

October 5, 1962

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Honorable Stephen E. Strom  
Prosecuting Attorney  
Cape Girardeau County  
Cape Girardeau, Missouri

Dear Mr. Strom:

This will reply to your letter requesting our opinion, as follows:

"I request your opinion whether the County Welfare Director or other officer of the Division of Welfare is a proper person to institute proceedings for the involuntary hospitalization of a mentally ill person under the provisions of Section 202.807 R.S. Mo., 1959, where such applicant is fully and properly advised of the facts concerning the mental illness and the necessity for such commitment and where none of the other persons described in said section are available for or willing to sign such application."

Your request relates to the opinion we issued to you under date of July 6, 1962, in which we held that during the pendency of a criminal charge against a defendant, both in the magistrate court prior to a preliminary hearing on the complaint and in the circuit court thereafter if the defendant is held for the circuit court and an information is filed, the probate court has no authority to exercise jurisdiction over the person of the accused in a proceeding filed under Section 202.807 RSMo. We held that if you desired a probate court hearing with respect to the mental condition and need for hospitalization of the defendant, you must

first withdraw the complaint pending in the magistrate court and terminate the proceedings therein. You now inform us that you have determined to withdraw the present complaint, "file involuntary commitment procedures in the Probate Court, and later refile the complaint to terminate the running of the Statute of Limitations."

As you point out in your letter, Section 202.807 RSMo provides that a proceeding for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the probate court by "a friend, relative, spouse, or guardian of the individual, or by a licensed physician, a health or public welfare officer, or the head of any public or private institution in which such individual may be." The application must be accompanied and supported by a certificate of a licensed physician or "a written statement by the applicant that the individual has refused to submit to examination by a licensed physician." It is evident that an application, filed by an authorized person, together with the supporting certificate or statement, is jurisdictional and that the probate court is not authorized to hold a hearing or make a finding until and unless such an application is filed.

Your specific question is whether the county welfare director or other public welfare officer employed by the division of welfare is a proper person to institute proceedings for the involuntary commitment of the individual against whom you have filed murder charges. Section 202.807 must be construed together with other provisions relating to the hospitalization of mentally ill individuals, and in particular with Section 202.797 RSMo, insofar as your specific question is concerned. Section 202.797 RSMo provides for the admission of an individual to a hospital upon written application to the hospital by "a friend, relative, spouse, or guardian of the individual, a health or public welfare officer, or the head of any institution in which said individual may be."

It may be noted, therefore, that the very persons authorized under Section 202.807 (other than a licensed physician), to apply to the probate court, are authorized to make application to a hospital for the purpose of the care and treatment of the individual in a mental hospital under the conditions set forth in Section 202.797. The latter section imposes certain duties upon the "county welfare department" in connection with the application, and the action to be taken with respect thereto.

It is the opinion of this office that the term "county welfare department," as used in the statute, has reference to and means the office which the division of welfare is required to establish in each county under Section 207.060 RSMo. It is apparent, therefore, that the term "public welfare officer," as used in paragraph 1(1) of Section 202.797, would include the county welfare director and any other public welfare officer employed by the county welfare department.

In view of the identical phraseology in these two sections, it is our opinion that the term "public welfare officer," has the same meaning as used in Section 202.807 RSMo as it has under our construction of Section 207.797. It follows from the foregoing that a county welfare director, or other public welfare officer employed by the county welfare department, is a person authorized to institute an action under the provisions of Section 202.807. However, this does not mean that such a public welfare officer may be compelled to file an application for the involuntary commitment of an individual, nor that he should do so simply because a prosecuting attorney requests such action on his part.

We believe that the Legislature selected the persons authorized to file applications for involuntary commitment advisedly. The clear legislative intent is that such proceedings should be instituted by persons having personal or official knowledge of the necessary facts, or who, through their relationship to the individual, have a direct concern that he be given the necessary treatment for his mental illness.

A friend, relative, spouse or guardian would ordinarily have personal knowledge as to the need for care and treatment. It seems strange that if the individual in question is in such urgent need of hospitalization, as your letters would indicate, the relatives and friends of such individual would be so unconcerned as to be unwilling to apply for involuntary commitment. The head of the institution in which the individual is confined would also have personal, or at least official, knowledge of the need for care and hospitalization.

As for a health and public welfare officer, it is quite possible that, incident to the performance of his official duties, such officer might acquire personal knowledge that the individual has need for hospitalization and mental treatment. If he acquires such knowledge incident to the performance of his official duties and

believes it in the public interest that the individual be hospitalized, then he has the authority under Section 202.807 to file and prosecute an application for such involuntary hospitalization. He is under no mandatory duty to file an application in any event, and particularly so where he has no personal knowledge obtained in the course of the performance of his official duties.

The filing of an application for an involuntary commitment and the prosecution thereof is not a perfunctory act, nor one lightly to be undertaken. The direct responsibility for instituting the proceeding is upon the person who files the application in the probate court. Whether such responsibility shall be undertaken involves the exercise of judgment, and such judgment should properly be based on facts within the personal knowledge of the person authorized to commence the proceeding.

You inform us that the head of the institution in which the individual is presently confined has not agreed to sign the necessary application. Surely, the head of the hospital in which the individual is confined, with his personal and official knowledge of the essential facts, would be the logical person in the present situation to file the necessary application, rather than the county welfare director, who has no personal knowledge respecting the facts. And if the head of the hospital is unwilling to institute the proceedings you desire, there would appear to be more justification for a mere welfare officer, with no personal contact with the individual, to be equally or more reluctant to sign the application and to prosecute the proceedings.

As prosecuting attorney, you have no authority to substitute your judgment for that of the county welfare director. Had the Legislature intended that the necessary application be filed at the request of the prosecuting attorney, it would have directly authorized the prosecuting attorney to act in this connection.

Summarizing: A county welfare director, or other public welfare officer employed by the county welfare department, is a person authorized to institute and to prosecute a proceeding in the probate court under Section 202.807, but he may not be compelled to institute or prosecute such a proceeding if he deems it inadvisable or improper to do so. Hence, if, for any reason, none of the other persons, including the head of the state hospital in which the individual is confined, is willing to institute proceedings under Section 202.807

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(and since the prosecuting attorney is not one of the persons authorized to file an application for involuntary commitment of the individual involved), there is no means provided by statute whereby you may file involuntary commitment procedures in the probate court.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

JN: sr