

STATE MENTAL HOSPITALS:  
DISCHARGED CONVICTS:  
PENAL INSTITUTIONS:  
CONVICTS, ALLOWANCE WHEN  
DISCHARGED:  
PENITENTIARY:

Superintendent of the hospital in his sole discretion may furnish all or any part of the allowances provided in Section 216.350, V.A.M.S. to a convict when discharged, provided the convict is discharged from the hospital at the time his sentence in the penal institution expires. A prisoner confined in a penal institution when paroled or discharged therefrom is entitled to all allowances provided for in Section 216.350, V.A.M.S.

January 3, 1961

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Honorable Addison M. Duval, M.D.  
Director, Division of Mental Diseases  
1702 W. Dunklin Boulevard  
Jefferson City, Missouri

Dear Dr. Duval:

In your letter of November 4, 1960, you request an opinion on two questions regarding the interpretation of Section 216.350 and Section 546.627, V.A.M.S., stating as follows:

"Specifically, does this section mean that every prisoner who is finally discharged from the Department of Corrections to the Fulton State Hospital at the termination of the individual's sentence 'shall be furnished civilian clothing, including a suit, hat and shoes, and twenty-five dollars in money'?"

In the second instance, if such patient is eventually discharged from the Fulton State Hospital, is he entitled to 'a sufficient sum to transport him to the county from which he was sentenced and such other money and property belonging to the prisoner which have been in custody and control of the prison authorities'?"

Section 216.350, V.A. M.S., Laws of Missouri 1955, page 318 provides:

"Each prisoner discharged from an institution within the division or paroled shall be furnished civilian clothing including a suit, hat and shoes, and twenty-five dollars in money. In addition, he shall receive a suffi-

cient sum to transport him to the county from which he was sentenced and such other money and property belonging to the prisoner which have been in the custody and control of the prison authorities."

In construing a statute, all statutes applicable to subject involved must be read and construed together, and if possible, harmonized so each is given force and effect. *State v. Taylor* 328 Mo. 395, 40 S.W. 2d 1079.

Section 216.350, supra, was first enacted in 1955. In substance it provides that each prisoner discharged or paroled from a penal institution shall be furnished civilian clothing including a suit, hat, and shoes, twenty-five dollars in cash and sufficient money to transport him to the county from which he was sentenced. Furnishing these items to each prisoner discharged or paroled is not a matter of discretion with the prison official. Each prisoner discharged or paroled is entitled to all the benefits of this section as a matter of right at the time of discharge or parole from the prison.

Section 546.627 V.A.M.S. (Laws of Missouri 1959 H. B. 261) provides as follows:

"1. When a prisoner who has been transferred from a correctional institution to a state mental hospital recovers before the expiration of his sentence, the superintendent of the hospital shall so certify in writing to the division of classification and assignment. He shall thereupon be transferred to such correctional institution as the division may direct.

"2. A prisoner who has been committed to or transferred to a state mental hospital and is still mentally ill at the expiration of his sentence may be discharged and delivered to any person who is able and willing to maintain him comfortably and to the satisfaction of the superintendent of the hospital if, in the opinion of the superintendent, it is reasonably safe for the person to be at large. Before discharging the prisoner the superintendent shall receive verification of the expiration of the prisoner's sentence from the director of corrections. The person so discharged may, in the discretion of the superintendent, be provided with the whole or a portion of the allowances granted to discharged prisoners by section 216.350, RSMo. The cost of such allowances shall be paid from the same funds as are allowances granted to persons discharged directly from a correctional institution.

"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."

Section 546.627, supra, deals with prisoners that have been transferred from a penal institution to the State Mental Hospital.

Under subsection 1, if the prisoner recovers from his mental disability before his sentence expires in the penal institution he is to be returned to the penal institution and when discharged is entitled to the benefits of Section 216.350, supra, as though he had not been transferred to a mental hospital.

