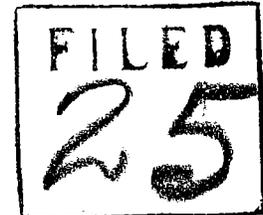


MENTAL HEALTH: The venue of proceedings instituted under the provisions of Section 202.807, RSMo Cum. Supp. 1957,
STATE HOSPITAL: relating to the involuntary hospitalization by judicial proceedings brought for the purpose of retaining
PROBATE COURT: in a state hospital for care and treatment a prisoner whose term has expired all as contemplated by House Bill 261, adopted by the 70th General Assembly, is properly in the probate court of the county of the patient's residence. A state hospital would not be liable for costs of court commitment of those patient's contemplated by H.B. 261 who are carried on the hospital rolls as "state support" and who have no residence in the state of Missouri.

July 27, 1959



Dr. Addison M. Duval
Director, Division of Mental Diseases
State Office Building
Jefferson City, Missouri

Dear Doctor Duval:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"It is my understanding that our Governor has signed House Bill No. 261 which was passed by the Seventieth General Assembly. This will, of course, then become law on August 29.

"This law will have the effect of requiring the Superintendent of the Fulton State Hospital to process the commitment of some seventy patients whose sentence will automatically expire at the time the bill becomes effective. Needless to say, the administration of that hospital will be faced with many problems in handling this situation.

"The following questions are posed for your interpretation and ruling:

1. What county has jurisdiction in the commitment of these cases we have here who were transferred from the Missouri State Prison, and whose sentences will expire when this law becomes effective, as well as future cases? Does the original county of residence have jurisdiction, or would the local county in which the hospital is located have jurisdiction?

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2. If the local county would have jurisdiction, would it be possible to assign the costs of court commitment to the counties of residence of these patients?

3. In those cases who have no residence in any Missouri county, and who are currently carried on our rolls as 'state support' would the hospital have to bear the costs of court commitment, or would the costs properly be assigned to Callaway County?"

The pertinent portion of House Bill No. 261, adopted by the Seventieth General Assembly to which you refer is Section 549.051, paragraph 3.

"When the term of a prisoner who has been committed or transferred to a state mental hospital has expired and the person, in the opinion of the hospital superintendent is still mentally ill and for the welfare and safety of himself and others should remain in the hospital for custody, care and treatment, he shall be retained in the hospital only after proper proceedings have been instituted and held as provided by section 202.807, RSMo, for hospitalization by judicial procedure; except that he may be retained for not more than thirty days after the expiration of his sentence for the purpose of initiating such proceedings."

Under this provision a prisoner whose term has expired may be retained in the hospital only after proper proceedings have been instituted and held as provided by Section 202.807, RSMo Cum. Supp. 1957, for hospitalization by judicial procedure.

Suffice it to say that House Bill No. 261 does not undertake to establish the venue of proceedings contemplated by said Bill. Therefore, we must look to the provisions of Chapter 202, RSMo Cum. Supp. 1957.

Section 202.807, RSMo Cum. Supp. 1957, referred to in House Bill No. 261, outlines the procedure for the involuntary hospitalization of an individual after judicial proceedings in the probate

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court and upon court order. Since said section does not specifically establish the venue of such proceedings, we do not deem it necessary to set out herein said section.

Your attention is invited to Section 202.805, RSMo Cum. Supp. 1957, which reads:

"1. Within ten days after the admission of any person under the provisions of section 202.800 or 202.803 the head of the hospital shall notify the probate court of the county of residence of such patient. Such notification shall contain the full name of the patient, his address, manner of admission, the name of his next of kin, spouse or guardian, and such other information concerning the patient as may be necessary.

"2. Upon receipt of the notice the judge shall note it on his docket and if no proceeding is instituted under section 202.807 by any person authorized to do so within five days, he shall order the patient's release. The head of the hospital upon receipt of the order of release shall release the patient immediately.

"3. If the proceeding under section 202.807 is instituted within the five-day period, the court shall hold the hearing therein provided for within ten days thereafter and shall order that all preliminary acts required by section 202.807 be performed before the hearing. The court may order the temporary confinement continued until the rendition of judgment in the proceeding, but the judgment shall be rendered not later than five days after the end of the hearing."

We note here that under the procedure for emergency hospitalization (Sections 202.800 - 202.803), notice is to be given to the probate court "of the county of residence of such patient" and that upon receipt of such notice, and upon proper application, proceedings shall be commenced under the provisions of Section 202.807. This would indicate to us that the proper

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venue of proceedings commenced under Section 202.807 is in the probate court of the county of the patient's residence. This conclusion would seem to accord with the context of Chapter 202. We see nothing that would indicate that the venue would be other than the county of the patient's residence in cases contemplated by House Bill No. 261, adopted by the Seventieth General Assembly.

Having concluded that the proper venue is in the county of the patient's residence in proceedings authorized by House Bill No. 261 and Section 202.807, RSMo Cum. Supp. 1957, we need not answer your second question since it is predicated upon an assumption that venue would be in the probate court of the county where the hospital was located.

Lastly you inquire whether the state hospital would have to bear the "costs" of court commitment of those patients (coming within the purview of House Bill No. 261) who are carried on the hospital rolls as "state support" and who have no legal residence in the state of Missouri.

It is a familiar rule that "costs" of judicial proceedings do not have their origin in the common law but are purely creatures of statute and such statutes must be strictly construed. It is also a familiar rule that a sovereign state in actions to which it is a party in its own courts is not liable for costs in the absence of an express statute creating such a liability. See 14 Am. Jur. Costs Section 34, page 22.

We have not been able to find any statute which would impose upon the State or one of its mental institutions the liability for costs under the circumstances and in a proceeding such as you have indicated.

In the absence of any statutory provision we conclude in answer to question 3 that the hospital would not be liable for costs of such a proceeding. We do not deem it necessary at this writing to express our opinion as to the liability of the county in which the hospital is located for costs in such a proceeding since such matter does not concern the duties of your office.

CONCLUSION

Therefore it is the opinion of this office that the venue of proceedings instituted under the provisions of Section 202.807, RSMo Cum. Supp. 1957, relating to the involuntary hospitalization

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by judicial proceedings brought for the purpose of retaining in a state hospital for care and treatment a prisoner whose term has expired all as contemplated by House Bill No. 261, adopted by the Seventieth General Assembly, is properly in the probate court of the county of the patient's residence.

It is the further opinion of this office that a state hospital would not be liable for costs of court commitment of those patients contemplated by House Bill No. 261 who are carried on the hospital rolls as "state support" and who have no residence in the state of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

DDG:gm