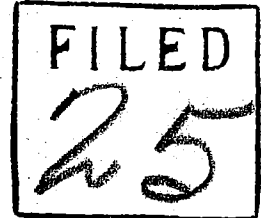


INMATES OF STATE INSTITUTIONS: The superintendent of a state hospital may open sealed personal mail addressed to private or committed patients; and he may refuse to mail letters or packages from voluntary or committed patients which contain obscene matter or threats of violence to others, but he may not interfere with a communication by a patient to the court which committed him, or to the Division of Mental Diseases.

October 9, 1959



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

Dear Dr. Duval:

Your recent request for an official opinion reads:

"It has come to my attention that the Superintendents of the several state mental hospitals and the state school and hospitals have established different methods of handling outgoing and incoming U. S. Mail addressed by and to the patients in these institutions.

"For outgoing mail of both voluntary and committed patients, it is the general practice for this mail to be read and censored as to mailability (obscenity, threats and the like) by an official of the hospital who then either completes the mailing or returns the material to the writer with an explanation.

"With regard to the receipt of mail for both voluntary and committed patients, procedures differ in the several institutions. In some instances, all incoming mail is opened by an employee on orders of the Superintendent and then usually is handed to the patient. In other instances letters are handed to the patient unopened while packages are opened and inspected by an employee in the presence of the patient.

"It is the general practice in the best mental hospitals in other states not to interfere any more than considered absolutely necessary with the mail of mental hospital patients. There most mail is delivered to the patients unopened.

Honorable Addison N. Duval, M.D.

If suspicious packages are received, these are then opened by the patient in the presence of an employee. As the Director of the Division, I would prefer this type of practice which I consider more humane.

"I would appreciate an opinion from you as to whether the Superintendents of the state institutions have authority to (1) open sealed personal mail to private patients or committed patients, and (2) whether the Superintendents have authority to refuse to mail letters or packages from voluntary or committed patients which contain obscene matter or threats of violence to others."

Section 202.847, No.R.S. Cum. Supp. 1957, reads:

"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

Honorable Addison M. Duval, M.D.

the court, if any, which ordered his hospitalization.

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

You ask two questions, the second of which is whether superintendents of state hospitals have authority to refuse to mail letters or packages from voluntary or committed patients which contain obscene matter or threats of violence to others.

Under the authority vested in the superintendent under Section 202.847, supra, I do not believe that there can be any question but that the superintendents may refuse to mail such material. In the situation which you set forth, there is, of course, no question regarding the United States mail because a letter which has not been mailed has not entered the "bloodstream" of the mail and so does not involve any question relating to that matter.

Your first question is whether the superintendents of state hospitals have authority to open sealed, personal mail to both voluntary patients and committed patients.

While the situation here is somewhat different than that presented in your second question, we believe it to be clear that Section 202.847 does give the superintendent the right to open sealed, personal mail.

From numbered paragraph 2 of Section 202.847, it would appear that a patient would have the right of communication, including communication by mail "with the division and with the court, if any, which ordered his hospitalization." It would also appear that this would be mail which the superintendent could not open or stop in passage.

We may say that we have made a search of the federal law pertaining to the United States mail and have not found anything contrary to the holdings above. We do direct attention to the following portion of the Postal Manual Promulgated by the Postmaster-General of the United States:

Honorable Addison M. Duval, M.D.

"Part 154

"Conditions of Delivery

"154.2 Delivery of Addressee's Mail to Another

.22 Delivery of Mail to Minors. A minor's guardian may control delivery of mail addressed to the minor. If there is no guardian, and the minor is unmarried, then the father or, if he is dead, the mother may receive delivery of the minor's mail.

.23 Delivery of Mail to Incompetents. Where a person has been legally declared an incompetent, his mail may be delivered in accordance with the order of his guardian or conservator. Where there is no legal representative, the mail is delivered as addressed.

"154.6 Delivery of Mail Addressed to Persons at Firms, Hotels, Institutions, Schools, etc.

.61 Mail addressed to patients or inmates at institutions, unless otherwise directed by the addressee, is delivered to the institution authorities who in turn will deliver the mail to the addressee in accordance with the institution's rules and regulations."

CONCLUSION

It is the opinion of this department that the superintendent of a state hospital may open sealed, personal mail addressed to private or committed patients and that he may refuse to mail letters or packages from voluntary or committed patients which contain obscene matter or threats of violence to others, but that he may not interfere with a communication by a patient to the court which committed him, or to the Division of Mental Diseases.

Honorable Addison M. Duval, M.D.

The foregoing opinion, which I hereby approve, was prepared
by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW/als:cm