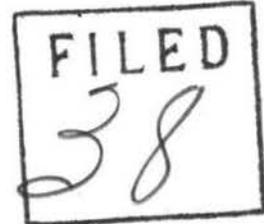


MISSOURI STATE SCHOOL:

Accepting patients

May 20, 1944



Mr. J. M. Haw
Assistant Prosecuting Attorney
Charleston, Missouri.

Dear Mr. Haw:

Your letter of May 9th has been received. Your letter states:

"I have been requested to write you with reference to the possibility of compelling the Missouri State School for the Feeble-Minded at Marshall, Missouri, to accept patients sent it by the County Court.

"* * *The authorities here would like to have an opinion from you as to what can be done under these circumstances."

Article 6 of Chapter 51, R.S. Mo. 1939, consists of nine sections of our statutes dealing with the colony for feeble minded, epileptic or otherwise designated in the statutes as Missouri State School. These sections of said article dealing specifically with the subject of your inquiry as to the power to compel the managers of the Missouri State School to accept patients, must be read with other sections under Article 1 of Chapter 51, R.S. Mo. 1939, which comprises the general statutes governing state eleemosynary institutions. For instance, Section 9258, Article 1, Chapter 51 defines the state eleemosynary institutions and includes the Missouri State School at Marshall as one of the group. Section 9259 provides for a board of managers. Section 9263 gives the authority to the board of managers to make necessary rules, regulations and bylaws for the government, discipline and management of each institution not inconsistent with the laws of this state, and such rules shall be binding upon all officers of such institutions and shall remain in effect until changed by the board. Section 9278 provides for the appointment of a superintendent of each eleemosynary institution who shall have complete charge, control and management of the entire institution with special attention to the health and sanitation of the respective institutions over which he has been appointed as manager.

Section 9392, Article 6, Chapter 51, provides that there shall be received and gratuitously supported in the Missouri State Schools, feeble minded and epileptics residing in the state who, if of age, are unable, or if of age, whose parents or guardians are unable to provide for their support therein, and who shall be designated as state patients. This section then provides that such additional number of feeble minded and epileptics, whether of age or under age, as can be conveniently accommodated shall be received and the school by the managers on such terms as shall be just; and shall be designated as private patients. This section further provides that all patients, either state or private patients, shall be received upon the written request of the person desiring to send them. This section further provides for the procedure and proof necessary to be followed and supplied to determine that a patient is an eligible and proper candidate for admission to the colony.

Section 9393 and section 9394 relate to the transfer of dangerous patients to other institutions, the discharge or parole of patients from the Missouri State School. They do not bear upon the question here and will not be further noticed.

Section 9395 must be read along with Section 9392, since section 9395 treats solely of the admission of state patients and defines generally the procedure to be followed by the managers respecting the admission of state patients. Section 9395 is as follows:

"Apportionment of state patients. -- When-
ever applications are made at one time
for admission of more state patients
than can be properly accommodated in the
school, the managers shall so apportion
the number received that each county may
be represented in a ratio of its dependent,
feeble-minded and epileptic populations
as shown by statistics of this state."

The patients being divided into two groups or classes; that is, state patients and private patients, it is obvious that the intent of the legislature was to give priority to state patients. The language in Section 9392 definitely states in the first paragraph that dependent patients shall be designated as state patients. Then the second paragraph of Section 9392 provides that such additional number of feeble minded and epileptics whether of age or under age as can be conveniently accommodated shall be received and shall be

designated as private patients.

Section 9395, in providing that when applications are made at one time for more state patients than can be properly accommodated, the managers shall so apportion the number received that each county may be represented in a ratio of its dependent, feeble minded and epileptic population as shown by the statistics of this state manifestly confers discretionary powers upon such managers to determine: (1) Whether there are or not applications at any one time for admission of more patients than can properly be accommodated in the school; (2) They must determine what the apportionment of patients received should be so that each county may be represented in such proportions as its feeble minded and epileptics bears to the whole population of such unfortunates according to the statistics of this state.

The determination of these matters involves the exercise of the discretionary judgment of the managers as to facts upon which they must admit patients to the school. This would make the conclusion inevitable that unless the board of managers should grossly abuse their discretionary powers they cannot be compelled to receive patients as long as they based the refusal upon over crowded conditions which would bear upon sanitation, health and other elements of the safe and proper conduct of the institution.

Mandamus will not issue to compel the performance of a discretionary act of a public officer unless he has abused that discretion. 38 C.J. 592, 593, 594, Section 71.

59 C.J. 1077 lays down this rule:

"Generally, statutes, directing the mode of proceeding by public officers, designed to promote method, system, uniformity, and dispatch in such proceeding, will be regarded as directory if a disregard thereof will not injure the rights of parties, and the statute does not declare what result shall follow noncompliance therewith, nor contain negative words importing a prohibition of any other mode of proceeding than that prescribed."

In the case of *Hudgens et al. v. School District et al.* 312 Mo. 1, l.c. 9, our Supreme Court had this to say about mandatory or directory statutes:

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"Under a general classification, statutes are either mandatory or directory; a determination of their character in this respect is of first importance in their interpretation. If mandatory, in addition to requiring the doing of the things specified, they prescribe the result that will follow if they are not done; if directory, their terms are limited to what is required to be done. (State ex rel. McAllister v. Bird, 295 Mo. 344)".

These sections providing for the admission of patients to the Missouri State School merely direct what the board of managers shall do in their discretion with respect to determining how many can be accommodated in the school, consistent with health conditions and other conditions, and prescribe no result if they are not done. It would appear then that these statutes are directory and not mandatory.

Respectfully submitted

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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