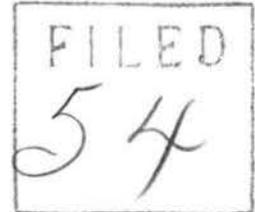


DANGEROUS INSANE

PERSONS:

1. The County Jail is a suitable place for the confinement of a dangerous insane person within the meaning of Sec. 9336 R.S.A. Mo., 1939, pending the adjudication of the question of sanity.
2. The sheriff is not restricted by the Statute to the county jail as a place of confinement of such patients.
3. The State Hospitals are not available as places of confinement for such insane persons before they have been adjudicated insane by the court.

April 27, 1949



Honorable Franklin W. Long
Judge of the Probate Court
Bates County
Butler, Missouri

Dear Judge Long:

We are in receipt of your letter of March 23, 1949, in which you request an opinion of this department, your letter is as follows:

"Section 9336 Revised Statutes 1939, reads in part as follows:

'..... Provided, however, if the affidavit filed in compliance with Section 9335 of this act states that the alleged insane person is so deranged as to endanger himself or others or would be dangerous to the safety of the community by being at large and is not being confined or restrained, the Judge or Clerk of the Probate Court may issue a Warrant authorizing the Sheriff to apprehend such alleged insane person and confine him or her in some suitable place for such time as may be necessary to carry to a determination the proceedings to inquire into the condition of the said alleged insane person and may, if in the opinion of the Judge issuing the warrant it is necessary, authorize one or more assistants to be employed. Said warrant shall be substantially in the following form.'

"In this county and we presume in most counties of the third class, the Sheriff has no "suitable place" in which to confine a person alleged to be insane and in such a condition as to be dangerous to himself or the community.

"It has been our experience that in cases where the accused should be confined until a hearing is completed that the accused is generally in such condition that he needs medical attention, constant care and guarding. The County Jail is not a proper place for people in this condition; and the Sheriff is not prepared or able to handle people in this condition.

"We ask that you please furnish us an opinion as to whether or not the Sheriff, upon receiving a Warrant from the Probate Court as referred to in the above Section, has the authority to immediately deliver the accused to a State Hospital for the insane, to be held and cared for until such time as the Probate Court may have a hearing as provided by law to determine whether or not the accused is insane and to commit him to the State Hospital for treatment as a County Patient. Also as to whether or not the Superintendent of said State Hospital is required to receive said accused and hold him for the Sheriff; the "suitable place" referred to in the Statute being the State Hospital.

"Also we would like to have your opinion as to whether or not the Sheriff, taking into his custody the accused by a Warrant as provided in the above Statute, may arrange to confine the accused in a Private Institution pending disposition of the case and until the State Hospital will admit the Patient after he has been found to be insane and ordered committed; and if the Sheriff may incur the expenses of keeping the accused in a Private Institution and if the County is liable for said expenses."

The pertinent portion of Section 9336 R.S.A. Mo., 1939 is set forth in your above quoted letter. Said section also sets forth the form of warrant which shall be directed by the court to the sheriff. This form of warrant is as follows:

"State of Missouri

County of _____

The State of Missouri, to _____

WHEREAS, it appears that proceedings have been instituted for inquisition into the sanity of _____, and it appears to the satisfaction of the undersigned that the said alleged insane person is so deranged as to endanger himself or others and would be dangerous to the safety of the community by being at large, you are, therefore, commanded forthwith to arrest said person and confine him in some suitable place until the proceedings herein instituted have been determined, and you are authorized to take to your aid _____ assistants, if deemed necessary by you. After executing this warrant make return thereof to the office of the county clerk.

Witness my hand this ____ day of ____ 19__

Judge of the County Court."

In your aforesaid letter you express yourself as believing that the county jail is not a suitable place of confinement for a dangerous insane person pending adjudication on the matter of sanity and you point out the lack of facilities for medical attention, which you correctly say is usually needed by such patients.

We quite agree with you that the county jail is not a suitable place of confinement for such patients from the standpoint of affording the necessary curative facilities, but we are of the opinion that it is a suitable place for this confinement, which is of a very temporary nature, within the meaning of the statute above quoted.

