INSANE PERSONS: Should be committed by county court if paupers; by guardian or relatives if pay patient;-and eleven other questions.

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

Dear Sir:

This Department acknowledges receipt of your letter of January 19, relative to a number of questions concerning civil liability of superintendents of the hospitals of eleemosynary institutions and particularly the hospitals for the insane.

In order to avoid repetition and duplicity we shall attempt to separate your questions and answer them individually.

I

The first question is as follows:

> "First, there has always been some contention on how patients should be committed to the hospital where they are public patients, whether they should be committed by county courts or probate courts."

Section 448, Revised Statutes Missouri 1929, relates to the procedure to be followed in the probate court with respect to insane persons. Said section 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 is an idiot, lunatic or person of unsound mind, and incapable of managing his affairs, and praying that an inquiry thereinto be had, the court, if satisfied there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a 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."

Originally, the above section contained the provision as follows:

> "Provided that the probate court shall not have jurisdiction to inquire into the sanity of any person who is the owner of no property."

But the Legislature, in 1913, in Laws of Missouri,1913, page 94, amended the section by striking that sentence and inserting in lieu thereof the words contained in the statute quoted, after the proviso.

Section 8636, Laws of Missouri 1935, page 388, relates to the power of the county court to send poor patients to the various eleemosynary hospitals:

> "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. * * * * * "

Section 8664, Revised Statutes Missouri 1929, defines the terms "insane poor" or "indigent insane." The pertinent part is as follows:

> "* * *'insane poor' or 'indigent insane,' when applied to a person without a family, shall mean one whose property of all kinds does not exceed, after payment of his debts and liabilities, that which is exempted by the laws of this state from attachment and execution when owned by any person other than the head of a family; and the same words, when applied to a person having a family, shall mean one whose property of all kinds does not exceed, after payment of his debts and liabilities, that which is exempted by the laws of this state from attachment and execution when owned by the head of a family: Provided, that when the said words are applied to a married woman, her separate estate, if any, and that of her husband shall be estimated as aforesaid, and the total amount of both estates shall determine the question aforesaid, whether she be a 'poor' person or not, within the meaning of this chapter. A person with a family is one who has a wife and child, or either; county patients are those supported in a state hospital at the expense of the counties sending them; pay or private patients are those supported in the hospital by their family or friends, or from the proceeds of their own property * * ."

We assume that "public patients" are those patients which are supported in the various hospitals by public funds, county and state. The question as to whether or not sole jurisdiction to investigate sanity of citizens of Missouri is vested in the probate

court, is discussed in the case of Painter v. Painter, 206 Mo. l. c. 321:

> "Appellant relies principally upon the argument that the case of Redmond v. Railroad, 225 Mo. 721, 126 S. W. 159, holds that the exclusive and sole jurisdiction to investigate the sanity of citizens of Missouri is vested in the probate courts under the Constitution. However, on reading that case we conclude that on this question the Supreme Court merely held that the legislature could not deprive the probate courts of Missouri of the jurisdiction to try insanity cases. This case, or no cases cited by appellant go to the extent of holding that exclusive jurisdiction if this particular is given by the Constitution to the probate courts.
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> "On turning to the Constitution again, to ascertain the authority given the county courts under Section 1411, as amended, to Section 1423, Revised Statutes of 1909, we find that the Constitution in Article 6, Section 36, has vested county courts with the jurisdiction to transact all county 'and such other business as may be prescribed by law.'
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> "It is held that implied limitation to the legislative powers to enact statutes must be so clear and unmistakable as to make possible no other reasonable construction of the language used than that the power to enact the statute does not exist.

(See State ex rel. v. Burton, 266 Mo. l. c. 717, 182 S. W. 746; State ex rel. v. Locker, 266 Mo. l. c. 393, 181 S. W. 1001; State ex rel. v. Tincher, 258 Mo. 1, 166 S. W. 1028.)

"We therefore hold that the Constitution did not confer exclusive jurisdiction to try insanity cases in the probate courts of Missouri, and that the Legislature has conferred such jurisdiction in certain cases on county courts under Section 36, Article 6 of the Constitution. It will be observed on reading the act conferring this jurisdiction upon county courts that they are, in the main, making an investigation as to whether certain people are entitled to be sent to the State hospital at public expense."

