

COUNTY COURT: The duty owed by a county hospital towards
NURSING HOMES: the county's indigent old is met with the
COUNTY HOSPITAL: completion of medical treatment. A county
court may provide for its indigent old by
paying a private nursing home institution
for their care if it determines this means
of care to be economically expedient. The
county may grant supplemental aid to its
indigent old in addition to that granted
by the state.

May 26, 1959

Honorable Charles M. Cable
Prosecuting Attorney Dunklin County
Bradley Building
Kennett, Missouri



Dear Mr. Cable:

This is in reply to your letter of April 2, 1959, requesting that we submit an opinion in response to an inquiry by Mr. Albert B. Osborne, Jr., Administrator of the Dunklin County Memorial Hospital, Kennett, Missouri, concerning certain patients of the county hospital which could be best served by nursing home care.

After reviewing Mr. Osborne's letter of March 30, 1959, we have formulated two questions which we feel state Mr. Osborne's inquiry. These questions are as follows:

1. Does the county hospital have the responsibility of providing nursing home facilities for aged wards of the county or aged indigents who are residents of the county, after it has cared for the patient's general hospital needs?

2. (a) In order to provide nursing home care for these aged indigents after the general hospital needs have been made, may the county pay a private nursing home the monetary difference between the patient's old age assistance check and the nursing home charges?

(b) If such charges may be paid, by whom are they payable, the hospital or the county court?

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In answering these questions, we are proceeding on the assumption that these people are indigent residents of the county who are unable to otherwise provide for themselves, or who are unable to secure care and support through relatives.

Section 1, of Article X, of the Missouri Constitution of 1945, provides as follows:

"The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes."

The Legislature has seen fit to delegate powers to create and maintain hospitals to the counties and has also imposed a duty of taking care of the county poor upon the counties. In order to properly determine the duties and powers of the county hospital in relation to indigent patients who could best be served by the nursing home type care, we shall examine both the statutes pertaining to county hospitals and county care of the poor.

County hospitals are for the benefit of the county's inhabitants. Section 205.270, RSMo, embodies this premise together with provision for reasonable charges to patients who can afford them, but excepts paupers from the payment of these charges.

In governing the hospital the hospital board of trustees is empowered by Section 205.280, RSMo, to prescribe rules and regulations applying to the hospital's equipment, staff, as well as to its patients.

Certainly, no agency other than the hospital itself in the county would be competent to determine when a patient has completed medical treatment. Once this determination has been made, it terminates the hospital's duties towards the patient and the indigent aged person again becomes the responsibility of other county authorities to be discussed infra.

A county hospital is prohibited, by statute, from spending funds raised by the general hospital maintenance levy for activities other than maintenance or improvement of such hospital. The hospital maintenance levy statute is Section 205.200, RSMo, Cum. Supp. 1957, which expresses this prohibition as follows:

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"* * * The funds arising from the tax levied for such purpose shall be used for the purpose for which the tax was levied and none other."

Under the terms of Section 205.190, RSMo, which prescribes the duties of the hospital board, they are given complete control of the expenditure of funds collected by the hospital to the credit of the hospital fund. It is our view, however, that the control of this fund is restricted to the needs and purposes of the hospital, not its indigent patients whose medical needs have been met by the hospital.

We pass next to the question of the county paying nursing home charges in private nursing home institutions or paying the monetary difference between a patient's old age assistance check and the institution's charges. The county's responsibility for the care of the poor is established by Section 205.580, RSMo, which reads as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Poor persons are defined by Section 205.290, RSMo, as follows:

"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law to maintain them, shall be deemed poor persons." (Emphasis ours)

By the terms of this section the ability to support themselves would seem to be the determinate factor as to whether the county need assist these persons. This determination is made by the county court according to Section 205.610 which provides as follows:

"The county court of each county, on the knowledge of the judges of such tribunal, or any of them, or on the information of any magistrate of the county in which any person entitled to the benefit of the provisions of sections 205.580 to 205.760 resides, shall from time to time, and as often and for as long a time as may be necessary, provide, at the expense of the

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county, for the relief, maintenance and support of such persons."

It is the duty of the county court to set aside a sum sufficient to support its poor. Section 205.670 provides for this duty in the following language:

"The several county courts shall set apart from the revenues of the counties such sums for the annual support of the poor as shall seem reasonable, which sums the county treasurers shall keep separate from other funds, and pay the same out on the warrants of their county courts."

