

June 5, 1963



Honorable Frank Conley
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Mr. Conley:

This is in reference to your request of this office as to whether it is mandatory upon a probate judge to permit inspection of court records concerning the mentally ill. You enclosed a copy of a letter you received from Judge Lang, Probate Judge, Boone County, Missouri, in which he states that in recent years the court has been required by law to keep its records of mentally ill cases in a book separate from other records and for a period of two years inspection was restricted.

Under Article V, Section 17 of the Constitution of Missouri, 1945, the probate court is a court of record. Implementing this is Section 476.010, RSMo 1959, which states that probate courts shall be courts of record and shall keep just and faithful records of their proceedings. Section 476.040, RSMo 1959, provides that full entries of the orders and proceedings of all courts of record of each day be read in open court on the morning of the succeeding day. Section 476.170, RSMo 1959, requires the sitting of every court shall be public and every person may freely attend the same.

It is our view that under these statutory provisions, proceedings of the probate court have to be open to the public and their records are public records.

The question now arises whether there is any statute that exempts proceedings concerning the mentally ill from these general statutory provisions.

In House Bill 355, enacted by the Legislature in 1953, Laws of Missouri 1953, page 647, Section 9, provision was made for the exclusion of all persons from the hearings concerning the mentally ill in the probate court except those whom the court determined had a legitimate interest in the proceedings. Section 23 of the said act required all applications, records and reports concerning the proceedings to be kept confidential unless the court determined it would be contrary to public interest. Apparently these must be the statutory provisions which Judge Lang referred to in his letter.

Sections 9 and 23 of House Bill 355 are cited as Section 202.807 and 202.853 in Mo. Cum. Supp. 1955. These sections were repealed by the Legislature in 1957, Laws of Missouri 1957, page 672, and Section 202.807 was re-enacted with the secrecy provision omitted. At the present time, there is no statutory provision requiring a hearing in the probate court concerning a mentally ill patient to be conducted in secrecy or that the records concerning the same be kept confidential. The fact that the Legislature repealed the provisions of the statute providing for secrecy of the hearing and for the records to be kept confidential, indicates that the Legislature disapproved of such procedure.

We are enclosing herewith a rather exhaustive opinion issued by this office on February 5, 1963, to Honorable Loicen O. Boyd, Prosecuting Attorney, Worth County, Grant City, Missouri, construing Section 109.180 and 109.190, Mo. Cum. Supp. 1961, concerning inspection of public records.

It is our view that probate court records of all proceedings concerning the mentally ill are open to public inspection.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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Enclosure