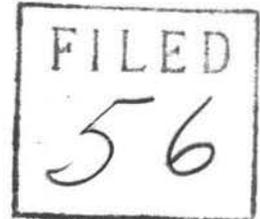


INSANE PERSONS:
ELEMOSYNARY IN-
STITUTIONS:

Counties are liable for support of indigent insane soldiers who are residents of such counties, even though such insanity developed after induction into the United States Army.

November 5, 1942

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Mr. Lloyd Main
Clerk of the County Court
Barton County
Lamar, Missouri



Dear Sir:

This will acknowledge receipt of your letter of November 2, 1942, in which you submit the following for an opinion:

"On April 18, 1941, one Lafayette Bowling was inducted into the army from this county and was accepted at the induction station on April 19, 1941. Since that time he has been continuously in the United States army.

"The county court of this county has received a communication from Ira A. Jones, President of the State Eleemosynary Institutions and one from Capt. F. I. Seward of Camp Blanding, Florida, Station Hospital, stating that Lafayette Bowling has become unstable mentally and is incapacitated for further service and is in need of institutional care. They are asking that Barton County accept the man as a county patient in a state institution.

"The county court has been advised before, and in the letter of Mr. Jones, of the State Eleemosynary Institutions, it is stated 'It is our understanding

that under the law, if a man has been in military service for six months the government is responsible for him if he breaks down mentally.' The court took this matter up with the Missouri State Headquarters of the Selective Service System and we were directed by Mr. Wm. Orr Sawyers, State Legal Advisor, to take this matter up directly with your office to determine this man's status. The legal residence of Lafayette Bowling is Lamar, Barton County, Missouri, Route 2.

"We would like to be advised as quickly as possible whether or not this county is responsible for the care of Mr. Bowling so that if the county should take this burden upon itself it can advise the military authorities; however, if the county is not responsible for the care of this man the court would also like to advise the authorities to this effect. It will be noted that this man has been in the service since April 19, 1941."

Your letter says that "the legal residence of Lafayette Bowling is Lamar, Barton County, Missouri, Route 2." Therefore, we proceed with the question of his residence as being determined to be in your county. We assume also that he comes within the classification as a poor person.

Section 9590, R. S. Mo. 1939, reads as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 9328, R. S. Mo. 1939, reads 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 counties thus sending shall pay semi-annually, in cash, in advance, such sums for the support and maintenance of their insane poor, as the board of managers may deem necessary, not exceeding six dollars (\$6.00) per month for each patient; and in addition thereto the actual cost of their clothing and the expense of removal to and from the hospital, and if they shall die therein, for burial expenses; and in case such insane poor shall die or be removed from the hospital before the expiration of six months, it shall be the duty of the managers of such hospital to refund, or cause to be refunded, the amount that may be remaining in the treasury of such hospital due to the county entitled to the same; and for the purpose of raising the sum of money so provided for, the several county courts shall be and they are hereby expressly authorized and empowered to discount and sell their warrants, issued in such behalf, whenever it becomes necessary to raise said moneys so provided for."

Section 9333, R. S. Mo. 1939, reads as follows:

"When poor patients shall be in need of clothing, it shall be the duty of the steward, under the direction of the superintendent, to furnish the same, at the cost of the county court sending them."

Section 9334, R. S. Mo. 1939, reads as follows:

"The superintendent shall, under the direction of the managers, cause, once in every six months, to be made out and forwarded to any county court which may send to a state hospital an insane poor person, an exact account of the sum due and owing by such court on account of such insane person. Said court, at its first session thereafter, shall proceed to allow, and cause to be paid over to the treasurer of such state hospital, the amount of said account."

Section 9343, R. S. Mo. 1939, reads as follows:

"When a county patient is sent to the hospital, it shall be the duty of the clerk to see that the patient is supplied with the proper clothing specified in section 9329, and, if not otherwise furnished, the clerk shall purchase it; and, in such case, the same shall be paid for out of the county treasury, by order of the county court."

Under the foregoing statutes, we think it is clear that the duty of supporting indigent insane persons is upon the county wherein such persons are residents. Under similar statutes, the Supreme Court of this state, in the case of *Montgomery County v. Gupton*, 139 Mo. 303, 1. c. 308, said:

"The duty of supporting the indigent insane of this state is devolved by statute upon the counties of which they are inhabitants."

Since, therefore, the soldier in question is a resident of Barton County, the duty of supporting him at a state hospital is upon that county, provided, of course, he is an indigent insane person. There is nothing in the statutes which says that a county can be relieved of its responsibility to support its indigent insane if such persons happen to be temporarily away from the county at the time they become insane. The question which determines the liability of the county as to indigent insane persons is whether or not they are residents of the county at the time they become insane.

It is admitted that the soldier in question was a resident of Barton County at the time he entered the service of the United States Army. Nothing in your letter indicates that he has done anything since his induction into the army which showed any intention on his part to change his residence. It has long been held in this state that residence is largely a matter of intention, and that such intention is to be deduced from the acts and utterances of the person whose residence is in issue. (In re Lankford Estate, 272 Mo. 1.) The soldier in question was merely taken from his residence to the United States Army and is still in the army. Nothing he has done indicates that he intended to change his place of residence from Barton County to any other place.

We do not think that a person loses his residence by reason of his entering the military service of the United States. Section 7 of Article VIII of the Constitution of Missouri provides as follows:

"For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service either civil, or military, of this state, or of the United States; nor while engaged in the navigation of the waters of the State, or of the United States, or of the high seas, nor while a student of any institution of learning, nor while kept in a

poor-house or other asylum at public expense, nor while confined in public prison."

While the foregoing provision of the Constitution merely covers the question of loss of residence so far as voting is concerned, yet we see no reason why it should be held that a person loses his residence for any other purpose because he enters the military service of the United States. We think the constitutional provision above quoted shows an intention of leaving the rights of a soldier as a citizen the same as they would have been were he not in the service of the United States.

Whether or not the United States Government has a rule or regulation which provides that it will be responsible for a soldier who breaks down mentally after six months' service does not change the situation so far as your county is concerned. If there is such a regulation and the government actually does take care of the insane soldier, then your responsibility would cease because such soldier would be taken care of. However, if the United States Government does not take care of such soldier, the responsibility of your county is the same as it would have been were such soldier still in your own county as a civilian.

We enclose herewith a copy of an opinion given by this office under date of September 23, 1942, to Hon. Ira A. Jones, President, Board of Managers, State Eleemosynary Institutions, Jefferson City, Missouri, which details the procedure to follow in returning insane persons from the army to the state hospitals, which may be of some service to you in handling your particular case.

CONCLUSION

It is, therefore, the opinion of this department that a county is liable for the support of an indigent insane soldier whose residence was in that county, even

Mr. Lloyd Main

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though such insanity developed after his induction into the United States Army.

Respectfully submitted

HARRY H. KAY
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

HHK:HR