

INSANE PERSONS: State has no claim on estate of insane  
person sent to the institution by county  
COUNTIES: court as a poor person.

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June 28, 1943

Mr. Lieu Cunningham, Jr.  
Prosecuting Attorney  
Camden County  
Camdenton, Missouri



Dear Sir:

We are in receipt of your letter of June 25, 1943, in which you request an opinion from this department, as follows:

"In re: Estate of Anna La Pette Howe, deceased, Probate Court of Camden County, Missouri.

"The above estate is solvent, having some life insurance and money, as well as real estate, there are no near relatives.

"Anna La Pette Howe, was sent to the State Hospital at Fulton, Missouri, in 1934 or 1935, and remained there until her death in July, 1942.

"I have prepared and had filed a demand for the County for their expenditures in her behalf, and the Administrator is willing to pay the demand, providing the State does not file a demand for their expenditures, the Administrator has requested that I obtain your opinion as to the right of the State to file a demand for their proportion of the cost of keeping her in the Hospital, and if the State can or desires to file a demand to have it filed immediately.

"I have been unable to find any law relative to the matter, however would appreciate your opinion upon the matter on or before the 30th of this month, at which time the Administrator has agreed to pay the County their demand.

"The Administrator of course does not wish to pay the county demand and not have sufficient funds to pay the State."

There are two procedures for admission of a patient who is insane to the state hospital. The first procedure is that of a pay patient who has sufficient money to pay his expenses while confined in the hospital. The second procedure is that of an indigent poor person who has no money to pay his expenses while confined in the hospital.

Section 9322, R. S. Mo. 1939, provides that pay patients, or those not sent to the hospital by order of the county court, may be admitted on such terms as Article 2, Chapter 51 Revised Statutes 1939 may provide.

Section 9323, R. S. Mo. 1939, provides that the superintendent of the state hospital shall be furnished with a request for the admission of a patient into the hospital in the form set out under Section 9324, R. S. Mo. 1939.

Section 9325, R. S. Mo. 1939, sets out the form of the certificate of two physicians, as is set out in Section 9323, which section sets out specifically the information that shall be furnished to the superintendent of the state hospital.

Section 9326, R. S. Mo. 1939, sets out the form of bond that is to be signed by two sureties as required under the information requested by the superintendent under Section 9323.

Where a patient is sent to the state hospital as a pay patient ~~the state hospital as a pay patient~~ the state does not look to the county for the payment of the costs of the upkeep of the patient, but looks to the bondsmen who signed the bond, as set out in Section 9326, R. S. Mo. 1939.

It is true that the probate court has concurrent jurisdiction with the county court to hold a sanity inquisition of poor persons, but that such court has no authority to commit an insane poor person to a state hospital is held in the case of Van Loo v. Osage County, 141 S. W. (2d) 805, Par. 2,3, where the court said:

"It is our conclusion and we so rule that the probate court has concurrent jurisdiction with the county court to hold sanity inquisitions of poor persons, but that such court has no authority to commit an insane poor person to a state hospital. And we further rule that when a poor person is adjudged by the probate court to be insane and also found by said court to be disordered in mind, etc., as set out in Sec. 498, supra, then the probate court has the authority to make an order that such person be held until the county court shall cause him or her, as the case may be, to be 'removed to a state hospital' as provided in Sec. 8657, R. S. 1929, Mo. St. Ann. Sec. 8657, p. 7750, for the circuit court, and to transmit to the county court a certified copy of its proceedings in the matter. And in such situation there would be, as in the circuit court procedure, no occasion for any adjudication of sanity in the county court. The procedure in the Cox case, supra, was such or similar."

In the above quotation the probate court, it is said, may hold a sanity hearing for the purpose of declaring a poor person insane, but the usual procedure for the confinement of poor persons is set out in Section 9328, R. S. Mo. 1939. In that section the county is compelled to pay semi-annually, in cash in advance, such sums for the support and maintenance of the insane patient as the board of managers of the hospital may deem necessary, not exceeding \$6.00 per month for each patient. The county is also liable for the actual cost of their clothing and expenses of removal to and from the hospital, and if they die in the hospital for the burial expenses.

Section 9335, R. S. Mo. 1939, describes the proceedings for the admission of county patients.

Section 9336, R. S. Mo. 1939, provides for the notification of the insane person before he is declared insane by the county court.

In your request you infer that the State may file a demand for their expenditures upon the estate of Anna La Pette Howe. As said before, if the patient had been sent to the state hospital as a pay patient the State could only look to the bondsmen on the bond. But if the patient was sent to the state hospital as a poor person by the county, the State could only look to the county for the payment of any money due it and not to any estate left by the patient. There is a possibility, which your request does not disclose, that there may have been a change of status of the patient while in the hospital. Section 9346, R. S. Mo. 1939, provides the procedure by which a pay patient may be made a county patient, and Section 9347, R. S. Mo. 1939, sets out the procedure by which a county patient may be made a pay patient.

In writing this opinion we are assuming that during the time of the confinement of the patient in the state hospital she was there on an order of the county court as a poor person, and, we are also assuming that the demand made by the county upon the administrator of the estate is for money expended by the county to the State.

#### CONCLUSION

It is, therefore, the opinion of this department that if Anna La Pette Howe at the time of her entire confinement in the state hospital was there as a county poor patient, by order of the county court, the State would not have any claim against her estate for the reason that the state can only look to the county for the payment of the expenses of her confinement, maintenance and support.

Respectfully submitted,

APPROVED:

W. J. BURKE  
Assistant Attorney-General

ROY MCKITTRICK  
Attorney-General

WJB:CP