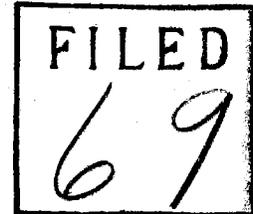


ELEEMOSYNARY INS TITUTIONS: County Court has no authority to deduct, from amounts due eleemosynary institution in year 1945, for overcharge made in previous year or years.

May 24, 1945



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Honorable W. R. Painter
President, Board of Managers
State Eleemosynary Institutions
Capitol Building
Jefferson City, Missouri

Dear Governor Painter:

Under date of May 15, 1945, you wrote this office requesting an opinion as follows:

"I have received your letter concerning the price to be charged for merchandise furnished to patients.

"Up to December 31st, 1944, there had been no adjustment of this account. Some of the counties are trying to deduct from their payment to the Eleemosynary Board for 1945 accounts what they think would be a fair deduction for the overcharge in 1944. We take the position here that was a debt incurred in 1944 and they will have to send their claim to the State Auditor and await the payment of same by the legislature as we have no money with which to make payment. We maintain we should be paid in full for the 1945 charges, with no deduction being made for the 1944 adjustment.

"Please give us your opinion about this as it is causing some trouble."

The operation of the eleemosynary institutions is controlled by statute, so that the answer to your question depends to a great extent upon statutory law.

Section 9328, R. S. Mo. 1939, requires the county courts to pay on behalf of the counties a portion of the expense of the indigent patients sent by counties. This section is 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 9334, R. S. Mo. 1939, requires the superintendents of the various institutions to cause statements of account to be sent to the county courts of the various counties having patients in the institutions, which section provides 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 9300, R. S. No. 1939, requires all money received by the institutions to be deposited in the State Treasury, providing as follows:

"All moneys received by any institution for the support of patients therein, from whatever source received, shall be paid into the state treasury, and shall be placed to the credit of the fund for the support of the eleemosynary institutions."

From these statutes it is apparent that the officers of the institutions have no discretion in the collection of the funds, merely acting as agents for the state, and that the money which is collected by the various institutions becomes a part of the state funds in the State Treasury.

The statutes also require the State Auditor to audit all accounts against the institutions. Section 9304, R. S. No. 1939. Further, the Board is authorized to bring suit to collect the accounts, Section 9306, R. S. No. 1939, providing for same as follows:

"For all debts and demands whatsoever due any eleemosynary institution, and all damages for failure of contract, and for trespass and other wrongs to the institution or any property thereof, real or personal, actions in any court of competent jurisdiction may be maintained in the name of the board of managers of such institution, naming it. Interest shall be recovered on any and all sums due the institution from the time when the cause of action accrued. In actions for any indebtedness, or for any damages due the institution on

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account of any patient or inmate thereof, the account therefor, certified by the superintendent, with the seal of the institution attached, shall be prima facie evidence of the amount due."

No statute has been found conferring authority on the officers of the institutions or the Board of Managers to make refunds of amounts erroneously charged for clothing, nor do we find any appropriation or item of appropriation for such refund.

This would all seem to indicate that county courts which have paid an excessive amount for clothing, for which account had been erroneously submitted, would not be authorized to deduct from later accounts the amount of such overcharge. Relief should be obtained through the Legislature.

Conclusion

It is, therefore, the conclusion of this Department that a county court has no authority to attempt to deduct, from amounts due an eleemosynary institution in the year 1945, for an overcharge made in some previous year or years.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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