The decision of Ex parte Zorn, 241 Mo. l. c. 270, indicates very strongly that the county court has exclusive jurisdiction of insane persons who have no property:

"We have no hesitation in holding that Jackson county was the proper place to conduct the inquiry into the alleged insanity of petitioner, because that county was the place of his residence. One of the objects of article 19, chapter 2, Revised Statutes 1909, is to protect and preserve the property of persons of unsound mind. This

> is evidenced by the fact that the proceeding cannot be instituted in the probate court if the insane person has no property. It is apparent that the Legislature intended that the guardians of insane persons should be appointed and their estates administered in the county of their residence where their property is located, and where their friends and acquaintances are likely to reside. (State ex rel. v. Wurdeman, 129 Mo. App. 263.) It is true that article 19, chapter 2, Revised Statutes 1909, does not expressly authorize probate courts to send their notices or writs to other counties to be served upon parties sought to be declared insane. Probate courts are part of the judicial system of our State, being created by the Constitution, and empowered by that document to pass upon the sanity of individuals; therefore, the instrumentalities for invoking their jurisdiction in that class of cases may be prescribed by general law."

Section 448, quoted supra, relates to the procedure for declaring persons insane and incapable of managing their own affairs when said person has property or an estate. If, after a legal hearing, the person is declared to be of unsound mind and incapable

of managing his or her own affairs, then a guardian may be appointed of the person and the property of such insane person, as provided in Section 452, Revised Statutes Missouri 1929. The probate court may immediately commit the patient to the insane asylum or the patient may remain under the care of the guardian and if necessary may be committed according to the provisions of Section 498. If the person has no property or is declared to be a person who is defined by Section 8664 as insane poor or indigent insane, then the procedure is to be followed as contained in Sections 8636 to 8651, inclusive, as amended by the Laws of 1937, page 509.

We are, therefore, of the opinion that the probate court has exclusive jurisdiction of insane persons who have property or an estate, but if the estate of the insane person becomes exhausted after the patient is incarcerated in the asylum the patient may become a county patient and subject to the supervision of the county, according to the provisions of Section 8653, Revised Statutes Missouri 1929; that the county court has exclusive jurisdiction in committing patients who have no property or estate, or, in other words, public patients.

II

The second question is as follows:

> "Second, should we at any institution, at any time, take a public patient from a peace officer without a commitment?"

Under the provisions of Section 8649, Revised Statutes Missouri 1929, it is the duty of the clerk of the county court to transmit to the superintendant of the state hospital a copy of the order of the county court with application for the admission of a person to the hospital. The form of warrant is also contained in this section; likewise, the form of endorsement by the superintendent to be placed on the warrant when the patient is received.

Section 8650, Revised Statutes Missouri 1929, is as follows:

> "The relatives of the insane person shall have the right, if they choose, to convey him to the hospital. In such case, the warrant shall be directed to one of them; and the person to whom it is directed and his assistant shall, if demanded, receive the same compensation allowed for the like services to the sheriff."

In view of these sections, we are of the opinion that the public patients should not be received from a peace officer without a commitment or a warrant.

This conclusion is further fortified by the provisions of Section 8639, R. S. Mo., 1929, which is as follows:

> "Whenever a patient is sent to a state hospital, by order of any court or officer having authority to make such order, the warrant, or copy of such order, properly authenticated, by which such patient is sent, shall be lodged with the superintendent."

III.

> "Should we have public patients properly committed for whom the county or city or the responsible public authorities do not make regular payments? Have we the right to take such patients from the hospital and deliver them back to the county or city from which they have been committed, and, if so, to whom shall we deliver the patient? This question often arises on account of non-payment of bills and, as you know, unless we collect the money owed the institutions we cannot spend it."

The power of the county courts to send patients to the various State hospitals is contained in Section 8636, Laws of Missouri, 1935, p. 388, 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 counties thus sending 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, not

> exceeding six dollars ($6.00) per month for each patient; and in addition thereto the actual cost of their clothing and the expense of removal to and from the hospital, and if they shall die therein, for burial expenses; and in case such insane poor shall die or be removed from the hospital before the expiration of six months, it shall be the duty of the mangers (managers) of such hospital to refund, or cause to be refunded, the amount that may be remaining in the treasury of such hospital due to the county entitled to the same; and for the purpose of raising the sum of money so provided for, the several county courts shall be and they are hereby expressly authorized and empowered to discount and sell their warrants, issued in such behalf, whenever it becomes necessary to raise said moneys so provided for."

We know of no provision wherein a city has the authority to send patients to the various State hospitals but we assume that you refer to the City of St. Louis, which for all purposes is treated as a county. Under Section 8636, quoted supra, the county is empowered to discount and sell its warrants when it becomes necessary to raise money to provide for the payments therein specified. In addition, the County Budget Act, Laws of Missouri, 1933, p. 340 et seq., has, in classifying expenditures of the counties, created Class 1 relating to patients in State hospitals as a priority over all succeeding classes. Thus, it would appear that there should be no occasion for returning patients to the various counties or city from which they were committed.

