the jury, if one shall have been employed, finds that the person is insane and a fit subject to be sent to the state hospital; the county court in this instance is acting judicially and when the court has made such a finding, for one or more of the members of the court to execute the warrant issued and convey the patient to the state hospital, would, in our opinion, be against public policy. And further, it must be remembered that the county court would pass on, determine and allow the fees and mileage to be paid for rendering this service for the reason that the fees and mileage are paid by the county under Section 8662 as amended by Laws of 1933, at page 408.

As was said by the Kentucky court in the case of *Meglemery v. Weissinger et al.*, 131 S. W. 41:

"It is of the highest importance that municipal and other bodies of public servants should be free from every kind of personal influence in making appointments that carry with them services to

which the public are entitled and compensation that the public must pay. And this freedom cannot in its full and fair sense be secured when the appointee is a member of the body and has the close opportunity his association and relations afford to place the other members under obligations that they may feel obliged to repay. Few persons are altogether exempt from the influence that intimate business relations enable associates to obtain, and few strong enough to put aside personal considerations in dispensing public favors. And it is out of regard for this human sentiment and weakness, and the fear that the public interest will not be so well protected if appointing bodies are not required to go outside their membership in the selection of public servants, that the rule announced has been adopted, and ought to be strictly applied."

The above case was cited approvingly and quoted from in the case of State ex rel. Smith v. Bowman, 184 Mo. App. 549, l. c. 559.

It is true that the county court is not appointing one of its members to an office, yet the court in the present case is directing the warrant to one of its members and performing the service and collecting the fees therefor, and we think that it is objectionable and would fall in line with the reasoning adopted in the Kentucky case.

It is, therefore, our opinion that it is not mandatory upon the county court to designate the sheriff to keep and transfer insane persons to the state hospitals, but any person who answers the description of "any other suitable person"

Hon. Walker Pierce

-5-

April 15, 1935.

in the discretion of the county court may be designated to transfer the patient to the hospital, but in our opinion one of the members of the county court cannot be selected and designated to execute the warrant, convey the patient to the hospital and collect the fees therefor.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

CRH:EG