

**INSANE PERSONS:** Lapse of time preventing operation of  
**PROBATE COURTS:** Section 9356, the Probate Court of County  
in which party regularly discharged from  
state hospital takes up residence has  
proper jurisdiction to commit said party  
as insane poor person to state hospital.

July 17, 1950

Hon. W. A. Despain, Judge  
Probate Court  
County Courthouse  
Eminence, Missouri



Dear Judge Despain:

Your recent opinion request reads in part as follows:

"A person was declared to be insane and so adjudged by the Probate Court of Shannon County. She was admitted to State Hospital No. 4, Farmington, Missouri, and at some later date was discharged by the Superintendent of the Hospital. The party adjudged insane took up her residence in Howell County, Missouri and since her return to Howell County, has been placed in the County Home (Poor Farm). Since the time of admittance to the County Home she has become so violent that it has become necessary to again confine her in the State Hospital.

"What Probate Court has the proper Jurisdiction, that of Shannon County or Howell County?"

Since you state in your request that the individual in question is now being kept at the county home of Howell County, we shall assume that she will have to be admitted to the state hospital as an insane poor person. We further assume that sufficient time has elapsed since her regular discharge from State Hospital No. 4 and the taking up of her residence in Howell County so as to prevent the operation of Section 9356, R. S. Mo. 1939. This section provides in part that: "Every patient in a state hospital shall be deemed to be the county patient of the county first sending him till one year after his regular discharge from the hospital."

Section 9328, Laws of Missouri 1945, page 907 reads in part as follows:

Hon. W. A. Despain, Judge

"The probate courts of the several counties shall have power to send to a state hospital such of the insane poor of their respective counties as may be entitled to admission thereto. Such probate court shall furnish the county court with a certified copy of the order finding the person to be an insane poor person and the order committing such person. The counties from which such insane poor person has been sent shall pay semi-annually, in cash, in advance, such sums for the support and maintenance of their insane poor, as the board of managers may deem necessary, \* \* \*"

Prior to the amendment of Section 9328 in 1945, the jurisdiction vested in the probate courts by that amendment was held by the county courts of such counties. The only change made therein was giving to the probate courts that jurisdiction which prior thereto had been held by the county courts. This section as it formerly read was construed in the case of Thomas v. Macon County, 175 Mo. 68, 74 S.W. 999. In that case the court held at l. c. 73:

"Plaintiff next points to section 4867 which provides that: 'The several county courts shall have power to send to the asylum such of their insane poor as may be entitled to admission thereto.' And it specifies that the county shall pay for the support and maintenance of such insane poor persons as the county court may send to the asylum.

"Under that section, however, even the county court is not authorized by its arbitrary will or unlimited discretion to send any insane poor person it may select to the asylum at the expense of the county, but the court must hold due proceedings upon a petition filed showing that the insane poor person is 'a citizen residing in the county' and other essential facts as prescribed by the statute, and there must be a trial of the facts and a judgment of the court thereupon. (Secs. 4874 to 4878, inclusive.) The county court has no authority under those statutes to send a person to the asylum or maintain one there at the expense of the county who is not a resident thereof."

Hon. W. A. Despain, Judge

The court further held at l. c. 75,76:

"From the statutes and decisions above referred to we find that provision is made for the maintenance of a person in the insane asylum at the expense of the county in the following cases:

"First. When the county court adjudges a person who is 'a citizen residing in the county' to be insane and insolvent and orders him to be sent to the asylum at the expense of the county.

\* \* \* \* \*

"In the first three of these categories the county court is required to take action and pass judgment and when it has done so the patient is held in the asylum at the expense of the county. And, as was held in State ex rel. v. Cole County Court, above referred to, that, if the county court in a proper case should refuse to take action, it may be required by mandamus to do so. But of the 114 counties in the State against which is the mandamus to go? In the case just cited it went against the county court of Cole County because the insane person in that case was a resident of that county. No county court has jurisdiction to send a person to the asylum who is not a resident of the county and therefore could not be required by mandamus to do so. \* \* \* \* \*

In view of the above, it must be concluded that only the probate court of the county of residence has jurisdiction in this instance. Since the party in question took up her residence in Howell County following her regular discharge from State Hospital No. 4 and assuming that Section 9356 does not apply, it is our opinion that the Probate Court of Howell County is the court which has the jurisdiction to send to the state hospital the insane person here under consideration.

Hon. W. A. Despain, Judge

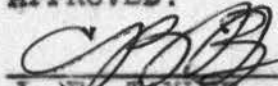
CONCLUSION

In the premises, it is the opinion of this department that the Probate Court of Howell County is the court which has the jurisdiction to send the insane poor person under discussion to the state hospital, as such person became and has since been a resident of Howell County following her regular discharge from the state hospital.

Respectfully submitted

RICHARD H. VOSS  
Assistant Attorney General

APPROVED:

  
\_\_\_\_\_  
J. E. TAYLOR  
ATTORNEY GENERAL

RHV:A