We are of the opinion that the Board of Managers can return patients to the counties or city provided that the counties or city will accept them, and if patients are returned they should be returned to the custody of the

county court. We think it the duty of the Board of Managers to collect from the various counties, by proper action if necessary, any delinquent accounts, and not return the unfortunate patient to the county. State ex rel. v. County, 80 Mo. 80; Thomas v. County, 175 Mo. 68. We are impressed by an opinion given by the Attorney-General of Pennsylvania, 29 Pa, County Court Rep. 123, as follows:

> "You ask whether the asylum should return the patients whose maintenance now remains unpaid by the poor districts, to the county from which they came, or whether suits should be brought to collect the amounts due.
>
> "I do not deem it necessary at the present writing to determine whether or not you can legally return these patients. In my judgment it is unnecessary to resort to so harsh a measure, particularly as it would involve great suffering to the helpless and unfortunate beings who are now the subject of your care, and I advise that you continue to protect them, and to instruct your counsel forthwith to bring suits against the delinquent counties for the amounts unpaid, under the act of May 8, 1889, P. L. 127."

Therefore, we reiterate, the patient should not be returned to the county, except by the consent of the county itself, but rather suit should be brought against the delinquent counties for the amounts unpaid.

IV.

"Private Patients - On the admission of private patients to our mental

> hospitals we have attached hereto the form used. Are we free of all civil responsibility when we accept a private patient on the statement of two physicians and, if so, to what extent should we go in regard to the checking up of the relationship liability of the one delivering the patient to our institution?"

Section 8630, R. S. Mo. 1929, is as follows:

> "Pay patients, or those not sent to the hospital by order of the court, may be admitted on such terms as shall be by this article and the by-laws of the hospital prescribed and regulated."

Section 8631, R. S. Mo. 1929, contains the provisions as to the application preparatory to the admission of pay or private patients, and further contains the following pertinent provision:

> "Each person signing such request or certificate shall annex to his name his profession or occupation, and the township, county and state of his residence, unless these appear on the face of the document."

Section 8632, R. S. Mo. 1929, contains the form of the request for admission. Section 8633 contains the form of the certificate of two physicians. Section 8634 contains the provisions and the conditions of bond to be executed. The last provision of Section 8634 is as follows:

> "Those that take private patients to any state hospital must be prepared to give such bond, and, if strangers, evidence must be taken of their responsibility."

We have examined the enclosed blank designated "Private Patient - Certificate of Insanity" and the forms therein contained appear to comply with the provisions of the sections heretofore referred to and we think if properly executed, and no fraud appearing on the face of the forms, it relieves the hospital of civil liability. As to what investigation or what efforts should be made to ascertain the genuineness of the application or the relation, we suggest that if the parties are strangers and the Superintendent of the hospital is not satisfied, that he make some investigation of the same and ascertain whether they be responsible parties.

V.

"If a private patient is delivered to our institutions in accordance with this form, and the patient makes complaint and wishes to leave the institution and insists upon leaving, to what extent should we go to restrain such patient from leaving?

"Some of our superintendents have been advised that having the patients sign the typewritten statement on this attached application relieves us of responsibility. Will you please advise as to this?"

If the private patient has been adjudged insane, that is, in the opinion of the hospital superintendent and the authorities, such a person is mentally unfit to run at large, and if in the opinion of the hospital authorities should not be permitted to leave the hospital, the hospital should restrain and prevent such patient from leaving. In any event, relatives of the person who made the application should be notified before the patient is discharged or released. The fact that the insane person signed a waiver

or acknowledgment that such person is in need of treatment and submits voluntary to incarceration, has some probative weight but is not conclusive. The patient has acknowledged in the signing of the same that he or she is demented, deranged or insane as the physician's certificate so states, and this renders the patient incompetent to make contracts and agreements.

The general liability of public institutions is discussed in 13 R. C. L., Par. 8, p. 944, as follows:

> "Strictly public institutions created, owned, and controlled by the state or its subdivisions, such as state asylums for the insane, city hospitals, reformatories, etc., are not liable for the negligence of their agents. The doctrine of respondeat superior does not apply. They are held to be governmental agencies brought into being to aid in the performance of the public duty of protecting society from the individual unfortunate or incompetent in mind, body, or morals, and the rules applicable to municipal corporations and public officers generally are applied."

