STATE SCHOOLS: Senate Bill No. 93, enacted by the 70th General
PRIVATE PATIENTS; Assembly is applicable to a patient in a state
PATIENT SUPPORT: school who was admitted prior to the effective date of such Senate Bill, and who has now attained his majority. Division of Mental Diseases, upon a finding that such a patient, admitted as a county patient, may be placed upon a pay patient status upon a finding by the division that the parents of such child are able to pay a certain amount for his support. In such a situation, parents are liable for the support of their children although such children have passed their majority. The Probate Court is no way involved in this matter.

May 11, 1960

FILED
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Honorable Addison M. Duval, M.D.
Director, Division of Mental Diseases
State Office Building
Jefferson City, Missouri

Dear Dr. Duval:

Your recent request for an official opinion reads:

"The 70th General Assembly enacted Senate Bill No. 93 relating to the Missouri State Schools for the Mentally Deficient. A recent problem has developed in this connection wherein a patient, previous to the enactment of Senate Bill No. 93, had been committed to the Marshall State School and Hospital as a Boone County patient by order of the Boone County Court.

"On recent administrative review of all patients in the Marshall State School and Hospital after enactment of Senate Bill No. 93, it was found that this patient's family, in the opinion of the Superintendent of the State School and Hospital, was able financially to pay a rate of $45.00 monthly for the care of this patient as a private pay patient and this was reported to the County Court. The attorney for the patient's family has advised the County Court that Senate Bill No. 93 does not apply to a patient admitted to the State School and Hospital prior to August 29, 1959, the date on which this legislation became law. This Division has taken an opposite position on this question still pending before the County Court and, therefore, it becomes necessary that we ask you for an official opinion on the matter.

A second related question is asked of you; namely, does only the Probate Court of the county of residence of a patient in a Missouri State School and Hospital

> . have the authority to transfer a patient from county patient status to private pay status, or the reverse?
>
> "If the answer is in the affirmative, what relief is provided to the Division of Mental Diseases or the Institution when a patient in the institution is found to be financially able to be a private patient as provided in paragraph 2, section 202.-613 of Senate Bill No. 93?
>
> "Presented in a slightly different fashion, if the Division or institution finds ability to pay, must this then be corroborated by the Probate Court before the matter can be settled under paragraph 2, section 202.613?"

In regard to the above we note that, subsequent to making the above opinion request, you have orally advised this department that the patient in the instant case has now passed his majority. We have been similarly advised by the attorney for the family of this patient who, in a letter to this department dated February 22, 1960, takes the position that in view of the fact that the patient is past his majority the parents are under no legal obligation to support him. In view of this situation, we believe that this matter should be disposed of first, to-wit: the liability of parents for the support of an incompetent child who has passed his majority, or who is past 21 years of age.

In this regard we direct attention to the case of State v. Carroll, 309 S.W2d 654. In that case one Roberta Kramer, an adult incapacitated woman sought a declaratory judgment against her divorced parents, establishing their duties of support and maintenance. The court in its opinion stated the question thus (l.c. 658[8]):

> "* * * *Does a legal duty rest upon a father to support his adult unemancipated, unmarried and needy child who as a result of epilepsy is totally and permanently disabled from gainful employment, who from infancy has been either in hospitals or in the home of her parents and who has remained in the custody of her mother since the divorce of the parents?* * * *"

The court, after a very thorough discussion of this matter, concludes that such a duty does rest upon the parents. We note the following language (l.c. 661):

> "It is impossible on principle to distinguish between the duty to support a twenty year old child incapacitated by infancy and the duty to support an adult unmarried, unemancipated and insolvent child incapacitated from self-support by mental or physical infirmity. The duty in both cases arises out of the helplessness of the child, and the drawing of a line in all cases at the age of twenty-one years is artificial and arbitrary."

In the light of such information as we have, we believe that the person now in the state school at Marshall comes within the law as set forth above. Such person is incapacitated from supporting himself; so far as we know has never been able to do this but has always been supported by his parents until such support was taken over by the state upon the admission of the child to the state school. We believe, therefore, that it may be said that the obligation of the parents to support this child did not cease when the child attained his majority, has not ceased at this time but is yet a duty which rests upon the parents.