Subsection 2 of Section 546.627, supra, provides in substance that when a prisoner is an inmate in a state mental hospital at the time his sentence expires in a penal institution and is still mentally ill he may be "discharged and delivered" to any person who is able and willing to maintain him to the satisfaction of the superintendent of the hospital, if in the opinion of the superintendent it is reasonably safe for the prisoner to be at large. The person so discharged in the discretion of the superintendent may be provided with the "whole or a portion" of the allowances granted under Section 216.350, supra, and the cost of such allowances shall be paid from the same funds as are allowances granted to persons discharged "directly" from the correctional institution to which he was sentenced. This subsection applies only to those persons who are still patients in the State Mental Hospital at the time their sentence in the penal institution expires and who have not completely recovered from their mental disorder and who have not been transferred back to a penal institution and who are released from the mental hospital by the superintendent of the hospital to the custody of persons whom the superintendent finds are able and willing to maintain the prisoner. A prisoner discharged from the State Mental Hospital under these conditions is entitled to only the allowances provided for under Section 216.350, supra, that the superintendent of the hospital in his discretion thinks he should have but not to exceed the allowances provided for under Section 216.350. The authorities at the penal institution have no control over this allowance other than to pay it or reimburse the hospital. This subsection applies only to those persons who are released from the State Mental Hospital at the same time that their sentence at the penal institution expires.

Subsection 3 or 549.051, supra, governs the disposition of the prisoners confined in the State Mental Hospital who in the opinion of the superintendent of the hospital have not recovered from their mental disability at the time their sentence expires at the penal institution and because of their mental condition should not be released. Such prisoners are to be retained in the hospital until a hearing is held as provided for in Section 202.807, V.A.M.S. for hospitalization by judicial proceedings but they cannot be retained more than 30 days after the expiration of their sentence in the penal institution. After the expiration of 30 days the prisoner must be discharged or released from said hospital unless the prisoner is ordered committed as a result of a judicial hearing as provided in Section 202.807, supra. Subsections 1 and 2 of section 549.051, supra, are clear and unambiguous in their meaning. The only ambiguity is as to the intent and meaning of subsection 3 of said section. This statute must be considered as a whole and not by separate or distinct paragraphs. It should be liberally construed because it is remedial legislation. Its purpose in part is to prevent those who have been imprisoned in penal institutions from being discharged or released without some assistance to meet their temporary needs. Those persons finally discharged under the terms of paragraph 3 may be just as much in need of assistance as those discharged under paragraph 2.

Under paragraph 3 the prisoner may be held not to exceed thirty days unless proceedings are initiated in probate court for his commitment. During this time he is being held in the State Hospital under and by virtue of his commitment to the penal institution although the period specified in the commitment has expired. If during the thirty-day period proceedings are had in probate court and the probate court orders him committed he is not entitled to any part of the allowance provided for in Section 216.350 because he is not discharged from the hospital. On the other hand, if no proceedings are instituted within thirty days after his prison sentence has expired, or if proceedings are instituted in probate court and the probate court refuses to commit him, he must then be discharged by the hospital authorities and this discharge must be considered as a discharge at the expiration of his term even though it may be thirty days or more after the termination of his sentence. This is so considered because he has been held in the State Hospital during this additional time by virtue of his commitment to a penal institution. Therefore, a prisoner discharged from the State Mental Hospital under the provisions of paragraph 3 is likewise entitled to the allowances provided for under paragraph 2 within the discretion of the superintendent of the hospital where he is being released.

#### CONCLUSION

It is our opinion:

1. The allowances provided in Section 216.350, supra, must be offered or paid each prisoner who is discharged from the penal

institution by the prison authorities at the expiration of his sentence. The prisoner so discharged is entitled to the benefits as a matter of right and the prison authorities have no discretion on any of the allowance except the amount needed for transportation.

2. The allowances provided in Section 216.350, supra, may, in the discretion of the superintendent of the State Mental Hospital, be given any prisoner who is confined in said hospital at the expiration of his sentence in the penal institution and who is discharged from said hospital under the terms and conditions specified in paragraph 2. The allowance to be given cannot exceed the amount specified in Section 216.350, supra, but it may be less than that amount depending entirely upon the discretion of the superintendent of the hospital from which the prisoner is released.

3. A prisoner who is discharged from a state mental hospital under the provisions of paragraph 3 because no proceedings are instituted in probate court within thirty days after the expiration of his prison sentence, or who is discharged from the hospital because the probate court refuses to issue a commitment is entitled to the same allowance as in paragraph 2 even though the prisoner may not be released from the hospital within the thirty-day period.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,

John M. Dalton  
Attorney General

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