

INSANE PERSONS: Procedure and action under Sections 8644 to 8648, Laws of Mo. 1937, p. 510, are to be strictly construed. Procedure outlined. X

October 13, 1937.

10-18



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

Dear Mr. Jameson:

This Department acknowledges receipt of your letter enclosing a memorandum concerning the interpretation of the Laws of Missouri, 1937, page 509 to 512, inclusive, same relating to proceedings for admission of county patients to State Hospitals. You desire our instructions or criticisms of the same.

Before reviewing the sections as you have them numbered, we must consider in the first instance the decision in Ex Parte McLaughlin, 105 S. W. (2d) 1020. This decision construed Sections 8643, 8644, 8645, 8646 and 8648 of Article 2, Chapter 46, R. S. Mo. 1929, which the Legislature repealed and reenacted in 1937. The decision is important, however, for the reason that it offers two principles of law governing these statutes. First, page 1022:

"There is another reason for holding the judgment void. The proceeding against petitioner was in vitum and if the statutes regulating the proceeding were not followed strictly, the judgment is void. Ruckert v. Moore, 317 Mo. 228."

And second,

"The county court is a court of limited jurisdiction, and jurisdiction to render the judgment here involved 'must affirmatively appear on the face of the proceedings.' Doddridge v. Patterson, 222 Mo. 146."

We, therefore, conclude that the new statutes are mandatory in their terms and must be followed strictly, otherwise the judgment must be void.

We think that the memorandum sets out the correct procedure and is in substance correct. However, we offer the following suggestions:

FIRST: Under Section 8643, supra, the memorandum states that it should follow the form of affidavit substantially.

We suggest that it be followed verbatim et literatim et punctuatum, as the section sets forth the form of the affidavit and there is no reason why the same should not be followed literally.

FIFTH: We suggest that the following be added to this instruction:

The county clerk shall issue subpoenas for the persons named in the affidavit as witnesses and to such other persons as he may think proper or persons who may be competent to testify as to the sanity of the accused person, and subpoenas should be issued in behalf of the alleged insane person at his request or at the request of his attorney.

SIXTH: The memorandum contains the statement that "The hearing must be before the court without a jury." While it is true that the hearing must be before the court, the question of whether or not a jury is to be used is entirely within the discretion of the court. If the alleged insane person demands a hearing before a jury, the same should be granted. If a jury trial is not demanded by the alleged insane person the record should show that the jury was waived by him.

SEVENTH: The memorandum should set forth all of the elements of the court order, which are:

(a) That a citizen (naming him) residing within the same county as the alleged insane person has filed with the clerk of the county court a verified statement in writing as the form of affidavit sets forth in Section 8643, Laws of Missouri, 1937, p. 510.

(b) That the clerk has caused the alleged insane person to be served with written notice of the proceedings, and that the notice stated the nature of the proceeding, time and place when the proceedings will be heard by the court, and that the alleged insane person is entitled to be present and to be assisted by counsel.

(c) That the notice be served on the alleged insane person a reasonable time before the date set for such hearing.

(d) That if the affidavit contains the allegation that the alleged insane person is so deranged as to endanger himself or others or would be dangerous to the safety of the community, or the alleged insane person be at large, that the clerk would forthwith transmit the affidavit and complaint filed to one of the judges of the county court (naming him); that the judge of the county court issue a warrant authorizing the sheriff to apprehend the alleged insane person and confine him or her until the determination of the mental condition of the alleged insane person.

(e) That the clerk issued subpoenas for the persons named as witnesses in the affidavit and for other witnesses including witnesses for the alleged insane person.

(f) That after service with notice on the alleged insane person had been made known to the county clerk by the return of the sheriff, the clerk forthwith convened the county court for the purpose of passing upon the sanity or insanity of the alleged insane person.

(g) That on the day of the trial or hearing the cause proceeded to trial before the court with or without a jury.

(h) That the alleged insane person appeared by attorney or any attorney was appointed to represent him.

(i) That the court caused the witnesses to be examined and the trial or hearing was had.

(j) The verdict of the jury or the decision of the court.

(k) That the alleged insane person is a fit subject to be sent to the State Hospital (mention the name of the Hospital) to undergo treatment therein.

(l) That the medical witness or witnesses forthwith make out such a detailed history of the case as is required by Section 8640, R. S. Mo. 1929.

(m) That the cost of the examination is to be paid out of the treasury of the county.

(n) That the clerk of the county court forthwith forward a certified copy of the order of the court to the superintendent of the particular hospital.

(o) That the clerk make a request for the admission of the person found to be insane to the hospital (naming the hospital), and that such request accompany the order of the court.

ELEVENTH: We suggest that the county clerk issue a warrant in accordance with Section 8649, R. S. Mo. 1929, to the sheriff of his county or any other suitable person.

Under Section 8650, R. S. Mo. 1929, the relatives of the insane person have the right if they choose to convey the person to the hospital. In such event, the warrant shall be directed to the relative.

Oct. 13, 1937.

If the above suggestions, alterations and changes are included in the memorandum, we are of the opinion that the instructions contained therein are a proper and correct interpretation of the new and old sections of the statutes relating to the admission of county patients in the State Hospitals of Missouri.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

(Acting) J. E. TAYLOR
Attorney-General

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