

INSANE PERSONS:
CONVICTS:
PAROLE:

Superintendent of the state hospital in which an insane person is incarcerated pursuant to an order of the Governor suspending his sentence because of such insanity has no power to return him to the custody of the prison officials absent an order to that effect from the Governor.



November 18, 1954

Honorable W. J. Cremer, M.D.
Superintendent
Missouri State Hospital No. 1
Fulton, Missouri

Dear Sir:

In your recent request you ask this office for an opinion on the following facts:

"On July 24, 1953, we received at this hospital one E. H. as a transfer from the Missouri State Penitentiary on an order of the Governor in accordance with statutes No. 549040. This individual had been convicted in the April 1953 term of the circuit court, Cape Girardeau County--having been actually sentenced by an order of the court May 2, 1953 to two years in the Missouri State Penitentiary for grand larceny.

"Following his admission here, it was our opinion that this individual was suffering from Schizophrenic Reaction, Acute Undifferentiated type. He was definitely insane. Under treatment he has shown no improvement whatsoever.

"Facts subsequently remain that this patient is a resident of the State of Illinois, and his family have been anxious to get him returned to the State of Illinois for treatment. I am not familiar with sick parole statutes under the State penal system, and for several months I have had repeated requests to attempt to determine whether an individual confined here under such circumstances could by any legal means be returned to the custody of authorities by the Board of Probationary paroles under the sick parole statutes.

"Statute No. 549050 would indicate to me, that I have no authority to do anything but to certify back to the Governor that the patient has completely recovered, as

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far as transferring back to the penal authorities jurisdiction. In this particular case, it would seem that recovery is unlikely and I will, therefore, never be in such a position to so certify to the Governor.

"I would appreciate from you an opinion concerning the facts in this case--whether there is any statutory regulations with which I am not familiar, that would possibly give me the authority to certify to the Governor that while this patient is not recovered and recovery is unlikely that I would urge that he be returned to the custody of penal authorities for sick parole consideration. I understand that the family have given assurance that he would be placed under medical jurisdiction if such consideration is possible."

As you indicate in your letter, Section 549.050 RSMo 1949 relates only to a situation where the superintendent certifies to the return to sanity of a convict who has theretofore completed two-thirds of his sentence before his transfer to the asylum, and would have no bearing upon the problem which you face. In the present case, you indicate not only that the convict has not recovered his sanity but that he is unlikely to do so and, of course, in such circumstances, you could not certify to his recovery either under the provisions of Section 549.050 supra, or under the general law of the state as set out in the case of State v. Brackington, 349 Mo. 662, 162 SW2d 860. In the present case, the convict is legally held in your institution pursuant to an order of the Governor, issued under the authority granted him by Section 549.040 RSMo 1949, and his release for treatment elsewhere can only be accomplished by one having discretion in the matter of the disposition of convicts who become insane before the completion of their sentence. Since the authority of the Board of Probation and Parole extends only to "any person confined in any correctional institution" by the provisions of Section 549.240 RSMo 1949, such Board could not have such discretion in the case of the convict whom you mention since he is presently legally confined in your institution rather than in a correctional institution, and therefore, it would appear that the discretion in this matter is vested by the provisions of said Section 549.040 in the hands of the Governor.

This section (549.040) gives the Governor authority "to pardon such lunatic, commit or suspend, for the time being, the execution of such sentence...".

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Thus it appears that the Governor has large discretion in such cases as is shown by such decisions as that of the Missouri Supreme Court in the case of Lime v. Blagg, 345 Mo. 1, 131 SW2d 583, and that the Governor has wide latitude in the nature of the order that he may issue, and that the action he takes may be conditioned in any manner that is not illegal, immoral, or impossible. See ex parte Strauss, 320 Mo. 349, 7 SW2d 1000; Ex parte Webbe, (Mo. Sup.) 30 SW2d 612; and Silvey v. Kaiser, (Mo. Sup.) 173 SW2d 63.

From the above, it appears that the convict about whom you inquire is properly incarcerated in your institution pursuant to the order of the Governor, that the Governor has large discretion as to the disposition to be made in the case of such an insane prisoner, and that any problems now confronting you as to the disposition of such convict should be brought to the attention of the Governor for his consideration.

CONCLUSION

From the foregoing, it is the conclusion of this office that the superintendent of a state hospital wherein an insane convict is incarcerated has no authority to return such convict to the custody of prison officials prior to his return to sanity, that the discretion and the handling of such matters is vested in the hands of the Governor of the State of Missouri, and that any facts which might make a change desirable should be brought to the attention of the Governor.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Very truly yours,

JOHN M. DALTON
Attorney General

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