We come now to the second question which is involved, whether Senate Bill No. 93, enacted by the 70th General Assembly, which bill became effective August 29, 1959, applies to persons admitted to Missouri state schools prior to the effective date of such bill.

The argument is advanced that the language of the bill, particularly paragraphs 202.613 and 202.614, Sections 202.611 and 202.615, VAMS, plainly indicate that the bill is to apply only to persons admitted after the effective date of the bill. On the contrary, the Division of Mental Diseases takes the position that this bill is applicable to persons admitted prior to its effective date. It is upon such basis that the Division seeks to have this patient transferred from the status of a county patient to that of a private patient supported by his parents, this latter being based upon a finding by the superintendent of the state school that the patient's family is financially able to pay the sum of $45 per month for the support of this patient.

It is true that the language of Senate Bill No. 93, Sections 202.613 and 202.614, is addressed to persons admitted when the bill is effective. We do not believe, however, that this is in any way decisive in view of the fact that the bill does not in any way attempt to become retroactive.

We do believe, on the contrary, that the provisions of the bill apply to persons admitted prior to its effective date.

On June 18, 1958, this department rendered an opinion to Mrs. Ruth Nanson, Executive Secretary, Division of Mental Diseases, Jefferson City, Missouri, a copy of which is enclosed. We direct attention to the first portion of that opinion (pages 1-4 in which this very question is discussed). The specific issue there was whether a law, enacted by the 69th General Assembly which became effective August 29, 1957, vesting in the Director of the Division of Mental Diseases the authority to increase the amount of pay for the support of pay patients in state hospitals, applied to pay patients admitted to the hospital prior to the effective date of the law. We held that it did so apply on the ground that patients did not acquire a vested right by the act of being admitted, and that their admission did not give rise to any contract, express or implied, between the patient and the hospital as to the amount which the patient was to pay for his maintenance. We believe that the same reasoning is applicable in the instant situation, and that Senate Bill No. 93 does apply to the Boone County patient and that the Division of Mental Diseases may, upon a finding that the parents of this patient are able to pay a particular amount for his support, transfer him from the status of county patient to that of private patient.

You also inquire whether only the probate court of the county of residence of a patient in a Missouri state school has the authority to transfer a patient from county patient status to private pay status. We do not believe that the probate court is in any way invoved in this matter. In support of that statement we direct attention to numbered paragraph 2 of Section 202.613 of Senate Bill No. 93, (§202.611 VAMS) which reads:

> "The ability of the parents, guardian or others to provide for the support of a private patient shall be determined by the division or institution and the private patient admitted on the payment of such charges as are deemed just and equitable but not to exceed the amount provided for in section 202.330."

We further call attention to paragraph number one of Section 202.615 of Senate Bill No. 93(§202.621, VAMS), which provides as follows:

> "If any person is admitted to a state school or hospital who is unable to pay for his care or treatment, the superintendent shall notify the county court of the county of the patient's residence and the county shall pay semi-annually in cash, in advance, for the support of the patient a sum fixed by the division not to exceed ten dollars per month and in addition the actual cost of clothing and the expenses of

transporting the patient to and from the institution."

From the above it would appear to be clear that the determination as to whether a patient is to be a state patient or a private patient and any change in status of the patient in such regard is to be made by the Division of Mental Diseases or the institution to which the patient is or has been admitted.

CONCLUSION

It is the opinion of this department that Senate Bill No. 93, enacted by the 70th General Assembly, is applicable to a patient in a state school who was admitted prior to the effective date of such Senate Bill and who has nowattained his majority.

It is the further opinion of this department that the Division of Mental Diseases or the institution to which the patient was admitted as a county patient, may place such patient upon a private patient status upon a finding by the division or institution that the parents of such child are able to pay a certain amount for his support.

It is the further opinion of this department that in such a situation, parents are liable for the support of their children although such children have passed their majority. It is the further opinion of this department that the Probate Court has no authority to determine whether the patient shall be a state patient or a private patient.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

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