PROBATE COURTS: RESTORATION OF SANITY PROCEEDINGS: JURISDICTION OF:

State patient in state school sent under provisions of Sec. 202.160 RSMo 1949, never adjudged insane previously to admission, who subsequently files petition for restoration of sanity and discharge from school under provisions of Sec. 458.530 RSMo 1949, in probate court of patient's residence should have petition dismissed, since court lacks jurisdiction over subject matter and person of petitioner.

September 22, 1952 10-31-51

Honorable A. R. Alexander
Judge of the Probate Court
Plattsburg, Missouri

Dear Sir:

Your recent request for a legal opinion of this department calling for an interpretation of Sections 202.610, 202.630 and 458.530 RSMo 1949, and an application of these statutes to the facts given in your letter has been received. The specific inquiries read as follows:

> "(1) Does Section 202.630 give the superintendent of the State School at Marshall such continuous control over said patients as to prevent the Probate Court from exercising any jurisdiction?
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> (2) Is the Commitment by the County Court, under Section 202.630, such a finding of insanity as gives the Probate Court jurisdiction to hold an inquiry for restoration under the provisions of Section 458.530?"

Upon our request that above inquiries be clarified, we received a reply from you which reads in part as follows:

> "In view of your closing paragraph, probably an opinion on query (2) may satisfy both queries. It may be resolved into this form:
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> "Keeping the provisions of Section 202.630 in mind, does Section 458.630 give the probate court authority to hold an inquiry for restoration of patients committed to the State School at Marshall by a County Court under the provisions of Section 202.610?"

Evidently the reference to the section number in the preceding paragraph was intended to refer to Section 458.530 which provides the procedure to be followed in restoration proceedings, rather than Section 458.630 as stated. We shall therefore treat the reference as being Section 458.530. RSMo 1949.

Section 202.610 RSMo 1949, sets out the necessary procedure for having feeble-minded and epileptic persons admitted into the state schools for treatment. Said section may be summarized as follows: A written application must be made by those desiring the admission of one into a state school. The application must state the prospective patient's age, place of nativity, if known, christian and surname, town, city or county of such person's residence; ability of parents or others to provide for patient's support in whole or in part, and if in part, what part; degree of relationship or other circumstances of connection between patient and person desiring patient's admission. The statement in all cases of state patients (those in which the parents or others are unable to pay for patient's treatment in the school, and county of patient's residence pays same) must be verified by affidavit of petitioner and the disinterested persons, together with the opinion of two qualified physicians, all residents of the same county as patient, and acquainted with circumstances thus stated, and who must be certified as credible and that the patient is an eligible and proper person for admission, by the county court, or the hospital commissioner, or his assistant of St. Louis City, respectively, as the case may be.

An official application for admission of state patient may also be made by any judge of a court of record of the county of the patient's residence, which county shall be liable for payment of five dollars per month to the state school into which the patient is admitted.

The object of state schools has been given in Section 202.600 RSMo 1949, which reads as follows:

> "The objects of such school shall be to secure the humane, curative, scientific and economical treatment and care of the feeble-minded and epileptics, exclusive of dangerous insane epileptics, to fulfill which design there shall be provided, among other things, a tract of fertile and productive land in a healthful situation, with an abundant supply of wholesome water, sufficient means of drainage and disposal of sewerage, and sanitary conditions; and there shall be furnished, among other necessary structures, cottages and dormitory and domiciliary uses, buildings for an infirmary, a schoolhouse and a chapel, workshops for the proper teaching and productive prosecution of trades and industries; all of which structures shall be substantial and

> attractive, but plain and moderate in cost, and arrangedon the colony or village plan."

When this section is read and interpreted with Section 202.610, supra, it is apparent that state schools are not institutions for treatment of the insane. In fact no mention is made in this section of the insanity of the prospective patient, or that he may be sent to a state school for treatment of such ailment.