We are of this opinion for the reason that the outstanding purpose of the section is the restraint of a dangerous person in order to prevent his harming himself or others and in order to prevent his menacing the safety of the community. We are of the opinion that confinement in the county jail should prevent all of these dangers which the aforesaid section is designed to provide

against. It is to be assumed that in all jails reasonable measures are resorted to in order to prevent persons from inflicting self injury whether such persons be sane or insane and certainly the confinement of a dangerous insane person in the jail would protect the outside world from any violence which he might perpetrate if he were at large. We are therefore of the opinion that in view of the fact that confinement of a dangerous insane person in the county jail for the days pending the adjudication of the question of sanity accomplishes the purposes of the statute, it is therefore logical to hold that confinement of such a person in the county jail is confinement in a suitable place within the meaning of said section.

In further support of the opinion expressed above we call attention to the fact that section 9340 R.S.A. Mo., 1939 provides that if the court finds the insane person to be dangerous it shall so state in its order and authorize the sheriff to hold the insane person in the county jail or other safe place until such time as he is admitted to the state hospital. Said section 9340 is as follows:

"If the court at the hearing finds that a person is dangerous either to himself or the person or property of others or that he would endanger the community by being at large, such finding shall be stated in the order of court and shall authorize the sheriff to hold the insane person in the county jail or other safe place until such time as admission may be had at the state hospital to which he has been committed."

We are of the opinion that after construing section 9336, supra, and 9340, supra, together it is logical to conclude that since the legislature considered the county jail a fit place in which to confine a dangerous insane person during the period of time between the adjudication and the admission of the patient to the state hospital it also considered such county jail as a suitable place in which to confine a dangerous insane person pending adjudication. It should be borne in mind, however, that the legislature did not in either section designate the county jail as the only suitable or safe place for confinement of such patients.

We are of the opinion that the statute does not limit the sheriff to the county jail as a place of confinement for such insane persons. We base this opinion on the use in the section

of the very broad expression "in some suitable place", which description would be satisfied by any decent place of confinement sufficient to hold or confine a patient and where reasonable precautions might be provided against the infliction of self injury by the patient. Our holding to the effect that the sheriff may choose any suitable place of confinement for a dangerous insane person leads us to the consideration of the direct question as to whether or not the sheriff has the authority to deliver dangerous insane persons to the state hospital immediately upon receipt of the warrant and whether the superintendent of the state hospital is required to receive the patient pending adjudication. In answer to this question we call attention to the fact that the law provides only two methods whereby patients may be admitted to a state hospital. One method applies to pay patients and is set forth in sections 9323, 9324 and 9325 R.S.A. Mo., 1939, which sections contain no provisions authorizing a superintendent of a state hospital to receive patients pending a sanity hearing. The other method applies to insane persons who are poor and unable to pay. These persons are to be paid for by the county as set forth in section 9328, R.S.A. Mo., 1939, after being adjudicated insane. This statute does not contain any provision from which it may be implied that it is the duty of a superintendent of a state hospital to accept dangerous insane patients pending an adjudication as to their sanity and since no section of the statute pertaining to acceptance of such patients by state hospitals provides for acceptance of such patients pending adjudication we are of the opinion that state hospitals are not available for such patients until after they have been adjudicated insane.

We shall next consider the question as to the right of sheriffs to confine a dangerous insane person in a private institution pending adjudication and to charge the county with the expense resulting. We are of the opinion that the sheriff has the right under section 9336 to confine the patient in a suitable private institution, but that in view of the fact that the county jail is also a suitable place of confinement for such patients pending adjudication within the meaning of the statute, he would not have the authority to obligate the county to pay such private institution when a county has a cheaper suitable place as the county jail available.

CONCLUSION.

We are therefore of the opinion that under section 9336, R.S.A. Mo., 1939, the sheriff has authority to confine a dangerous

insane patient in the county jail pending adjudication and that said county jail is a suitable place of confinement within the meaning of the statute.

We are of the further opinion that the sheriff may confine such dangerous insane person in any other suitable place of confinement available, but that the county is not chargeable with the obligation to pay therefor, since it has available a county jail which is a suitable place of confinement of such a patient within the meaning of the statute.

We are of the further opinion that the state hospitals are not available for use by the county sheriff as places of confinement for dangerous insane persons prior to the adjudication of insanity.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SMW:p