While a county may, by the terms of Sections 205.640, 205.650 and 205.660, RSMo, erect and maintain a poorhouse, such institutions or county hospitals are not designed to provide the functions of a nursing home. Our Legislature, acting to enable counties to meet a recognized need to care for certain of its aged poor through this type of care, enacted, in 1957, Section 205.375, RSMo, Cum. Supp., providing that counties might maintain a nursing home.

Quite conceivably, a county may feel that it is uneconomical or inexpedient to maintain such an institution, yet it still has certain of its indigent old which it wishes to have cared for in this manner. Where the maintenance of such an institution would be uneconomical because of the small number of deserving indigent aged which the county wishes to provide for in this manner, we do not find that our statutes imposing a duty to care for the county's poor impose upon the county a duty to maintain such an institution, nor do our statutes specifically prohibit the county acting indirectly to provide such service, through the medium of an arrangement with a private nursing home institution, to maintain their support where this end may be more economically attained.

Based primarily on the county poor laws and the newly enacted nursing home law, we have thus far discussed the question of whether or not the county may provide for its indigent old who are in need of nursing home type care through payment to private institutions for that purpose. One factor of such payment is yet to be discussed, whether or not a county may determine who is "poor" under the laws cited, supra, after a determination of that person's needs by the state in

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granting old age assistance and after having made such a determination grant county aid in addition to the state grant. In doing so we shall briefly examine the history of Chapter 208, RSMo 1949, the portion of the statutes providing support by the state of its aged, in its relationship to the aforementioned county poor laws is found in Chapter 205, RSMo.

This state has made provision for its poor by statutory enactment since its inception as a state. In contrast, the old age assistance laws are of more recent vintage, being enacted first in their original form in the 1930s. By the later enactment these provisions, without any legislative declaration of preemption of the right to determine the needs of the aged applicant, by the state, we feel that it was not intended to be a determination exclusive in the state.

The rule is stated in *Sikes v. St. Louis & S.F.R.Co.*, 127 Mo. App. 326, 105 S.W. 700, l.c. 702:

"* * * In examining this statute and seeking to arrive at the legislative intention therein manifested, we must do so with the knowledge that the Legislature is presumed to know the existing state of the law relating to subjects with which they deal at the time they act on a given question, and therefore are deemed to have dealt with the matter in the light of the state of the law then existing. * * *"

Eligibility for public assistance under the state old age assistance program is defined by Section 208.010, RSMo Cum.Supp. 1957, which reads in part as follows:

"In determining the eligibility of a claimant for public assistance under this law, it shall be the duty of the division of welfare to consider and take into account all facts and circumstances surrounding the claimant, including his living conditions, earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the claimant is not found to be in need, assistance shall be denied. The amount of benefits, when added to all other

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income, resources, support and maintenance, shall provide such persons with reasonable subsistence compatible with decency and health in accordance with the standards developed by the division of welfare; provided, when a husband and wife are living together, the combined income and resources of both shall be considered in determining the eligibility of either or both. In determining the need of a claimant in federally aided programs, such amounts per month of earned income shall be disregarded in making such determination as shall be required for federal participation by the provisions of the Federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments thereto. Irregular, casual and unpredictable income received by a claimant from performing odd jobs shall be excluded in calculating income. * * *

This section then goes on to list factors which will preclude applicants from receiving state aid, none of which would exclude the applicant by simply accepting additional aid from the county. A portion of this section quoted supra indicates that the board may consider all sources of income in granting state old age assistance, however, it does not in any way limit the county's authority to grant aid, nor do any other sections relating to state old age assistance.

CONCLUSION

Therefore, it is the conclusion of this office that:

1. The duty of a county hospital maintained by the county under Section 205.160, RSMo, and the sections immediately following, towards the aged poor of the county, has been terminated with the completion of medical treatment;

2. A county acting through the county court has a duty to determine the need of and care for its indigent old, which may be accomplished by paying a private institution to do so where the county court determines it is

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economically feasible;

3. Where the applicant is receiving state old age assistance checks it does not preclude the county from making separate determination of need and granting aid supplemental to that granted by the state.

The foregoing opinion, which I hereby approve, was prepared by my assistant J.B. Buxton.

Very truly yours,

John M. Dalton
Attorney General

JMB:lc