

PENAL INSTITUTIONS: The Department of Penal Institutions should not pay the expenses of maintaining an insane inmate of the State Industrial Home for Girls who was transferred to State Hospital No. 1 at Fulton.

January 26, 1940

Mr. G. W. Lane, Secretary
Department of Penal Institutions
Jefferson City, Missouri



Dear Mr. Lane:

Your letter dated January 19, 1940, with enclosures, was received. Said enclosures are herewith returned to you.

I understand the facts are these: Betty Abbott, a resident of Jasper County, was sentenced on a charge of delinquency to the State Industrial Home for Girls at Chillicothe, Livingston County, Missouri, for one year from June 24, 1937, to June 24, 1938, and accordingly, became an inmate of the Chillicothe institution. Before her term expired, and on December 11, 1937, she was taken to State Hospital No. 1 at Fulton, Missouri, as a person of unsound mind. Your letter dated January 19, 1940, in part states, "I am not informed as to the procedure in connection with her transfer."

The question is whether the Department of Penal Institutions should pay the expenses of maintaining Betty Abbott in the Fulton institution from January 1, 1940, to July 1, 1940.

On the basis of the facts stated, the Department of Penal Institutions should not pay said expenses.

On the facts as presented, it would appear the appropriate procedure is that provided as follows by Section 3801, R. S. Mo. 1929, as amended, Laws of 1939, page 352, Section 1, Mo. Stat. Ann. page 3316:

"If any person, after having been con-

victed of any crime or misdemeanor, become insane before the execution or expiration of the sentence of the court, it shall be the duty of the governor of the state to inquire into the facts, and he may pardon such lunatic, commute or suspend, for the time being, the execution of such sentence, and may, by his warrant to the sheriff of the proper county, or the warden of the penitentiary, order such lunatic to be conveyed to the hospital for the care and treatment of the insane, and there kept until restored to reason. If the sentence of such lunatic is suspended by the governor, it shall be executed upon him after such period of suspension has expired; and the expense of conveying such lunatic to the hospital for the care and treatment of the insane shall be audited and paid out of the fund appropriated for the payment of criminal costs, but the expenses at the hospital for the care and treatment of the insane for his board and clothing shall be paid as now or hereafter provided by law in cases of the insane poor: Provided, if such person shall be adjudged to be insane and shall have property, the costs shall be paid out of his property, by his guardian."

Said Section 3801 appears to include all the provisions of Section 8659, R. S. Mo. 1929, Mo. Stat. Ann. page 7751, which is to a similar effect.

According to the definitions stated in Section 14136, R. S. Mo. 1929, Mo. Stat. Ann. page 850, "delinquency" may consist either of the commission of a crime or of various kinds of conduct, as for example being incorrigible without committing a crime. It is assumed here that the delinquency of Betty Abbott consisted of the commission of a crime, which brings the case within the terms of said Section 3801, supra.

The payment of expense for maintenance "as now or hereafter provided by law in cases of the insane poor" referred

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to in the above quoted Section 3801, is the method provided by Section 8636 R. S. Mo. 1929, as amended, Laws 1935, page 387, Section 1, Mo. Stat. Ann. page 7741, wherein it is provided that a county shall pay the expense of the maintenance of insane poor who are residents of such counties.

Inasmuch as the county should pay this expense, the Department of Penal Institutions should not pay it.

CONCLUSION

The Department of Penal Institutions should not pay the expenses of maintaining an insane former inmate of State Industrial Home for Girls, who was transferred to State Hospital No. 1 at Fulton.

Respectfully submitted,

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APPROVED:

W. J. BURKE
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