And again, Par. 9, p. 945:

> "The theory on which those cases holding hospitals immune from liability to patients on the ground of public policy proceed, is that as such institutions are inspired and supported by benevolence and devote their assets and energies to the relief of the destitute, sick and needy, the common welfare requires that they should be encouraged in every way and held exempt from liability for tort; that to do otherwise would operate to discourage the

charitably inclined, dissipate the assets of such institutions in damage suits, and ultimately, perhaps, destroy them."

VI.

"Should private patients, who are being committed to our mental hospitals for restraint, or any other reason, be held by us as prisoners contrary to their wishes, merely upon the statement of the physicians in the certificate and request of relatives who placed them therein?"

Much of what has been said in answer to your fifth question is also applicable to this question. It must be borne in mind that the Superintendent by the statute and by his title has complete charge of the asylum, subject to the rules and supervision of the Board of Managers. He has the power to parole or discharge a patient by statute. When private patients are placed under his charge and supervision it becomes his duty to determine what shall be the best interest of the patient. If the patient has been admitted and has complied with the rules and law relating to the admission of patients, then it becomes the duty of the Superintendent to restrain the patient contrary to the patient's wishes, but merely because two physicians and the relatives of the patient have certified that said patient is insane does not mean that the Superintendent shall restrain the patient contrary to his wishes, if in the judgment of the Superintendent said patient is not in reality insane.

In other words, the patient does not and should not be confined in an asylum irrespective of what physicians or relatives may desire, if in the opinion of the Superintendent the patient has been restored or no longer should remain in the institution.

VII.

"Should we go to the extent of requesting that private patients placed in our mental hospitals be committed to us by a duly authorized court order? This question we realize full well carries with it the thought that in declaring a person insane by court order you place a stigma upon them, when the condition may be only a temporary one, which with proper treatment can be remedied."

As stated heretofore the statutes set forth the manner in which private or pay patients shall be admitted to the various hospitals and the manner in which public patients may be admitted to the hospital on a duly authorized court order.

If a person is a private or pay patient and the provisions of Sections 8631, 8632, 8633, 8634 and 8635, R. S. Mo., 1929, have been complied with, the terms of which have been set forth in answer to other questions, we are of the opinion that it is not necessary nor should you go to the extent of requesting that private patients be committed by duly authorized court order.

VIII.

"Where a private patient is placed with us under a contractual agreement, where the relatives or other responsible parties, guardians, etc., agree to pay a stipulated amount each month for their upkeep, in the event that payments are defaulted what course should we follow in discharging said patients from the hospital, delivering them back to their relatives or guardians, and what liability results to us therefrom?

"Bearing in mind our position in regard to some of these questions, where there comes before us the question of a person who is mentally deficient and possibly violent, or with homicidal inclinations, to what extent would our liability be if such a patient were turned back upon the community from whom we received them?

"Suppose that a private patient was being discharged from one of our mental hospitals on account of non-payment of his bill by his relatives or guardians, and that we were to deliver such patient back to relatives or guardian and they refuse to accept such patient what course of action should we pursue and what would our either personal or public liability be?"

Section 8634, supra, provides for the giving of bond for private patients, and in the case of guardians placing patients in the institution it is assumed that the patient has some estate, subject to execution. However, if the guardian or relatives or other parties who have contracted for the support of the patient refuse to adhere to the terms of the contract, we think you have two courses: one being a suit at law for the amount in default; and the other to return the patient to the parties responsible for the payment and support of the patient. Of course, the relatives,guardians, or persons bound by the contract, should be notified and the patient actually delivered to them, either at the institution or at the place of residence, and the provisions of Section 8672 should be followed.

If the patient has no mentality, is violent, and it is dangerous to the patient and to the public for the patient to run at large,we think the Superintendent and the Board of Managers should use their own judgment in the matter, but should not release the patient upon the community, and if the guardian or other person responsible for the patient refuses to accept the patient, then,under such circumstances, the

patient should be delivered to the sheriff of the county and the sheriff informed of the situation and that said patient is mentally unfit to be released upon the public. But again, we are of the opinion that no patient should be delivered, released or discharged only as a last resort due to the fact of non-payment of his or her support, but all remedies should be exausted to obtain delinquent accounts or a satisfactory adjustment and agreement for future accounts.

If the patient's estate has been exhausted or if the relatives are unable to support or refuse to support the patient, then the matter should be reported to the county court of the county in which the patient is a legal resident and the patient can then be committed by the procedure as prescribed for the commitment of public patients.

In short, we think no legal resident of the State of Missouri in need of treatment, or who is insane, should be denied that treatment because of poverty or dereliction of duties on the part of relatives or others.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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