

SHERIFF:

Sheriff is to convey county patient found insane to state hospital upon order of probate court. Rate of compensation fixed by R. S. Mo. 1939, Sec. 9355. No duty to convey pay patient admitted to state hospital through application to superintendent unless the sheriff has the patient in his care and custody for some other cause.

August 10, 1950.

FILED: 18

Hon. E. Wayne Collinson,  
Prosecuting Attorney  
Greene County,  
Springfield, Missouri.



Dear Mr. Collinson:

This office is in receipt of your recent letter requesting an opinion from this department on the following problem.

"The following set of circumstances has happened in Probate Court here in Greene County:

"The Sheriff took two incompetent persons to Nevada, Missouri to be incarcerated in the insane asylum. He took them both at one time with one guard. One of these persons is a pay patient, the other person is a county patient. The question has arisen and is in dispute between the Sheriff and Probate Judge as to whether both of these persons should be charged for mileage, guard, and if both should not be charged, how should it be shown on the Probate Judge's books and Sheriff's books."

Your attention is directed to Laws of Mo. 1945, p. 905, Sec. 1, referring to county patients who have been found by the Probate Court to be insane, and a fit subject to be sent to a state hospital. Said section reads in part as follows:

"If after such examination, the court, or the jury, if one shall have been employed, shall be satisfied of the truth of the facts set forth in the statement, the court shall cause a suitable order to be entered of record, upon its own decision, or, where the verdict of the jury has been rendered, upon the verdict. And such order shall further set forth that the person found to be insane is a fit subject to be sent to a state hospital (naming the particular hospital) to undergo treatment therein; \* \* thereupon the Clerk or Judge of the Court shall forthwith issue a certified copy of the court's order and commitment, and deliver the same to the officer or person who

who is to transmit such patient to such hospital. The Clerk or Judge shall, thereupon, in due season, for conveyance of such person to the state hospital by the appointed time, issue his warrant to the sheriff of his county, or any other suitable person, commanding him forthwith to arrest such insane person and convey him to the state hospital designated in the order. If the Clerk or Judge be satisfied of its necessity, he may authorize one or more assistants to be employed \* \* \*."

R. S. Mo. 1939, Sec. 9355, provides for the rate of compensation for a sheriff and his assistant for removing county patients to or from a state hospital in the following words:

"To the Sheriff or other person, for taking a patient to a state hospital or removing one therefrom, upon the warrant of the Clerk, mileage going and returning, at the rate of ten cents per mile, and \$1.00 per day for the support of each patient on his way to or from the hospital shall be allowed; to each assistant allowed by the clerk and accompanying the Sheriff, or other person acting under the warrant of the clerk, \$4.00 per day for the time actually consumed in making said trip said sum, to include all expenses of such assistant. The computation of mileage in each case is to be made from the place of arrest to hospital by the nearest route usually traveled: Provided, that the said Sheriff shall furnish all necessary means of transportation without charge other than as above allowed. The cost specified in this Section shall be paid out of the County Treasury of the proper county."

These two sections appear to clearly impose upon the sheriff or other suitable person named by the probate court the duty to convey a patient to a state hospital designated in the order, and further clearly states the mileage charge and per diem to be allowed the sheriff and his assistant to be paid out of the county treasury for conveying a county patient to a state institution.

Your second inquiry is whether the sheriff should be allowed a fee for transporting a "pay patient" to the state hospital.

First, you will note the manner in which pay patients, or those not sent to the hospital by order of the probate court, are to be admitted to the hospital. Admission of pay patients to the state hospitals is provided for in sections 9323 to 9327, R.S. Mo.

1939. Application for the admission of such a patient is made to the superintendent of the hospital and the probate court has no duties whatever in connection with committing a pay patient. It is the duty of the person by whose direction the patient is sent to the hospital to deliver such patient to the hospital. We find no statutes imposing upon the sheriff the obligation to take into his care and custody any person to be conveyed to a state hospital unless the patient is dangerous in the community or has been charged with or convicted of a crime or has escaped from a state hospital. You do not indicate in your request for an opinion that such circumstance has arisen here.

We do not find any statute which requires the sheriff to convey a pay patient to the state hospital except under the circumstances cited above. If the person by whose direction application is made to the superintendent of the hospital for the admission of a pay patient fails to convey such patient to a hospital and employs another person to perform that task the person so employed, whether the sheriff or any other person, shall determine the amount of the charge for such service as an independent agreement between such persons. It is not a charge or fee coming to the sheriff by virtue of his office, and no statute established the rate the sheriff or any other person employed to convey a pay patient to a state hospital shall charge. The sheriff or other person so employed would not report such employment or services or charges therefore to the probate court, nor to the county court because it is in the nature of private employment rather than a duty of his office.

Of course, if there were some extenuating circumstance such as the patient being in the custody of the sheriff because of a criminal conviction or because he has escaped from a state institution then the sheriff would be obligated to convey such patient to the hospital. You do not disclose such a circumstance has arisen in the problem cited by you, and we have assumed in rendering this opinion that your case is one in which some person has requested the superintendent of a state hospital to admit a pay patient and that neither the probate court nor the sheriff have any official connection with such admission by virtue of their office.

If the condition of the pay patient is such as to authorize his or her confinement for his or her safety and the safety of persons and property of others, then the probate court could order the pay patient confined, at least temporarily. Such temporary confinement could be within a state hospital with the transportation to be made by such person or persons as may be designated by the probate court, and the expense of such transportation charged to the estate of the pay patient in probate court as part of the costs on the hearing of the sanity of the pay patient. You do not indicate in your letter that this was the situation, however.

CONCLUSION.

It is the duty of the sheriff or other person named in the order of the probate court to convey a county patient to a state hospital for the insane. The clerk or judge of the probate court may authorize one or more assistants to be employed. The sheriff or other person and the assistant shall be allowed the sums specified in R. S. Mo. 1939, Sec. 9355, for conveying a patient to a state hospital who has been committed as a county patient by the probate court.

No statute charges the sheriff with the duty of conveying a patient to a state hospital by virtue of his office nor fixes any fee therefor unless the sheriff shall for some other cause have the patient in his care or custody, such as a patient found to be dangerous in the community, or one who has been charged with or convicted of a crime or has escaped from a state hospital. It is the duty of the person requesting admission of the pay patient to the state hospital to convey such patient to the hospital. If such person employs the sheriff or any other person to transport a patient to the state hospital the charges made for such services must be by agreement between the parties; the statutes fix no charge payable to the sheriff by virtue of his office, unless the sheriff shall for some other cause have such patient in his care or custody as indicated above. The fee or charge collected for transporting a pay patient to a state institution admitted on application to the superintendent of the institution should not be reported to the probate court. If the condition of the pay patient warrants temporary confinement to safeguard the insane person and the person and property of others, then the probate court could order temporary confinement and transportation expenses would be charged to the estate of the pay patient in probate court as part of the costs on the hearing of the sanity of the pay patient.

Respectfully submitted,

JOHN E. MILLS,  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
Attorney-General