INDIGENT INSANE:
COUNTY COURT:
PROBATE COURT:

Under S. B. No. 284 the probate court is the only court which has the power to commit indigent insane.

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July 31, 1946

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Honorable George H. Hubbell
Judge and ex-officio clerk
Probate Court, Grundy County
Trenton, Missouri

Dear Sir:

We received your letter of recent date which submitted to this department the following question for answer. We quote:

> "Has the Probate Court the consitutional authority and jurisdiction, under Article V of the Constitution, 1945, to commit indigent insane persons to a state hospital for the insane?"

A brief analysis of the Probate Court and the County Court will be necessary and pertinent to a solution of the problem presented by your question.

We will not undertake to examine the historical background of the two courts for the reason that we believe that, while such history is interesting from a scholarly standpoint, it has no particular bearing upon the present problem.

The Probate Court was first recognized as a constitutionally created court by the constitution of 1875, therein the framers of the constitution provided Section 34, Article VI, which was subsequently approved by the sovereign power. This section provided for the jurisdiction and powers of the Probate Court at that time and under the constitution of 1875. Said section reads as follows:

> "Probate courts, jurisdiction and powers.-- The General Assembly shall establish in every county a probate court, which shall be a court of record, and consist of one judge, who shall be elected. Said court

> shall have jurisdiction over all matters pertaining to probate business, to granting letters testamentary and of administration, the appointment of guardians and curators of minors and persons of unsound mind, settling the accounts of executors, administrators, curators and guardians; and the sale or leasing of lands by administrators, curators and guardians; and also jurisdiction over all matters relating to apprentices: Provided, That until the General Assembly shall provide by law for a uniform system of probate courts, the jurisdiction of probate courts heretofore established shall remain as now provided by law."

After analyzing you question under the constitutional provision quoted supra, and the statutes in existence and in effect prior to the adoption of the 1945 constitution, we find the courts holding directly that the county court was the only court that possessed the power to commit indigent insane to state hospitals or proper asylums. In Ussery v. Haynes, 344 Mo. 530, 127 S. W. 2d, 410, the Supreme Court, at l. c. 417, made the following statement:

> "In the matter of examining into and determining the question whether plaintiff should be committed to the hospital the county court had jurisdiction of the subject matter. The statute gave it jurisdiction of that class of cases. * * * "

Obviously, the Supreme Court of Missouri acknowledged the power of the county court to commit indigent insane as an exclusive power by reason of Section 9328, R. S. Mo. 1939, then in effect, which vested in the county court this power to commit. Other and later cases acknowledging that the county court alone had the power to commit indigent insane by reason of the statute are: Van Loo v. Osage County, 346 Mo. 358, 141 S. W. 2d 805; Downey v. Schrader, 182 S. W. 2d 320, 353 Mo. 40; State ex rel. Moser v. Montgomery, 186 S. W. 2d 553, l. c. 554. There is no question but that up to this time only the county courts could commit the indigent insane and the probate courts were denied jurisdiction over the subject matter of committing indigent insane. The Constitution of Missouri, 1945, contains Section 16,

Article V, which now defines and limits the jurisdiction of the probate courts in this state. Said section reads as follows:

> "Probate Courts--Jurisdiction.--There shall be a probate court in each county with jurisdiction of all matters pertaining to probate business, to granting letters testamentary and of administration, the appointment of guardians and curators of minors and persons of unsound mind, settling the accounts of executors, administrators, curators and guardians, and the sale or leasing of lands by executors, administrators, curators and guardians, and of such other matters as are provided in this Constitution."

Under the two sections of the constitution, that section from the constitution of 1875 and that section of the constitution from 1945, we see that there is no direct prohibition against the probate courts acting over the subject matter of committing indigent insane, nor do either of the constitutional sections contain a direction to the probate court that said court act over the subject matter of committing indigent insane. That is the present status of the probate court in relation to this matter. In other words, there was no constitutional or statutory authority, up until July 1, 1946, which prohibited or directed probate courts concerning the subject matter of committing indigent insane.

Let us return to the county courts and examine their course in this matter. The county courts, as pointed out in the cases supra, were recognized under the constitution of 1875 and Section 9328, R. S. Mo. 1939, in effect up until July 1, 1946, as the only court with power to commit indigent insane. As pointed out in the cases supra, this power of the county court to commit indigent insane came into being by reason of Section 9528, R. S. Mo. 1939, which provided in part as follows:

> "The several county courts shall have power to send to a state hospital such of their insane poor as may be entitled to admission thereto. * * * * * * * "

The constitutionality of this power of the county court to commit indigent insane has been tested in the Van Loo case, cited supra. The court held that these statutes empowering the county court to commit indigent insane were valid statutes because they were enacted in furtherance of the constitutional provisions which allowed the county court to transact all county business. Sec. 36, Article VI, Constitution of 1875, provides:

> "County courts.--In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

As the county court, upon the committing of an indigent insane, would subject the county revenue to this burden, this constituted county business and was a power exercised by the county court by its jurisdiction over this matter, by reason of the constitution and statute, supra.

