

PAUPERS: County may recover from person obligated to support an indigent insane person or from such insane person's estate amounts expended by it for support of such insane person, but cannot recover from anyone amounts expended for support of other poor persons.

COUNTIES:

INSANE:



March 19, 1956

Honorable Max B. Benne  
Prosecuting Attorney  
Atchison County  
Rock Port, Missouri

Dear Mr. Benne:

This is in response to your request for opinion dated March 1, 1956, which reads as follows:

"I have been asked by the County Court of this County to advise them of their right to recover from a pauper or his estate the amount of aid given to said person for his care or support. The typical case is where a person has a modest home worth perhaps \$1,500.00, and upon his death the County files a claim in Probate Court for the amount of aid rendered him during his lifetime. I assume no fraud or deceit.

"There seems to be no cases listed in the Missouri digest under Section 40 of Paupers. There is to be found in Foster vs. Fraternal Aid Union, App. 87 SW2d 669 @671 some dicta on the question. Other material is found in 70 C.J.S. 129-134.

"I would much appreciate an opinion from your office concerning the rights of the County in these matters."

For sake of convenience, we shall set forth the applicable portion of the citations referred to by you in your request. 70 C.J.S., Paupers, Section 64, page 129, reads as follows:

"While there is some authority to the effect that at common law a poor person or his estate is liable for his support and maintenance at public expense, as a general rule, in the absence of contract or of some express statutory

Honorable Max B. Benne

provision, where public authorities relieve a pauper, pursuant to their statutory obligation, neither the pauper nor his estate after his death is under any obligation to make reimbursement; and this is the rule even though the pauper owned property at the time the relief was furnished, in the absence of fraud or deception on his part as to his ability to support himself, or although he subsequently became of sufficient ability to repay."

The dictum referred to, contained in *Foster v. Fraternal Aid Union*, Mo. App., 87 SW2d 669, 671, is as follows:

"It may be true that Jackson county, having duly accepted Warren T. Davis and Julia C. Davis, his wife, as poor persons, into the Jackson County Home for the Aged and Infirm, with no provision for the repayment of such expense, is not entitled to recover the amount thereof from Julia C. Davis estate. Article 4, chapter 90, R.S. Mo. 1929 (Mo. St. Ann. c. 90, art. 4 Sec. 12950 et seq., p. 7474 et seq.); 48 C.J. pp. 519, 544; *Chariton County v. Hartman*, 190 Mo. 71, 77, 88 S.W. 617. But that is something that will not assist intervener in her claim."

Although the C.J.S. quotation indicates that in some jurisdictions, i.e., Pennsylvania and the District of Columbia, even in the absence of a statute for a contract to repay, the county could recover from an indigent person or his estate the amount expended on his behalf by the county, it is not necessary to analyze or distinguish those cases from those representing the contrary view, which is apparently the one which prevails in most jurisdictions, because from the Missouri cases it is quite clear which line of cases the Missouri courts follow.

In *Montgomery Co. v. Gupton*, 139 Mo. 303, the deceased had in her lifetime been adjudged an indigent insane person and maintained in the State Lunatic Asylum as a county patient. Upon her death this action for recovery of the amounts expended by the county was brought against her estate. The lower court granted judgment for the plaintiff county, which was reversed by the Supreme Court. In disposing of the case the court said, l.c. 308:

Honorable Max B. Benne

"It is well settled at common law that the provision made by law for the support of the poor is a charitable provision, from which no implication of a promise to repay arises, and moneys so expended can not be recovered of the pauper, in the absence of fraud, without a special contract for repayment. Selectmen of Bennington v. McGennes, 1 D. Chipp. 44; Benson v. Hitchcock, Adm'r, 37 Vt. 567; Inhabitants of Deer-Isle v. Eaton, 12 Mass. 328; Inhabitants of Stow v. Sawyer, 3 Allen, 515; Charleston v. Hubbard, Adm'r, 9 N.H. 195. A person so relieved, whether he had or had not property, never was liable to an action for such relief at common law. Inhabitants of Groveland v. Inhabitants of Medford, 1 Allen, 23. 'The misjudgment of the officers of the poor as to the necessities of the person relieved, raises no implied promise on the part of such person that he will repay moneys expended in his behalf. City of Albany v. McNamara, 117 N.Y. 168. In view of these well settled principles of the common law, in many of the States laws have been enacted authorizing the recovery, by suit against the pauper, of moneys expended in his support. Such is the case in Pennsylvania, and it was upon a statute of this character that a recovery was upheld in Directors v. Nyce, 161 Pa. St. 82. But we have no statute of similar import. The only statute we have authorizing a recovery against any person for money expended in support of paupers is Section 5557, by which it is provided that:

"In all cases of appropriations out of the county treasury for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same.'

"Counsel for respondent insist that under this statute a recovery is authorized in this case, and the question is gravely asked: 'If an

Honorable Max B. Benne

action can be maintained against one who is legally liable for the support of the patient on account of an appropriation by the county, why could it not be maintained against the individual himself, or in case of his death against his administrator?' The obvious answer is: Because the right of action is purely a creation of the statute, and the statute gives it in the one case, and does not in the other. There is no principle of statutory construction to warrant the assumption that 'a legal liability being upon others, if they are able pecuniarily to pay for the patient's support, the law will imply a promise on the part of the patient to pay for it himself, if able pecuniarily.' Upon which the judgment in this case seems to have been based. The deduction is a palpable non sequiter and to give it effect is simply judicial legislation. Whatever argument may be urged in support of the proposition that such ought to be the law should be addressed to the legislature and not to the courts. The judgment is reversed. \* \* \*

See also Chariton County v. Hartman, 190 Mo. 71, 77, 88 SW 617, and the cases collected in 125 A.L.R. 712.

The statute quoted in the Montgomery County case allowing recovery from the person legally bound to provide for the support and maintenance of an insane person maintained at county expense was amended in 1927, adding the proviso that the county could also recover from the estate of such insane person. Section 202.260, RSMo 1949, now reads:

"In all cases of appropriation out of the county treasury for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same, and also the county may recover the amount of said appropriations from the estate of such insane person."

See Barry County v. Glass, Mo. App., 160 SW2d 808.

Honorable Max B. Benne

It is interesting to note that even before this statute was amended, allowing recovery against the estate of such insane person, recovery was obtained in City of St. Louis v. Hollrah, 175 Mo. 79, the court holding that the defense was an affirmative one which must be pleaded. Another interesting case is Audrain County v. Muir, 297 Mo. 499, 249 SW 383, holding that a husband is under no obligation to provide for his wife's necessaries while she is living apart from him without fault on his part, and consequently under those facts recovery cannot be had against him under that section.

Although because of Section 202.260, supra, recovery can now be had against either the person legally obligated to provide for the support and maintenance of an indigent insane person or against the estate of such insane person, we believe it quite clear from the case of Montgomery County v. Gupton, supra, that, in the absence of fraud or an express contract to repay, no recovery can be had from anyone for the support and maintenance of other poor persons maintained at county expense because there is no statute allowing such recovery.

#### CONCLUSION

It is the opinion of this office that a county may recover from either a person legally obligated to provide support and maintenance for an indigent insane person or from the estate of such insane person the amounts expended by the county for the support and maintenance of such insane person, but that, in the absence of fraud or deceit or an express contract to repay, the county cannot recover from anyone amounts expended by it for the support and maintenance of other poor persons.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWI/ml/bi