Section 458.020, Cumulative Supplement, RSMo 1951, is the section which authorizes the holding of sanity hearings in probate courts and reads as follows:

> "If information in writing, verified by the informant on his best information and belief, be given to the probate court that any person in its county, or any person eligible for care and treatment by the Veterans Administration or other agency of the United States government be found in the county, or on any federal reservation within the exterior boundaries thereof, is an idiot, lunatic or person of unsound mind and incapable of managing his affairs, and praying that an inquiry be had, the court, if satisfied there is good cause the facts to be inquired into by a jury; provided, that if neither the party giving the information in writing, nor the party whose sanity is being inquired into call for or demand a jury, then the facts may be inquired into by the court sitting as a jury."

When a comparison of Sections 202.610 and 458.020, supra, is made it is readily seen that on application for admission of a patient into a state school under the former section is not a petition for a sanity hearing under the latter section; each section covers entirely different subject matters and procedures, and each section operates independently of the other.

From the facts given in the opinion request it appears that a petition was made to the County Court alleging that certain persons were proper persons for admission into a state school and that said persons should be sent (apparently as state patients) to such school. The further contents of said application for admission are not disclosed, but for the purposes of our discussion, it is assumed that the application was in proper form and complied with the statutes and that the allegations of said application were found to be true by the county court as evidenced by its order, committing said patients to the State School at Marshall, Missouri.

From the facts thus given it does not appear that the sanity of the patients, or either of them was ever in question, nor does it

appear that they were adjudged to be insane under the provisions of Section 458.020, supra.

The opinion request specifically states:

> "* * *there is no record that this court or any court, so far as is shown, ever found said persons, or either of them to be of unsound mind * * *."

It has long been a legal principle that the law, in the absence of evidence to the contrary presumes every person to be sane and to understand and intend the natural and probable consequences of his voluntary acts. This principle has been recognized and declared to be in force in Missouri in the case of Reynolds v. Casualty Co. 274 Mo. 83, in which the court said at l.c. 96:

> "The sole question going to the merits of the case is whether the plaintiff's intestate died from the effect of a gunshot wound inflicted accidentally or whether the same wound was inflicted by himself voluntarily for the purpose of producing the injury. The question of sanity or insanity, is not involved, because the presumption is that every person is sane until the contrary is shown by evidence; and here there is no evidence, either direct or circumstantial that he was insane. * * *"

Therefore, in view of the above facts and applicable legal principle, each of the persons must be presumed to be sane. Under such circumstances the question has arisen as to whether or not the probate court has jurisdiction of a proceeding for restoration of sanity of said persons, and, if the court has jurisdiction, and should hold such a hearing, which might result in a finding of sanity of said persons, could the court then order them discharged from the custody of the state school.

The word "jurisdiction" has often been held to mean the power of a court to take cognizance of and to decide a case, and to carry its judgment into execution.

In discussing the proposition as to when a court obtains jurisdiction, in the case of United Cemeteries v. Strother, 119 S.W. (2d) 762, the Supreme Court said at l.c. 765:

> "* * *A court obtains jurisdiction of the subject matter by operation of law, and cannot acquire it by appearance, answer, contesting the proceedings, consent, waiver, or by the doctrine of equitable estoppel. It

> is the uniform rule of this state that jurisdiction as to the subject matter of any suit cannot be waived in any manner, and a judgment in such case is absolutely null and void, and may be set aside and for naught held, even in a collateral proceeding. Springfield Southwestern Railway Company v. Schweitzer, 246 Mo. 122, 151 S.W. 128; City of St. Louis v. Glasgow, 254 Mo. 262, 162 S.W. 596; State ex rel. Kelly v. Trimble, 297 Mo. 104, 247 S.W. 187, 1009."