There is no constitutional provision in either the constitution of 1875, or the constitution of 1945, which directs or prohibits the county court in taking jurisdiction of the committing of indigent insane.

Therefore, we see by our analysis that the county court, until July 1, 1946, was the only court that had the power to commit indigent insane and that power came into being through the legislative enactment of Section 9328, R. S. Mo. 1939.

Our problem now is, what is the status of these two courts, the probate court and the county court, as to the power to commit indigent insane under the statutes now in effect and the constitutional provisions now in effect. The legislature, under Senate Bill No. 284, has placed the power of committing indigent insane within the jurisdiction of the probate courts. Senate Bill No. 284 repealed all sections of the Missouri Statutes which dealt with the power to commit indigent insane in county courts, and placed this power in the probate courts. We must now examine the law to see whether or not this transfer of the power to commit indigent insane from the county courts to the probate courts, by reason of Senate Bill No. 284, is an effective transfer of power.

Keeping in mind the constitutional provisions quoted supra,

and what they provide, we come to the general principles of constitutional law to find the extent the legislature may go in enacting laws under constitutional provisions. The general rule of constitutional law, in regard to what laws the legislature may pass, is that the legislature possesses all legislative powers not prohibited by the constitution, either expressly or by necessary implication: State ex rel. Crutcher v. Koeln, 61 S. W. 2d 750, 332 Mo. 1229. A similar statement of the rule is found in State ex rel. Gaines v. Canada, 113 S. W. 2d 783, 342 Mo. 121, where the court held that the Missouri Constitution is a limitation on, and not a grant, of legislative power and, therefore, the legislature can enact any law not expressly or impliedly prohibited by the federal or Missouri Constitution. In other words, all legislative authority not denied the General Assembly by the constitution resides in the General Assembly. Further, the legislature needs no specific constitutional authorization for its enactment, only such enactments must not contravene any prohibition of the federal or state constitutions which are either expressed or impliedly contained therein. In other words, the legislature may pass any law not prohibited by the constitution, and the constitution need not affirmatively command the law in order that it be valid. It is only necessary that the constitution does not prohibit the legislature's act.

With that general rule of constitutional law in mind, we turn again to the Downey case cited supra and, at l. c. 323, we find the following statement of the Supreme Court of Missouri:

> "* * * "The general authorities show such lunacy inquisitions are governed by statute, 28 Am. Jur. Sec. 10, p. 661; and that historically the power was derived from the Kings of England, thence passed to the chancellor, and in this country to the people who have left it with the Legislature. 32 C. J. Sec. 162, 165, pp. 626, 628. The Legislature has implemented the power through the county court and probate court statutes mentioned in the beginning. * * * "

Summarizing the above discussion, we find that there is no direct prohibition, nor any implied prohibition in the constitutional provisions relating to the probate court or to the county court which would be contravened by the placing of the power to commit indigent insane within the jurisdiction of probate courts. As the constitutional provisions show, the probate courts have the power to appoint guardians and curators of insane persons, not

only as to their property, but, under the Redmond case, 225 Mo. 721, 126 S. W. 159, also, the probate court may appoint guardians as to the person. Further, under the statutes the probate court has the power to hold insanity hearings, Section 447, R. S. Mo. 1939. The power to appoint guardians by the probate court is found in the Laws of 1941, page 287, Section 451. The probate court may summarily restrain the dangerously insane, Section 497, R. S. Mo. 1939. In fact all of Article XVIII, Chapter 1, R. S. Mo. 1939, provides for the different powers of the probate court in dealing with insane persons, both as to their estate and their person. Why should the final power to commit indigent insane be denied the probate court? We see no reason for constitutionally denying the probate court this power.

Lacking as we do any direct or implied prohibition of the probate courts to commit indigent insane, we can see no reason why - - in view of all their statutory powers in regard to insane, whether indigent or not - - the legislature may not grant to the probate court the power to commit an indigent insane person. We see by the last quotation from the Downey case, cited supra, that the power to deal with the insane was left with the legislature. The legislature, in the exercise of that power to deal with insane persons, placed the power to commit within the jurisdiction of the probate court, by reason of Senate Bill No. 284. Said bill provides, page 3, Section 9328:

> "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. * * * * * * * "

CONCLUSION

In our opinion Senate Bill No. 284 is a valid and constitutional law, granting to the probate courts the power to commit indigent insane, for the reasons set out in the discussion above.

Respectfully submitted,

APPROVED:

WILLIAM C. BLAIR
Assistant Attorney General

J. E. TAYLOR
Attorney General

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