

MENTAL HEALTH:  
INSANE PERSONS:

Recovery of competency inquiry provided for in Sec. 475.360 RSMo Cum. Supp. 1955 need not be employed to qualify person to serve as administrator of an estate subsequent to such person's discharge as a "mentally ill individual" under authority of Sec. 202.827 RSMo Cum. Supp. 1955.



January 23, 1957

Honorable James A. Cole  
Prosecuting Attorney  
Franklin County  
Union, Missouri

Dear Mr. Cole:

This opinion is rendered in reply to your inquiry reading as follows:

"The Hon. Edwin Hoemann, Probate Judge of Franklin County, Missouri has requested that I write you concerning the mentally ill laws.

"A resident of Franklin County, under RSMo. Section 202.807, was found to be mentally ill, and was ordered to be hospitalized for an indeterminate period. Said resident has now been released by the State Hospital.

"Prior to the above proceeding, the spouse of the resident died.

"The question involved is whether it shall be necessary to have a proceeding under RSMo. Section 475.360 'Recovery of competency, inquiry', before the resident could serve as Administratrix or in behalf of herself file for her rights as surviving spouse."

The general rule on qualifications of a natural person to serve as an executor or administrator is found in the following language from Section 473.117 RSMo Cum. Supp. 1955:

"1. No judge or clerk of any probate court, in his own county, or his deputy, no person under twenty-one years of age, or of unsound mind, no habitual drunkard,

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and, except as otherwise provided by law, no person who is a nonresident of this state, shall be executor or administrator. No executor of an executor, in consequence thereof, shall be executor of the first testator." (Emphasis supplied)

Section 202.807 RSMo Cum. Supp. 1955 outlines procedure for involuntary hospitalization, on court order, of a person alleged to be "mentally ill" as such term is defined in the following language from Section 202.780(5) RSMo Cum. Supp. 1955:

"'Mentally ill individual,' an individual having a psychiatric or other disease which substantially impairs his mental health who may or may not be legally insane."

The informal nature of hearings under procedure outlined in Section 202.807 RSMo Cum. Supp. 1955, is evident from the following language from such statute:

"\* \* \* The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered and shall not be bound by the rules of evidence.  
\* \* \*"

The scope of an order of the probate court in a proceeding under Section 202.807, supra, is outlined in the following language from subparagraphs 7 and 8 of such statute:

"7. If, upon completion of the hearing and consideration of the record, the court finds that the proposed patient is mentally ill, and is in need of custody, care or treatment in a mental hospital and, because of his illness, lacks sufficient insight or capacity to make

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responsible decisions with respect to his hospitalization, it shall order his hospitalization for an indeterminate period or for a temporary observational period not exceeding six months; otherwise it shall dismiss the proceedings. If the order is for a temporary period the court at any time prior to the expiration of such period, on the basis of report by the head of the hospital and such further inquiry as it may deem appropriate, may order indeterminate hospitalization of the patient or dismissal of the proceedings.

"8. The order of hospitalization shall state whether the individual shall be detained for an indeterminate or for a temporary period and if for a temporary period, then for how long."

A review of the language quoted from Section 202.807, supra, touching the power of the probate court to make findings, discloses an absence of any authority in the court to find the person legally insane. This special procedure looks to corrective treatment of persons mentally ill, rather than to a judicial determination of sanity or insanity. The authority vested in the head of a hospital to discharge a person hospitalized under procedure outlined in Section 202.807 RSMo, supra, is found in Section 202.827 RSMo Cum. Supp. 1955, reading as follows:

"The head of a hospital as frequently as practicable shall examine or cause to be examined every patient and whenever he determines that the conditions justifying involuntary hospitalization no longer obtain, discharge the patient."

The extent to which the legislature has guaranteed civil rights of persons hospitalized for treatment under procedure outlined in Section 202.807, supra, is additional proof that corrective treatment, rather than hospitalization of persons judicially declared incompetent, by reason of insanity, is the goal to be achieved. Section 202.847 RSMo Cum. Supp. 1955, provides:

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"1. Subject to the general rules and regulations of the hospital and except to the extent that the head of the hospital determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient shall be entitled:

(1) To communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the hospital;

(2) To receive visitors; and

(3) To exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

"2. Notwithstanding any limitations authorized under this section on the right of communication, every patient shall be entitled to communicate by sealed mail with the division and with the court, if any, which ordered his hospitalization.

"3. Any limitations imposed by the head of the hospital on the exercises of these rights by the patient and the reasons for such limitations shall be made a part of the clinical record of the patient."

Section 475.360 RSMo Cum. Supp. 1955, referred to in the opinion request, is a part of Missouri's new Probate Code particularly applicable to guardianships of minors and incompetents, and reads as follows:

"For and on behalf of any person previously adjudged to be incompetent or of unsound mind by any court in the state of Missouri, there may be filed in the probate court of the county wherein he was adjudged incompetent or of unsound mind, a petition in writing, verified by oath or affirmation, alleging that subsequent to such adjudication he has fully recovered his mental health and been

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restored to his right mind and is now capable of managing his affairs, and the probate court wherein the petition is filed shall hold an inquiry as to the mental condition of the person in whose behalf the petition is filed. If the court, upon the inquiry, finds that the person is not restored to his right mind, and such person, or anyone for him, within ten days after such finding, files with the court an allegation in writing, verified by oath or affirmation that the person is of sound mind and is aggrieved by the action and finding of the court, the court shall then cause the facts to be inquired into by a jury."

A reading of Section 475.360, supra, discloses that procedure outlined therein is to be employed only after a person has previously been adjudged to be "incompetent or of unsound mind" in any court in the state of Missouri. Procedure looking to the initial appointment of a guardian of a minor or incompetent is fully outlined in Chapter 475 RSMo Cum. Supp. 1955, and such law has superceded Chapter 458 RSMo 1949, entitled "guardians of insane persons and drunkards." It is reasonable to conclude that Section 475.360, supra, providing for a restoration of competency inquiry has reference to an adjudication of incompetency after application for guardianship has been initiated under Chapter 475 RSMo Cum. Supp. 1955.

In the forepart of this opinion we have quoted the definition of a "mentally ill individual" found in Section 202.780(5) RSMo Cum. Supp. 1955, and disclosed the authority of the head of a hospital to discharge such a "mentally ill individual" by citing Section 202.827 RSMo Cum. Supp. 1955. The definition of a "mentally ill individual" discloses that the person may or may not be legally insane. It is the opinion of this office that legal insanity or incompetency is to be adjudicated under procedures outlined in Chapter 475 RSMo Cum. Supp. 1955, or related statutes, other than under Section 202.807 RSMo Cum. Supp. 1955. Accordingly, it is concluded that Section 475.360 RSMo Cum. Supp. 1955, looking to an inquiry to establish recovery of competency need not be employed to qualify a person to serve as administrator of an estate subsequent to such person's discharge as a "mentally ill individual" under authority contained in Section 202.827 RSMo Cum. Supp. 1955.

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CONCLUSION

It is the opinion of this office that Section 475.360 RSMo Cum. Supp. 1955, looking to an inquiry to establish recovery of competency need not be employed to qualify a person to serve as administrator of an estate subsequent to such person's discharge as a "mentally ill individual" under authority contained in Section 202.827 RSMo Cum. Supp. 1955.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

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