

PAUPERS: County court under facts and circumstances stated is obligated to take care of said poor persons notwithstanding the fact he is not an inhabitant of said county.

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Honorable Duncan R. Jennings  
Prosecuting Attorney  
Montgomery County  
Montgomery City, Missouri

Dear Sir:

This will acknowledge receipt of your request, which reads as follows:

"On the evening of September 9, 1948, one Carl Ezra Gage was found lying on the shoulder of Missouri State Highway No. 19, near New Florence, Montgomery County, Missouri. This person is without legs. He was apparently a victim of a hit and run driver. He had numerous bruises and his left arm was fractured at the elbow. Our County Sheriff sent this injured party to the Audrain County Hospital for emergency treatment. We have not been able to establish by whom or how this man was injured.

"The said Carl Ezra Gage stated to both the Sheriff and myself that his home was La Grange, Indiana. The Highway Patrol contacted the authorities in La Grange and received information that Gage's family would send for him.

"We have written and telephoned the Sheriff's office in La Grange and have not been favored with a reply. The La Grange County Welfare Department advises, that they are unable to take any action, for the reason that their investigation indicated that the said Carl Ezra Gage had left their County about 17 years ago, and was not a resident of their

County.

"Request advice as to what procedure we shall take to relieve the County from taking care of this non-resident poor person."

Your request for an opinion under such facts and circumstances is rather unusual and this department has never heretofore rendered an opinion applicable to such conditions.

Naturally if you could determine this party's residence or were able to contact relatives, ordinarily such problems are relatively easy to solve but if you are unable to determine his residence or locate any relatives who are willing to financially care for him then apparently caring for such helpless, indigent person is an obligation to be assumed by your county which unfortunately works a hardship on the county but under such circumstances it leaves you no alternative but to care for him.

A poor person is defined as follows in Section 9591, R. S. Mo. 1939.

"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law and able to maintain them, shall be deemed poor persons."

Under Section 9592, R. S. Mo. 1939, an inhabitant for the purpose of said article (article III, chapter 55, R. S. Mo. 1939) dealing with support of the poor is defined as follows:

"No person shall be deemed an inhabitant within the meaning of this article, who has not resided in the county for the space of twelve months next preceding the time of any order being made respecting such poor person, or who shall have removed from another county for the purpose of imposing the burden of keeping such poor person on the county where he or she last resided for the time aforesaid."

Unquestionably this person is not an inhabitant of your county or any other county in this state.

Under Section 9593, R. S. Mo. 1939, the county court is

authorized to support persons entitled to benefits under said article. Notwithstanding the fact that this person is not an inhabitant of your county the General Assembly has vested in the county court authority at all times to grant relief to persons regardless of residence.

Section 9594, R. S. Mo. 1939, reads:

"The county court shall at all times use its discretion and grant relief to all persons without regard to residence, who may require its assistance."

In Scotland County vs. McKee, 168 Mo. 282, the appellate court held that under said statute the county court is not bound to support a poor person who is not an inhabitant of the county but said county court may do so. In a more recent decision of the Supreme Court, State v. Smith, 96 S.W.(2d) 40, l.c. 41 and 42, the court goes a little farther and states that it is the duty of the county to support the poor who are within its boundaries. However, the authority in support thereof, is apparently based upon Section 9590, R. S. Mo. 1939. Formerly Section 12,950, R. S. Mo. 1929, which provided that poor persons shall be relieved, maintained and supported by the county of which they are inhabitants and also upon public policy and the good of the society in general. In so holding the court said:

"We are of the opinion that it is the duty of a county to support the poor who are within its boundaries. Section 12950, R. S. Mo. 1929 (Mo. St. Ann. Sec. 12950, p. 7474), is as follows: 'Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants.'

'An examination of the Revised Statutes of Missouri 1929 clearly shows that poor relief is a "public purpose" and a governmental duty because by sections 12950 and 12952 (Mo. St. Ann. Sections 12950, 12952, p. 7474), counties are authorized to spend money in support of the poor; by section 9986 (Mo. St. Ann. Sec. 9986 (p. 8022)), a county pauper fund is provided; by section 12058 and 13942 (Mo. St. Ann. Sections 12058, 13942 (pp. 6410, 4240)) county poor houses and county hospitals are maintained; Sec. 9697 (Mo. Stat. Ann. Sec. (p. 7349)) gives authority to educate poor children that are blind or deaf; section 12961 (Mo. St. Ann. Sec. 12961 (p. 7476)) directs the county court to set aside, out

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out of its annual revenues, a definite sum for the support of the poor; article 1, chapter 90, creates a state board of charities and defines its functions; section 12930 (Mo. St. Ann. Sec. 12930, p. 7465) requires this board to supervise public relief to the poor. \* \* \*

"The good of society demands that when a person 'is without means, and unable on account of some bodily or mental infirmity or other unavoidable cause, to earn a livelihood,' he is entitled to be supported at the expense of the public. 'It is immaterial how the alleged pauper is brought into need, as it is the fact or the situation and not the method of producing it that is important.' 'So the fact that a person's want is the result of gross intemperance does not prevent him from securing relief as a pauper.' 'An able-bodied man, who can, if he chooses obtain employment which will enable him to maintain himself and family, but refuses to accept employment, is not entitled to public relief, though relief may be properly extended to the wives and children of such men.' 21R.C.L. 705, 706. It necessarily follows that an able-bodied man, who is unable to obtain employment on account of the economic conditions existing at the time, and who is without means of support, is entitled to public relief.' Jennings v. City of St. Louis, 332 Mo. 173, 58 S.W. (2d) 979, 981 87 A.L.R. 365."

We are unable to find any law in Missouri making it mandatory that a person support his kinsfolk other than, husband must support his wife and minor children. There are some other states that have enacted laws requiring persons related within a certain degree either by consanguinity or affinity to support their relatives when financially able so to do, but in the absence of any statute to that effect in this State, there is no such liability. If you are able to determine the residence of this person, some of his

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close relations, or some facts as to how he came to be in your county, it is possible that you might find someone legally responsible for his care, or willing to furnish him assistance at this time.

#### CONCLUSION

It is the opinion of this department that it is not mandatory that your county take care of this person, since he is not an inhabitant of your county as defined in Section 9592, supra, however, it is within the discretion of the County Court to care for him if the Court is a mind to do so. Until such time as you are able to determine the residence of this party, or if he has any available finances that could be used for his support, relatives or friends who are financially able and willing to care for him, or who may be legally responsible under the laws of some other state to support him, there is nothing that can be done except for your County Court to exercise its discretion and care for him, or refuse to do so.

Respectfully submitted,

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APPROVED:

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ARH:mw