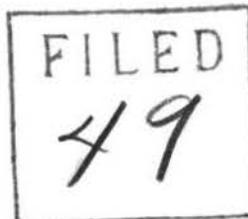


HOSPITAL: Pay patients cannot be evicted from state
INSANE: hospital to make room for indigent insane.

October 15, 1949

10/19/49

Hon. Robert G. Kirkland
Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Mr. Kirkland:

We have your recent letter requesting an opinion from this department, which reads as follows:

"Assuming that all the provisions of sections 9321, ff., R. S. Mo. 1939, as amended in 1945, have been followed and carried out according to both the procedural and substantive law by the various county officials and the Probate Court, can the officials of a state hospital for indigent insane refuse to accept a poor patient on the ground that the hospital is full, when the patient has been heretofore adjudged insane and indigent and ordered committed to the institution by the Probate Court, and when there are in the hospital a number of pay patients, or must the officials of the hospital receive the indigent patient under the order of commitment?"

We understand the substance of your question to be whether or not a state hospital must accept an indigent insane patient who has been properly committed, although the admittance of the former would necessarily result in the eviction of a paying patient because the hospital is full. Article 2, Section 9322, R. S. Mo. 1939, is as follows:

"Pay patients, or those not sent to the hospital by order of the court, may be admitted on such terms as shall be by this article and the by-laws of the hospital prescribed and regulated."

Section 9330, id., is as follows:

"The indigent insane of this state shall always have the preference over those who have the ability to pay for their support in a state hospital; and if there are not provisions in the state hospitals for the accommodation of all the insane persons in the state, then recent cases of insanity, by which term are meant cases of less than one year's standing, shall have preference over cases of more than one year's standing: Provided, no county shall have in the institution more than its just proportion, according to its insane population."
(Underscoring ours.)

Section 9321, Laws of Missouri, 1945, page 906, provides, in part, as follows:

"Persons afflicted with any form of insanity shall be admitted into the hospitals for the care and treatment of same. Any patient so admitted may be discharged or paroled whenever in the judgment of the Superintendent and his staff such person should be discharged or paroled. The decision of the Superintendent and his staff on such matter shall be final * * *"

Section 9330, supra, which in its general wording appears to be controlling in your problem, first became law in 1909, but, in spite of its lengthy tenure, has never been construed by the courts of this state. Said section states that the indigent insane shall have "preference" over those able to pay. Does this mean that paying patients must give way completely, i.e., leave the hospital if the admission of an indigent insane is sought, or merely that if there are two insane persons applying for admittance, one indigent and the other solvent, that the former shall be admitted first?

"'Preference' means the choice of one thing rather than another." Keller v. State, 31 S.E. 92.

"The provision of Quota Act 1921 * * * that in the enforcement of the quota provision of the act 'preference shall be given so far as possible to the wives, parents, brothers * * * of aliens now in the United States who have applied for citizenship,' means only that, if the quota from a country has not been filled, those so entitled to preference, if otherwise qualified, shall first be admitted." (Underscoring ours.) United States v. Curran, 299 Fed. Rep. 206, 214.

The instant section makes a definite rule in the event a hospital is full, "if there are not provisions in the state hospitals for the accommodation of all * * *," but goes on to provide merely that the most recent cases shall be preferred, thus conspicuously omitting mention of the preference of the indigent as specifically provided in the first sentence. The section is entitled "Who shall have preference," and yet on the particular problem you raise, that is, what shall be done when the hospital is already full, the Legislature expressed no preference for the indigent over the solvent, but merely of the recent over the remote. "It is a well known canon of statutory construction that expression of one thing is the exclusion of another." *Hendricks v. Sweaney*, 270 Mo. 543.

In *Case v. Wilson*, 151 Mo. App. 723, it was said: "Laws are presumed to be drafted with knowledge of all existing ones on the subject." Thus, if the Legislature had intended that the indigent should replace the solvent in the event of crowding, we would expect to find such an expression of intent in this very section, and yet it is omitted.

It has long been the policy of the Division of Mental Diseases to give preference to the indigent as to admittance, but not to discharge the paying patients to make room for the former. That this is of substantial weight in arriving at our ultimate conclusion is demonstrated by the language of the court in *Barrett v. First National Bank*, 297 Mo. 397, in part, as follows: "A long-continued interpretation of a statute by public officers charged with its execution should be considered in construing a statute." It appears to us then that not only would a construction of this section in favor of evicting paying patients not be a reasonable interpretation in view of the foregoing, but would not even be a just or fair interpretation. To evict a paying patient, paying or otherwise, while in a crucial stage of the course of medical treatment might very well work an irreparable damage on that patient.

In *Plum v. The City of Kansas City*, 101 Mo. 525, the court stated as follows: "It is a safe rule of construction to resolve any ambiguity or obscurity in a statute in favor of such reading as will best meet the demands of natural justice * * *"

Furthermore, Section 9321, supra, makes no distinction between indigent and solvent mental cases, and vests the absolute discretion as to who shall be discharged, and under what conditions, in the superintendent and staff of the hospital, and makes their decision, and theirs alone, absolutely final. From this and all of the preceding reasons, it manifestly appears that

Hon. Robert G. Kirkland

-4-

the hospital has the right to refuse admittance to any insane person, if there are no facilities for his accommodation, and the superintendent deems the discharge of any patient, paying or otherwise, inadvisable.

CONCLUSION

It is the conclusion of this office that the officials of a state hospital do not have to accept an indigent insane person if the hospital is full, even though there are in the hospital a number of paying patients. However, if there are both indigent and solvent insane persons waiting for admission, the indigent must be first admitted.

Respectfully submitted,

H. JACKSON DANIEL
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

HJD:ml