With reference to the jurisdiction of a probate court in Missouri, the court said in the case of Dietrich v. Jones, et al., 53 S.W. (2d) 1059, at l.c. 1061:

> "As is said by the Supreme Court in the case of State ex rel. Barlow v. Holtcamp, 322 Mo. 258, 14 S.W. (2d) loc. cit. 650:
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> "'The probate court is a court of limited jurisdiction, possesses only such power as is conferred upon it by statute, and can exercise its jurisdiction only in the manner prescribed by statute.' St. Louis v. Hollrah, 175 Mo. 79 85, 74 S.W. 996, 998.
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> "'Whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative, namely, that the thing shall not be done otherwise.' 25 C.J. 220, note 16(c).
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> "'The Constitution and the statutes have particularized the several things which may be done by probate courts, and we think their jurisdiction is necessarily confined to such suits and proceedings as they have been granted power to adjudicate.' State ex rel. Baker v. Bird, 253 Mo. 569, 580, 162 S.W. 119, 122 (Ann. Cas. 1915C, 353)."
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> (Underscoring ours.)

The probate courts have been granted the power to hear and determine proceedings for restoration of sanity under the provisions of Section 458.530, as noticed above. But since such courts are courts of limited jurisdiction, and in view of the holdings in the cases previously cited, the question of whether the court had jurisdiction of a matter under that section, and the legality of the proceedings held, is in reality a question as to whether the provisions of said section have been complied with.

In this connection we call attention to the general rule that such a hearing is a special proceeding of a summary nature, and is not a new procedure. It is a continuation of a former proceeding, namely, one in which a person was adjudged to be of unsound mind, and who subsequently seeks (by himself, or through another) to have his sanity restored. This general rule in effect in most states, is also the rule in Missouri as indicated by the court in the following cases: State v. McGuillin, 246 Mo. 587, in which the court said at l.c. 595:

> "Decrees of probate courts adjudging persons to be of unsound mind are entirely unlike ordinary judgments. No appeal lies from such decrees, for the reason that by statutes they remain in fieri, like a suit pending, and may be reopened and set aside at any subsequent term of the court when the insane person shall be restored to his right mind. (Sec. 519 R.S. 1909; Dutcher v. Hill, 29 Mo. 271, l.c. 274; * * *)."

If the restoration proceeding relates back, and is a continuation of a prior proceeding in which a person was adjudged to be of unsound mind by the probate court, then the jurisdiction of the court in the restoration proceeding would also relate back to the former proceeding. If the court has no jurisdiction of a restoration matter before it, and it had no jurisdiction at the time of the adjudication of insanity, then it never can legally acquire such jurisdiction and any action taken in the restoration matter will be null and void.

Section 458.530, supra, begins:

> "For and on behalf of any person previously adjudged to be of unsound mind by any court in the State of Missouri, there may be filed in the probate court of the county wherein the person was adjudged insane, a petition in writing, * * *."

It is readily seen that the statute applies only in those instances when one has been previously adjudged insane, and that this is more than a directory statutory requirement. It is our thought that such a previous insanity adjudication is a mandatory requirement of the statute and must be strictly complied with before the probate court could legally acquire jurisdiction of the subject matter, or of the person in the restoration proceeding.

In the present case it is admitted that the persons in question have never been adjudged to be of unsound mind, and it appears that the provisions of Section 458.530 relating to such adjudication

have not been complied with and at this late date cannot be complied with insofar as the court acquiring jurisdiction of the restoration proceeding is concerned.

In view of the foregoing it is our thought that the probate court has no jurisdiction of the restoration proceedings under the circumstances mentioned in the opinion request. Since the court lacks jurisdiction to hold the proceeding, we find it unnecessary to discuss or pass upon the other inquiries contained in said request.

CONCLUSION

It is the opinion of this department that one sent to a state school as a state patient under provisions of 202.160 RSMo 1949, and never adjudged to be of unsound mind previously to his admission, and who subsequently files a petition for restoration of sanity, and discharge from said school, in the probate court of the county of patient's residence, under provisions of Section 458.530, RSMo 1949; the petition should be dismissed since the court lacks jurisdiction over the subject matter and the person of the petitioner.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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