ELEEMOSYNARY INSTITUTIONS - Board of Managers have right to compromise judgment against county.

July 12, 1934.

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Honorable W. Ed Jameson, President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jameson:

This department acknowledges receipt of your letter dated July 3, 1934. Your letter is as follows:

> "Buchanan County owes State Hospital #2, at St. Joseph, for their account to Jan. 1, 1934 the principal sum of $39,401.50. Suit was brought on this account and judgment rendered with interest to Feb. 1, 1934 amounting to $3743.14, making the total amount of judgment, principal and interest, $43,144.64. This amount bears interest at 6% from Feb. 1, 1934.
>
> Buchanan County owes something like one and one half million dollars and preparations have been made by the county to issue bonds to each individual creditor to take up these obligations. They will be owing us, therefore, $43,144.64 plus interest from Feb. 1, 1934 to July 16, 1934.
>
> What we are endeavoring to do is to collect our accounts against Buchanan County. Our board has expressed its willingness to accept the principal of this account, or in other words if we are permitted to do so we are willing to square this account on our books for $39,401.50 in cash. In so

doing, of course, we will be allowing discount to the amount of the interest on the indebtedness.

At your earliest possible convenience, and particularly before July 16th, I will be very glad if you will have an opinion rendered from your office as to our right to accept the principal on this account and release this judgment."

Article 2 of Chapter 46 of the Revised Statutes for the year 1929, and particularly Sections 8636 and 8642 thereof, authorize the payment by the several counties of this state of the amounts due for the support and maintenance of the insane poor of such counties in the respective state eleemosynary institutions.

Section 8615, R. S. Mo. 1929 provides as follows:

"For all debts and demands whatsoever due any eleemosynary institution, and all damages for failure of contract, and for trespass and other wrongs to the institution or any property thereof, real or personal, actions in any court of competent jurisdiction may be maintained in the name of the board of managers of such institution, naming it. Interest shall be recovered on any and all sums due the institution from the time when the cause of action accrued. In actions for any indebtedness, or for any damages due the institution on account of any patient or inmate thereof, the account therefor, certified by the superintendent, with the seal of the institution attached, shall be prima facie evidence of the amount due."

From the foregoing it appears that the various counties are liable for the payment to the state eleemosynary institutions for the support and maintenance of insane poor of such county and that the Board of Managers of such institution where such patients of the institution may be supported and maintained are entitled to maintain an action in court for the collection of such sum or sums so due.

With the foregoing as a background, we think the applicable rule and answer to your inquiry is found in Railway Company v. Anthony, 73 Mo. 431, l.c. 434:

> "The power to sue implies the power to accept satisfaction of the demand sued for, whether the precise amount demanded or less. The taxes were levied for the benefit of the county. The beneficial interest was in the county, and it is for the public interest that she should have the right to settle, by compromise, questionable demands which she may assert. Must the county prosecute doubtful claims at all hazards, regardless of costs and expenses, and is it for the public good that the right to settle such demands by compromise be denied her? As was said by the Supreme Court of New York in the case of the Board of Supervisors of Orleans Co. v. Bowen, 4 Lansing 31: 'It would be a most extraordinary doctrine to hold that because a county had become involved in a litigation, it must necessarily go through with it to the bitter end, and has no power to extricate itself by withdrawal or by agreement with its adversary'. The same doctrine was sanctioned in the Supervisors of Chenango County v. Birdsall, 4 Wend. 453."

We see no reason why the reasoning of the court in the quotation above set out would not apply as well to the Board of Managers of the state eleemosynary institutions as to a county. The fact that Section 8615 requires judgment to be recovered for interest does not alter the situation, as it is now a question of what is to the best interest of the state eleemosynary institutions, in view of all of the circumstances which might surround an attempt to enforce the judgment you have obtained against Buchanan County.

It is our opinion, that if the Board of Managers of the state eleemosynary institutions are of the opinion that the acceptance of the principal sum of the judgment obtained by you against Buchanan County would be for the best interest of the state eleemosynary institutions, that you are authorized and warranted under the law in accepting that amount in full satisfaction of the judgment so obtained.

Yours very truly,

GILBERT LAMB
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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